

# DOCTORS



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## YOU ARE COMPELLED: WHAT TO DO WHEN YOU GET A SUBPOENA



### find out...

- When to contact MEDICAL MUTUAL/Professionals Advocate after receiving a subpoena
- How to ensure your response to a subpoena is complete
- How to minimize the inconvenience of a deposition

## A LETTER FROM THE CHAIR OF THE BOARD

Dear Colleague:

As Physicians, understanding how to respond to a subpoena requires careful review to determine whether it seeks testimony, the production of records, or both. This article will help you understand your legal responsibilities when responding to a subpoena and when you may need an attorney's assistance.

Sincerely,

George S. Malouf Jr., M.D., FACS  
Chair of the Board  
MEDICAL MUTUAL Liability Insurance Society of Maryland  
Professionals Advocate Insurance Company



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## DOCTORS RX

Michael Doll, Editor,  
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MEDICAL MUTUAL Liability Insurance Society of Maryland  
Professionals Advocate® Insurance Company

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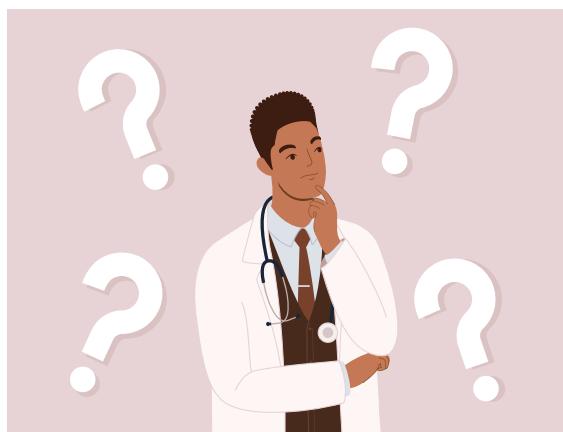


## YOU ARE COMPELLED: WHAT TO DO WHEN YOU GET A SUBPOENA

### Consider this:

After a busy week seeing patients, you receive a certified letter from an attorney, stating that you missed a deadline to supply records in a case involving a patient. You remember receiving a subpoena, but, due to your busy schedule, you did not have a chance to send the records. Now, you are being forced to testify at a deposition, disrupting a day of scheduled patient visits. The letter warns that, if you do not appear at the deposition, a motion will be filed seeking to hold you in contempt of court.

You might wonder: What are my obligations? Do I have to comply with the subpoena? How should I prepare to testify? Do I need an attorney? What could I have done differently to avoid having to appear in person?



At some point in your career (if it has not already happened), you will be served a subpoena. Subpoenas come in two forms: 1)

an order to provide specific documents (*subpoena duces tecum*); and 2) an order to appear in court or at a deposition to provide testimony (*subpoena ad testificandum*).

A subpoena *duces tecum* may include a request for records that you would not expect to turn over. For instance, in responding to a subpoena for records, you generally would expect to provide your progress notes from each visit with the patient, but the subpoena may request *all* materials and records relating to that patient. This might require you to produce billing records, referrals, prescriptions, consultation notes, and internal emails. Be cognizant of the specific records you are asked to produce in response to a subpoena.

A subpoena *ad testificandum* can instruct you to appear to testify for a deposition or at a trial. Depositions are "fact-finding expeditions," during which attorneys will ask questions of the deponent (the person being deposed), who is required to testify under oath. Depositions will generally be limited in scope to your experience and interactions with the patient, so long as they are relevant to the case and the care you provided. Whether in a deposition or at a trial, you will be asked to testify about your experience, knowledge, and understanding of a specific patient or facts relating to a patient and the care you rendered.

### DO I NEED AN ATTORNEY?

It is best to call MEDICAL MUTUAL/Professionals



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## Consider

**MEDICAL MUTUAL/  
Professionals**  
**Advocate can help  
you identify which  
subpoenas require  
an attorney's help  
and which do not.**

Advocate before responding to a subpoena so that you can be guided through the process. If you are served a subpoena *duces tecum*, in most instances, you will not need an attorney to assist you. After you and your staff compile and produce copies of the requested records, you will have complied with the subpoena and your involvement should end.

However, in certain circumstances an attorney can assist you with a subpoena *ad testificandum*. If, after reviewing the subpoena, it is determined that you need counsel, MEDICAL MUTUAL/Professionals Advocate will help you determine what your next steps should be.

A subpoena may be confusing and outside of your area of expertise. However, MEDICAL MUTUAL/Professionals Advocate can help you identify which subpoenas require an attorney's help and which do not.

