

HIPAA Privacy Policy #21
Uses and Disclosures of Protected Health Information
Without Patient Authorization for
Judicial and Administrative Proceedings (Subpoenas and Orders)

Effective Date: January 22, 2020	Refer to Privacy Rule Sections: 164.512; 164.514; 164.528; 164.530
Authorized by: Equinox Board of Directors	Version #:

Policy: Equinox, Inc. may disclose Protected Health Information in the course of a judicial or administrative proceeding without a patient’s written Authorization according to the Procedures listed below.

Procedures:

1. **Court Orders:** Equinox, Inc. may disclose Protected Health Information in response to an order of a court or an administrative tribunal (such as an Administrative Law Judge from the Department of Health). If Equinox, Inc. receives a Court Order, it should be immediately forwarded to the Privacy Officer. The Privacy Officer should consult counsel as necessary if there are any questions as to the content or appropriateness of a Court Order. For example, Equinox, Inc. may want to object to a Court Order that is overly-broad or that could cause harm to a patient.
2. **Subpoenas:** If Equinox, Inc. receives a subpoena, it should be immediately forwarded to the Privacy Officer, who in consultation with counsel as necessary shall decide whether the subpoena is overly broad or defective. If so, Equinox, Inc. may consider making a motion to quash.
 - a. **Responding to Appropriate Subpoena:** Equinox, Inc. may disclose Protected Health Information in response to a subpoena or similar request only under the following specific circumstances:
 - i. **New York State Court:** If the subpoena relates to an action in New York State Court, the Privacy Officer, in consultation with counsel as necessary, shall decide whether the subpoena is a “trial subpoena” or a “discovery subpoena,” whether to move to quash, and whether the subpoena is “ad testificandum” (for testimony) and/ or “duces tecum” (for documents). A “trial subpoena” is returnable at Court while a “discovery subpoena” is generally returnable in an attorney’s office.
 - (A) Trial subpoenas may be issued without a Court order. They are governed by Article 23 of the CPLR. Failure to comply with a trial subpoena shall be punishable as a contempt.
 - (i) Subpoenas may be issued without a court order by the clerk of the court, a judge where there is no clerk, the attorney general, an attorney of record for a party to an action, an administrative proceeding or an arbitration, an arbitrator, a referee, or any member of a board, commission or committee authorized by law to hear, try or determine a matter, or to do any other act, in an official capacity, in relation to which proof may be taken or the attendance of a person as a witness may be required. In the absence of an authorization by a patient, a trial subpoena duces tecum for patient’s medical records may only be issued by a court.

A subpoena to compel production of a patient's clinical record maintained pursuant to provisions of section 33.13 of the New York State Mental Hygiene Law shall be accompanied by a Court order. *N.Y. Mental Hygiene Law § 33.13(c)(1); N.Y. C.P.L.R. 2302*. A trial subpoena duces tecum shall state on its face that all papers or other items delivered to the court pursuant to such subpoena shall be accompanied by a copy of such subpoena.

- (ii) A subpoena to compel production of an original record or document where a certified transcript or copy is admissible in evidence shall be issued by the Court. *N.Y. C.P.L.R. 2302(b)*.
 - (iii) A subpoena may provide that the person subpoenaed shall appear on the date stated and any recessed or adjourned date of the trial hearing or examination. If the person is given reasonable notice of such recess or adjournment, no further process shall be required to compel their attendance on the adjourned date. At the end of each day's attendance, the person subpoenaed may demand their fee for the next day on which the person is to attend. If the fee is not then paid, the person shall be deemed discharged. *N.Y. C.P.L.R. 2305(a)*.
 - (iv) Where a court has designated a clerk to receive records described in subdivision (a), delivery may be made to the person at or before the time fixed for their production. The clerk shall give a receipt for the records and notify the person subpoenaed when they are no longer required. The records shall be delivered in a sealed envelope indicating the title of the action, the date fixed for production and the name and address of the attorney appearing on the subpoena. They shall be available for inspection pursuant to the rules or order of the Court. *N.Y. C.P.L.R. 2306(b)*.
- (B) "Discovery subpoenas" are governed by Article 31 of the CPLR, and must either (1) contain a statement in conspicuous bold-faced type that clearly indicates that *the records shall not be provided unless the subpoena is accompanied by a written authorization by the patient*. The subpoena must also be accompanied by a patient's written Authorization (which contains all of the information listed in Equinox, Inc.'s Policy No. 10 entitled "Consent and Authorization to Use or Disclose Protected Health Information"), *see N.Y. C.P.L.R. 3122(a)(2)*; or (2) be issued by the court, or have otherwise been ordered produced by the court. *45 C.F.R. § 164.512(e)*.
- ii. Federal Court: If the subpoena relates to a proceeding in Federal Court, then the subpoena must be accompanied by:
- (A) a patient's written Authorization (which contains all of the information listed in Equinox, Inc.'s Policy No. 10 entitled "Consent and Authorization to Use or Disclose Protected Health Information"), or
 - (B) an affidavit, or written statement similar to Equinox, Inc.'s form entitled "Attestation Regarding Subpoenas" (*see Attachment 1*), signed by the party who is seeking the records, which indicates that:

