

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**In re:**

**DOH Case No.:** \_\_\_\_\_

**Objection to SUBPOENA NO. A-**\_\_\_\_\_

\_\_\_\_\_/

**OBJECTION TO DOH SUBPOENA NO.** \_\_\_\_\_

COMES NOW Respondent, a doctor of medicine (M.D.), to whom the referenced Subpoena is directed, by and through his/her undersigned counsel, in accordance with Chapter 120, Florida Statutes, hereby files this Objection and Exceptions to DOH Subpoena No. A-\_\_\_\_\_, which was issued \_\_\_\_\_, 20\_\_ (referred to herein as the "Subpoena"), and a copy of which is attached hereto, in the above-referenced case.

Respondent files this objection with the Florida Surgeon General. The Respondent files this Objection anonymously to avoid disclosure of a confidential investigation which is prohibited by Florida law, pursuant to Section 456.073(10), Florida Statutes.

As grounds therefor he/she states:

1. The Respondent is a Florida licensed \_\_\_\_\_ who provides medical/health care/mental health/dental/psychological services, including but not limited to, drug and alcohol abuse counseling, HIV testing and counseling, testing and counseling for sexually transmitted diseases (STDs), and/or mental health/psycho-therapy counseling and/or referrals to specialists and consultants for the same.
2. The Subpoena seeks the confidential medical records of fifteen (15) named patients, none of whom made a complaint against the physician.
3. The complaint giving rise to this investigation is not based on any complaint made

by or on behalf of any patient. In fact, all of the Respondent's patients or former patients are very satisfied with the medical care they have received from this Respondent.

4. Respondent hereby objects as further stated below.

5. The Petitioner Department of Health seeks to obtain the private, personal, confidential medical records of fifteen (15) different patients. Yet the Department of Health has not received or furnished any signed authorization from any patient to obtain or receive a copy of the patient's medical record.

6. The underlying documents allegedly supporting the Subpoena indicate that the investigator attempted to obtain signed patient releases to obtain their medical records but "met with negative results."

7. The patients whose records are sought have been contacted by the Respondent and they have stated that they do not authorize the release of their records and information on them and they object to its release or use by the Department of Health.

8. The Subpoena shows on its face that it is being issued pursuant to Chapter 456, Florida Statutes, for the investigation of an alleged violation of Section 458.331, Florida Statutes.

9. The Respondent is not a Medicaid provider, has never signed any agreement agreeing to be in the Medicaid Program, and advises his patients in advance that he does not accept Medicaid. The Subpoena is not for records of Medicaid fraud. The Respondent physician has not billed or collected any fees from the Medicaid Program.

10. Furthermore, one patient whose record is requested (whose initials are "Y.Y.") is not even known to the Respondent and has never been treated by him/her. It is believed that the correct patient names are not being provided. This may lead to the release of the incorrect

patient's medical records.

11. As stated previously, Respondent contends that the underlying affidavit and other documents attached to the Subpoena show that there is no probable cause nor even a "reasonable cause" that any offense has been committed by the Respondent or that the medical records being sought contain any evidence of any violation of any law or rule.

12. The records requested include those that are considered to be "super-confidential" and may not be released absent a specific court order in accordance with Florida law, federal law, and Federal Regulations, including but not limited to 42 CFR Part 2, Florida Statutes, and the HIPAA Privacy Regulation. Federal Regulations and Federal Statutes prohibit the release of the information sought by the Subpoena, including 42 U.S.C. Sect. 290dd-2; 42 U.S.C. Sect. 9501(1)(H) & (2)(B); 42 C.F.R. Part 2; 45 C.F.R. Sects. 164.102, 164.501, 164.502(a), and 164.512. These federal laws and regulations override and pre-empt any state laws or regulations.

13. The Subpoena for fifteen (15) patients' medical records appears to be nothing more than a fishing expedition. It is overbroad and over-reaching on the part of the Department of Health.

14. The Respondent objects to the Subpoena because Respondent believes that the Subpoena may not have been lawfully issued and that the order is not proper. The Respondent objects on the following grounds, pursuant to Section 120.569(2)(k)1, Florida Statutes:

- a. That the Subpoena was not lawfully issued (including that the Subpoena was not based on reliable evidence of reasonable cause or that the complaint made initiating the investigation is not legally sufficient, as is required by Section 456.073(1), Florida Statutes).

- b. That it is unreasonably broad in scope; and
- c. That the Subpoena requires the production of irrelevant material.

**WHEREFORE**, the Respondent objects to the Subpoena.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing was filed and served as follows:

Filed via telefax (with original following via certified mail, return receipt requested), to:

Agency Clerk  
c/o General Counsel  
Department of Health  
**Mailing address:**  
4052 Bald Cypress Way, Bin #A02  
Tallahassee, Florida 32399-1703  
**Physical address:**  
2585 Merchants Row Boulevard  
Tallahassee, Florida 32399  
Telephone: (850) 245-4005  
Telefax: (850) 410-1448

with a copy served via telefax (with original following U.S. mail, postage prepaid), to:

*ZZZZ*  
Investigator  
Department of Health  
Prosecution Services Unit

\_\_\_\_\_  
\_\_\_\_\_, Florida \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**GEORGE F. INDEST III, ESQUIRE**

Board Certified in Health Care Law

Florida Bar No.: \_\_\_\_\_

**MICHAEL L. SMITH, ESQUIRE**

Board Certified in Health Care Law

Florida Bar No.: \_\_\_\_\_

**THE HEALTH LAW FIRM**

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Altamonte Springs, Florida 32714

Telephone: (407) 331-6620

Facsimile: (407) 331-3030

**ATTORNEYS FOR RESPONDENT**

**ATTACHMENT:** DOH Subpoena No. A-\_\_\_\_\_ (with patient names and Respondent's name redacted)

**[NOTE: THE FORGING DOCUMENT IS AN EXAMPLE FOR ILLUSTRATIVE PURPOSES ONLY AND MAY INCLUDE THE GROUNDS FROM SEVERAL DIFFERENT CASES. EACH CASE IS DIFFERENT AND THE APPROPRIATE FACTS AND LEGAL GROUNDS SHOULD BE ALLEGED AND USED. ALWAYS CONSULT AN EXPERIENCED HEALTH ATTORNEY.]**

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