## Questions? WE CAN HELP.



Call us today: 410-785-0050  
or toll free at 800-492-0193

## WHAT IS A VALID SUBPOENA AND WHEN DO I HAVE TO RESPOND?

You must comply with a subpoena if it is valid and enforceable. For a subpoena to be enforceable, there must be proper service.

A Maryland state court subpoena must be delivered to you or your authorized agent by a sheriff of any Maryland county or by an individual who is not a party to the lawsuit and is at least 18 years of age, or through Certified Mail Restricted Delivery.

A Virginia state court subpoena may be delivered to you by a sheriff or by any person 18 years of age or older who is not a party or otherwise interested in the subject matter in controversy, and who charges a fee for service of process. However, alternatives to personal service are available. "Substituted service" can be made on a family member who is at your usual place of abode, but only if the family member is at least 16 years old, is not a "temporary sojourner or guest," and is informed of the nature of the process being served. If a family member is not available at your usual place of abode to accept service, the subpoena may be posted on your "front door or at such other door as appears to be the main entrance of such place of abode."

If you receive a subpoena, you should note the date it was issued. Maryland state court subpoenas must be served within 60 days of



issuance. You are not required to comply with a subpoena served more than 60 days after issuance. If a subpoena *ad testificandum* (for witness testimony) issued by a Virginia state court is served less than five days before the witness's requested appearance, or a subpoena *duces tecum* (for records) is served less than 14 days before the date the items are to be produced, the subpoena may be challenged.

#### A SUBPOENA IS VALID AND ENFORCEABLE WHEN SERVED PROPERLY.

IN MARYLAND, PROPER SERVICE ENTAILS DELIVERY TO YOU OR YOUR AUTHORIZED AGENT IN ONE OF THREE WAYS:

- *by a sheriff*
- *by an individual who is not party to the lawsuit and is at least 18 years of age, or*
- *through Certified Mail Restricted Delivery*

#### IN VIRGINIA, ALTERNATIVES TO PERSONAL SERVICE ARE AVAILABLE.

"SUBSTITUTED SERVICE" CAN BE MADE ON A FAMILY MEMBER WHO IS AT YOUR USUAL PLACE OF ABODE, IF THE FAMILY MEMBER:

- *is at least 16 years old*
- *is not a temporary guest, and*
- *is informed of the nature of the process being served*

\* If a family member is not available to accept service, the subpoena may be posted on your door.

#### THIS IS JUST A SUBPOENA FOR RECORDS; I WILL SEND THEM RIGHT AWAY.

You should not send medical records immediately after receiving a subpoena. In both Maryland and Virginia, there is a waiting period before you may respond to a subpoena for medical records.

In Maryland, parties in the case typically have 30 days to file a "motion to quash," asking the court to intervene and prevent the other party from obtaining the records. In Virginia, parties have 15 days to file a motion to quash. In both Maryland and Virginia, you should receive notification after the court rules on whether the records are to be produced in response to the subpoena. If the records are produced before you receive such notification, you may be subject to a fine or other court-imposed sanctions.

It is also important to remember that you can bill the requesting party for the compilation of the records, as Maryland and Virginia have enacted statutes authorizing health care providers to charge certain fees for producing copies of medical records.



#### Note

**For a subpoena to be enforceable, there must be proper service.**





## Consider

**You should only provide what is asked; volunteering additional information might unintentionally draw you into a lawsuit.**



### MEDICAL RECORD FEES IN MARYLAND



Learn more from the  
Maryland Board of Physicians

### MEDICAL RECORD FEES IN VIRGINIA



Learn more from the  
Medical Society of Virginia

## IF THE SUBPOENA IS FROM ANOTHER STATE, DO I NEED TO COMPLY?

A subpoena from a state court outside of your home state is subject to additional requirements. For example, a subpoena issued by a Pennsylvania state court requiring a Doctor in Baltimore City to produce medical records cannot simply be served on the Doctor. Rather, the foreign subpoena must be filed with the Clerk of the Circuit Court for Baltimore City, who then will issue a subpoena for service on the Doctor. Like any subpoena, if you receive an out-of-state subpoena, call MEDICAL MUTUAL/Professionals Advocate for assistance.

## HOW DO I ENSURE MY RESPONSE TO A SUBPOENA IS COMPLETE?

Consider this: "Listen to the question, and then answer the question. Do not answer a question that is not asked." This advice holds true when responding to a subpoena or testifying at a deposition or trial. You should provide only what is asked, as volunteering additional information might unintentionally draw you into a lawsuit. If you are asked only for records from a specific date, only send the records from that date. Do not, for example, send the entire patient chart if it was not specifically requested.

