

# **SCHAUM LAW OFFICES**

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## **TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF**

**You are in your office on a typically busy day and are suddenly informed by a staff person that you have received a subpoena – unfortunately, not an uncommon experience. Let us discuss the particular document and reasons and implications of it.**

**A subpoena is issued in conjunction with a legal proceeding, be it litigation or a government inquiry, etc... It is a command – a direction – for the recipient to appear to give testimony. It may also be a subpoena duces tecum which requires the production or delivery of records or documents in the possession of the recipient. Be aware that despite the issuance of the subpoena you cannot be ordered to release information which may otherwise be privileged. Obviously, personal health information is privileged and other information may be subject to HIPAA privacy rules. Prior to any release you should consult with your attorney to determine that there has been compliant with all applicable regulations.**

**A further word about HIPAA information – the subpoena for a patient's medical records involving HIPAA must have the signed HIPAA authorization of the patient in question. The usual caution again come into play – consult with your attorney before commencing the walk down this path. It is better to have a quarrel with the issuer of the subpoena than run afoul of violating confidentiality.**

**Psychiatric records or information create their own set of issues. The CPLR (Rules of Civil Procedure) and New York Mental Hygiene Law impose stricture that the records of these patients are only obtainable by a court ordered subpoena or with the patient's consent. The same applies to alcohol and drug rehab facilities and their patients.**

**A further word of caution – the subpoena which contains the language SO ORDERED by a court cannot be followed blindly as the law dictates that the patient is entitled to a hearing to determine whether the confidential information being sought has met a burden of necessity. Only after this hearing is completed may a binding subpoena be issued.**

*Respectfully submitted,*

*Schaum Law Offices*