- (i) the party seeking the records has provided written notice to the patient whose records are being sought (a copy of which must be attached to the affidavit); that such notice provided the patient with an opportunity to object to the court; and that the time for objection has elapsed without any objection being filed or without any objection being sustained; or
 - (ii) the party seeking the records has requested a qualified protective order (a copy of which must be attached to the affidavit) from the court or administrative tribunal; or
 - (iii) the parties to the dispute have agreed to a qualified protective order (a copy of which must be attached to the affidavit) and have presented it to the court or tribunal. *45 C.F.R. § 164.512(e)*.
- b. Responding to Inappropriate Subpoenas: If Equinox, Inc. receives a subpoena that does not comply with the above requirements, the subpoena should be forwarded to the Privacy Officer. The Privacy Officer may contact the party who issued the subpoena (usually an attorney) and inform him or her about the subpoena's relevant deficiencies. The Privacy Officer may invite the party who issued the subpoena to complete Equinox, Inc.'s form, which is a standard Authorization or Attachment 1 form entitled "Attestation Regarding Subpoenas," as appropriate. If the issuing party is unwilling or unable to complete Equinox, Inc.'s relevant forms or to otherwise remedy an inappropriate subpoena, Privacy Officer should contact counsel prior to the subpoena's return date to bring a motion to quash the subpoena.

"A medical provider served with a subpoena duces tecum, other than a trial subpoena issued by a court, requesting the production of a patient's medical records pursuant to this rule need not respond or object to the subpoena if the subpoena is not accompanied by a written authorization by the patient. Any subpoena served upon a medical provider requesting the medical records of a patient shall state in conspicuous bold-faced type that the records shall not be provided unless the subpoena is accompanied by a written authorization by the patient, or the court has issued the subpoena or otherwise directed the production of the documents." *N.Y. C.P.L.R. 3122(a)(2)*.

3. Minimum Necessary: When making a disclosure pursuant to this Policy, Equinox, Inc. may only disclose the minimum amount of information necessary for the purpose of the disclosure. For purposes of this Policy, this means that Equinox, Inc. may only disclose the information described in the subpoena. Please refer to Equinox, Inc.'s Policy No. 7 entitled "Minimum Necessary Uses, Disclosures and Requests of Protected Health Information." *45 C.F.R. § 164.514(d)(3)(i)*.
4. Log of Disclosures: Equinox, Inc. is required to log disclosures made pursuant to this Policy in the patient's "Log for Accounting of Disclosures" (*See* Equinox, Inc.'s Policy No. 32 entitled "Accounting of Disclosures.") *45 C.F.R. § 164.528(a); N.Y. Public Health Law § 18(6)*.
5. Special Protection for Highly Sensitive Protected Health Information: In accordance with certain Federal and New York State laws, Equinox, Inc. must provide greater privacy protections to highly sensitive Protected Health Information, which includes information that relates to HIV, Mental Health, Psychotherapy Notes, Alcohol and Substance Abuse Treatment, and Genetics. The Privacy Officer, and legal counsel when appropriate, should be consulted prior to the disclosure of such information. *See* Equinox, Inc.'s Policy No. 14 entitled "Uses and Disclosures of Highly Sensitive Protected Health Information."

Attachment 1

Attestation Regarding Subpoenas

To be completed by the party requesting records with a subpoena

Patient's Name: _____

A subpoena was issued on _____, _____ 20__ for production of medical records of the above-named patient. I hereby attest that the following statement checked below is true and complete.

- Notice to Patient:** Reasonable efforts have been made to ensure that the above-named patient has been given notice of the request for his or her Protected Health Information, as evidenced by the following:
 - (1) the party requesting the information has made a good-faith effort to provide written notice to the above-named patient (or if the patient's location is unknown, to mail a notice to the patient's last known address); and
 - (2) a copy of the notice is attached to this attestation; and
 - (3) the notice included sufficient information about the litigation or proceeding in which the Protected Health Information is requested to permit the patient to raise an objection to the court or administrative tribunal; and
 - (4) the time for the patient to raise objections to the court or administrative tribunal has elapsed; and
 - a. no objections were filed, or
 - b. all objections filed by the patient have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.

- Parties Agreed to Protective Order:** Reasonable efforts have been made to obtain a qualified protective order, as evidenced by the following:
 - (1) the parties to the dispute giving rise to the request for information have agreed to a qualified protective order; and
 - (2) parties have presented it to the court or administrative tribunal with jurisdiction over the dispute; and
 - (3) a copy of the order is attached;

- Application for Protective Order:** Reasonable efforts have been made to obtain a qualified protective order, as evidenced by the following:
 - (1) the party seeking the Protected Health Information has requested a qualified protective order from the court or administrative tribunal with jurisdiction over the dispute; and
 - (2) a copy of the request is attached.

Signed: _____ Date: _____

Name: _____

Title: _____

Employer: _____

Address: _____

Telephone: _____