Once you respond to a subpoena for

documents, your involvement in the case is likely over. However, after providing the documents, you may be asked for additional materials, or the party may claim that you did not send the documents requested. To help guard against such a claim, keep a log or record of the documents you provided in response to the subpoena.

*"Listen to the question, and then answer the question. Do not answer a question that is not asked."*

## CAN I IGNORE THE SUBPOENA? WHAT IF I DO NOT COMPLY?

Failure to comply with a subpoena can have serious consequences. The court can impose a fine, issue a body attachment (which is an arrest warrant to have the authorities bring you to court to answer for your lack of compliance), or hold you in contempt of court. Be aware of the deadline listed on the subpoena and respond promptly.

Even if you receive a subpoena that you believe is invalid or has been improperly served, do not

ignore it. Instead, contact MEDICAL MUTUAL/ Professionals Advocate or your attorney for assistance.

## I HAVE RECEIVED A SUBPOENA TO TESTIFY. WHAT SHOULD I DO?

Attorneys representing a party in civil litigation often issue subpoenas for testimony during "discovery" to complete their fact-finding mission. In some instances, you may not need an attorney to represent you during your testimony as you are not at risk of being named in the lawsuit (e.g., a custody dispute, divorce proceeding, or workers' compensation case).

However, in other instances (e.g., a medical negligence case), having attorney representation prior to and during your testimony may be an important precaution to help minimize the risk of being added to the lawsuit as a defendant. When in doubt about whether you need an attorney to assist you in responding to a subpoena for testimony, contact MEDICAL MUTUAL/Professionals Advocate for assistance.

## I HAVE A BUSY SCHEDULE. CAN I AVOID TESTIFYING?

Unfortunately, you likely will have to give a



### Note

**Even if you receive a subpoena that you believe is invalid or has been improperly served, contact MEDICAL MUTUAL/Professionals Advocate or your attorney for assistance.**

## GLOSSARY

**DEPONENT:** A person who gives testimony at a deposition

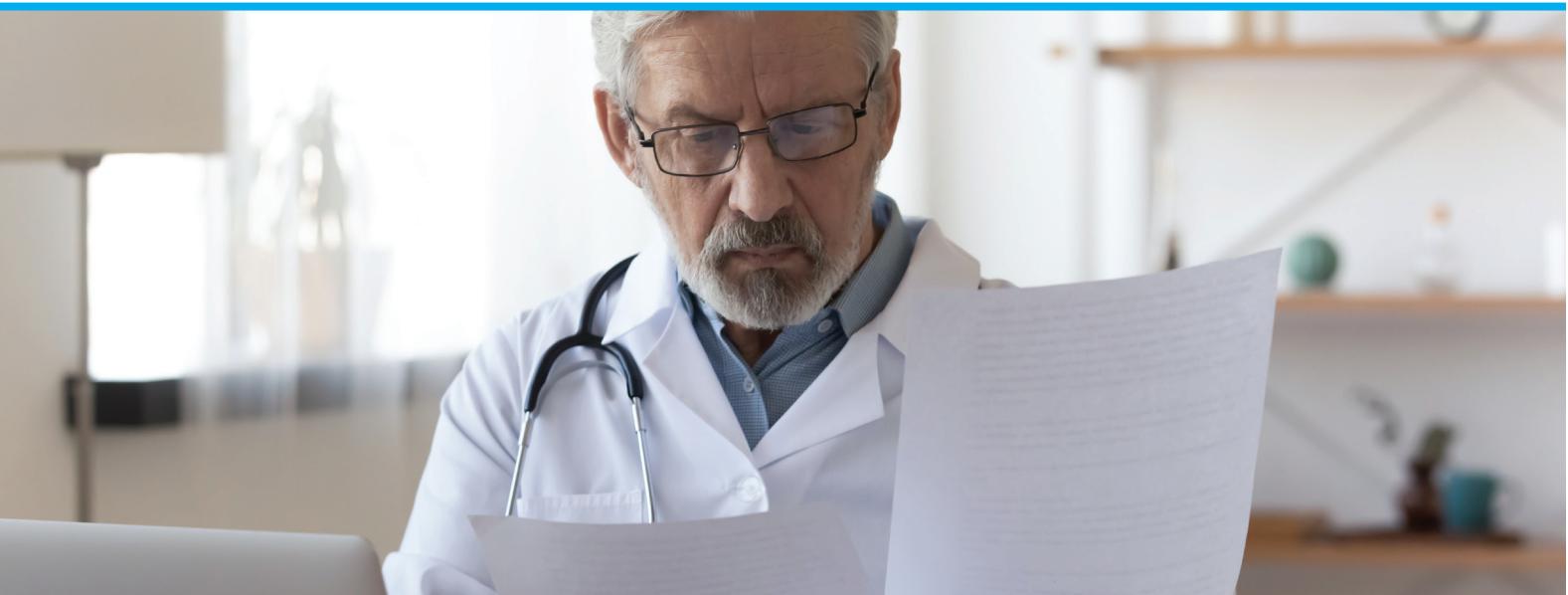
**DEPOSITION:** Testimony taken down in writing under oath

**DISCOVERY:** The legal process of gathering all relevant information about a case from the perspectives of both the plaintiff and defendant; includes requests for records and documents, interrogatories, retaining experts, and depositions

**MOTION TO QUASH:** A request filed with a court to nullify a subpoena, process, or act

**SUBPOENA AD TESTIFICANDUM:** A writ commanding a person to appear to testify as a witness

**SUBPOENA DUCES TECUM:** A writ commanding a person to produce certain designated documents or evidence



## Remember

**Keep a log of the materials sent in response to a subpoena.**

deposition if subpoenaed. A deposition is never convenient, but if you are not available on the date listed on the subpoena, your attorney can assist in having the deposition rescheduled to a mutually agreeable date and time. Your attorney will work with the party's attorney to minimize the inconvenience to you. Your attorney also will need time to review your involvement in the case and any relevant case materials so they can best protect your interests.

If you are subpoenaed to testify at trial, the date you are required to appear in court is almost always inflexible. Typically, a subpoena to testify at trial will list dates spanning the entire length of the trial. Does this mean that you must appear at trial every day? Usually not. Your attorney will contact the party who issued the subpoena in an effort to schedule the date of your testimony.

Be aware that a subpoena for trial testimony can be served with less than a week's notice before you are required to appear in court. If you receive such a subpoena, you should consider contacting an attorney immediately so that your interests can be protected.

## SUMMARY POINTS

So, how do you avoid the opening scenario? Here are the steps you should take to ensure compliance with your legal obligations:

1. *Read the subpoena carefully. Is it requesting documents, or your testimony, or both?*
2. *Note all deadlines in the subpoena.*
3. *Promptly contact MEDICAL MUTUAL/ Professionals Advocate for guidance.*
4. *If you have an attorney, work with them to ensure compliance with the subpoena.*
5. *Gather the materials requested and only the materials requested.*
6. *Comply with any required waiting period before responding to the subpoena.*
7. *Keep a log of the materials sent in response to the subpoena.*
8. *If called to testify at deposition or trial, remember: "Listen to the question, and then answer the question. Do not answer a question that is not asked."*

Complying with a subpoena — particularly one requiring deposition or trial testimony — can seem daunting. By carefully reading the subpoena, adhering to all deadlines, and, when necessary, enlisting the assistance of experience counsel, you can ensure that you discharge your legal obligations and minimize the risk of being drawn into a lawsuit.

1. Subpoenas usually come in two forms: duces tecum, and ad testificandum.

A. True    B. False

2. A subpoena ad testificandum can instruct you to provide the medical records on a patient.

A. True    B. False

3. For any subpoena, you will always need an attorney.

A. True    B. False

4. Out-of-state subpoenas must be filed properly for them to be valid in your state.

A. True    B. False

5. When answering a subpoena, it is best to give the requesting attorney more information than he or she requested.

A. True    B. False

6. Failing to comply with a valid, properly served subpoena may have serious consequences.

A. True    B. False

7. The "discovery" phase is a fact-finding mission that can lead a party to add a Physician as a defendant.

A. True    B. False

8. If a subpoena does not involve you, then you can ignore it.

A. True    B. False

9. When you receive a subpoena to testify at trial, you will likely need to be present for every day of the trial.

A. True    B. False

10. Receiving a subpoena for medical records typically means that you will have to testify as well.

A. True    B. False

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**Instructions – to receive credit, please follow these steps:**

Read the articles contained in the newsletter and then answer the test questions.

1. Mail or fax your completed answers for grading:  
Med•Lantic Management Services, Inc. | Fax: 443-689-0261  
P.O. Box 8016 | 225 International Circle | Hunt Valley, Maryland 21030  
Attention: Risk Management Services Dept.
2. One of our goals is to assess the continuing educational needs of our readers so we may enhance the educational effectiveness of *Doctors RX*. To achieve this goal, we need your help. You must complete the CME evaluation form to receive credit.
3. Completion Deadline: April 30, 2025
4. Upon completion of the test and evaluation form, a certificate of credit will be mailed to you.

**CME Accreditation Statement**

MEDICAL MUTUAL Liability Insurance Society of Maryland is accredited by the Accreditation Council for Continuing Medical Education (ACCME) to provide continuing medical education for Physicians.

**CME Designation Statement**

MEDICAL MUTUAL Liability Insurance Society of Maryland designates this enduring material for a maximum of one (1) *AMA PRA Category 1 Credit*.<sup>TM</sup> Physicians should claim only the credit commensurate with the extent of their participation in the activity.

## CME EVALUATION FORM

### Statement of Educational Purpose

Doctors RX is a newsletter sent twice each year to the insured Physicians of MEDICAL MUTUAL/Professionals Advocate.® Its mission and educational purpose is to identify current health care-related risk management issues and provide Physicians with educational information that will enable them to reduce their malpractice liability risk.

Readers of the newsletter should be able to meet the following educational objectives:

- 1) Gain information on topics of particular importance to them as Physicians.
- 2) Assess the newsletter's value to them as practicing Physicians.
- 3) Assess how this information may influence their own practices.

### CME Objectives for "You Are Compelled: What to do When you get a Subpoena"

Educational Objectives: Upon completion of this enduring material, participants will be better able to:

- 1) Understand the difference between a subpoena duces tecum and a subpoena ad testificandum.
- 2) Learn the requirements surrounding sending medical records when answering a subpoena.
- 3) Understand how best to respond to a subpoena.

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	Strongly Agree	Strongly Disagree
<i>Part 1. Educational Value:</i>	5 4 3 2 1	
I learned something new that was important.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
I verified some important information.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
I plan to seek more information on this topic.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
This information is likely to have an impact on my practice.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	

*Part 2. Commitment to Change:* What change(s), if any, do you plan to make in your practice as a result of reading this newsletter?

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*Part 3. Statement of Completion:* I attest to having completed the CME activity.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*Part 4. Identifying Information:* Please PRINT legibly or type the following:

Name: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Address: \_\_\_\_\_

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## RISK MANAGEMENT NEWS CENTER



### COMING SOON: NEW RISK MANAGEMENT EDUCATION PROGRAMS

Our Risk Management experts are in the process of developing timely new education programs so you can stay informed and up to date on the risks facing your practice.

Risk Management education programs will be browsable online at [MMLIS.com](http://MMLIS.com) and [ProAd.com](http://ProAd.com). In lieu of a paper brochure listing the new programs, you will receive information by mail in March, confirming all the details you'll need to select and register for programs online.



### TAKE OUR SECURITY RISK ASSESSMENT TODAY

How secure is your practice's personally identifiable information (PII) from outside threats? Developed with guidance from cyber liability and security experts, MEDICAL MUTUAL has produced a FREE online survey to help you assess the status of your electronic PII protection. To start the survey, visit [MMLIS.com/security-survey](http://MMLIS.com/security-survey)



### SUPPORT FOR OFFICE STAFF AVAILABLE ON OUR WEBSITES

In today's world of constantly evolving technology, practice management has expanded to include new responsibilities. It has become more vital than ever to increase awareness of potential liability issues. Our online practice management resources provide timely information on compliance, employment issues, and more. Visit [MMLIS.com/PMT](http://MMLIS.com/PMT) or [ProfessionalsAdvocate.com/PMT](http://ProfessionalsAdvocate.com/PMT)



### EXPERTS ON CALL TO ANSWER YOUR LIABILITY QUESTIONS

You can call our Risk Management Department to ask about any liability concerns. Our Risk Management Department includes medicolegal experts ready to provide instant answers to specific questions. Contact us today at 410-785-0050 or toll free at 800-492-0193.



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## FINANCIAL REWARDS JUST FOR YOU

The *Mutual Advantage Plan* (MAP) is a financial reward program that was created by MEDICAL MUTUAL and Professionals Advocate to recognize the commitment of our Policyholders to the long-term success and stability of the Company and to the practice of quality medicine.

After enrolling in MAP and following the next renewal of your policy, you will receive your own MAP account. Each year, the Board of Directors will decide what new MAP funds, if any, will be allocated to Participants' accounts. You can check your account balance at any time by logging in at [MMLIS.com/MAP](http://MMLIS.com/MAP) or [ProAd.com/MAP](http://ProAd.com/MAP)

### *Your Distribution*

Upon a qualifying event (death, total and permanent disability, or qualifying retirement) and subject to Board approval, you will receive a distribution of your full MAP account balance.

*What will you do with your  
MAP distribution?*