Department of Health Professions

DIRECTOR'S POLICY # 76-3.3

Subpoenas for Disciplinary Hearings

Effective Date: January 9, 2012

Approved By: D. Reynolds-Cane MD

Dianne Reynolds-Cane, M.D., Director

Purpose: The purpose of this Directive is to assure the issuance of subpoenas and provide for handling of subpoenaed evidence in connection with disciplinary hearings.

Statutory Background: Section 2.2-4022 of the Code of Virginia states in part, "The agency or its designated subordinates shall have power to, and on request of any party shall, issue subpoenas...." As such, it is the responsibility of agency personnel to facilitate requests in order to preserve the rights of parties in proceedings.

Procedures:

A. Every notice for a formal hearing shall include procedural instructions for the respondent or his counsel to have the Department process any request for the issuance of a subpoena. The instructions must specify the following:

1. A requirement to provide the complete and correct full name of the person to be subpoenaed as a witness or who is the custodian of records, books, papers or other evidence being sought, or, if the name is unknown, "Records Custodian";

2. A requirement to cite the full physical address (i.e., not the post office box, but the street address, office number and floor of the building) for the person who is to be subpoenaed. The business or home address of the person may be used;

3. The need to specify the county or city in which such address is located. (For example, DHP has a mailing address of "Richmond;" however, the agency is located in Henrico County);

4. The specific description of physical evidence, papers, etc., if the subpoena is a subpoena duces tecum;

5. The name and physical address of the person to whom the records should be delivered;

6. The return date by which records shall be delivered;

7. The requester must inform the Assistant Attorney General OR the staff assigned to present the case of each requested subpoena; and

8. For subpoenas for health records, the requester must provide a copy of the request to counsel for the other party, if known, or to the other party if pro se, and if the request is for the health records of a non-party witness, to the non-party witness as well. Proof of such notice must be attached to the subpoena request.

B. Upon receipt of the request, the Director of Administrative Proceedings Division or his designee shall prepare, approve and sign the subpoena as soon as practical.

A copy of any subpoena issued will be mailed by the Director of Administrative Proceedings to the respondent's counsel or the respondent if the subpoena was requested by the Commonwealth; and a copy of any subpoena requested by or on behalf of the respondent will be provided to the prosecutor upon issuance.

For subpoenas for health records, the Director of Administrative Proceedings will attach to the subpoena a notice to the individual whose health records are being sought regarding their right to move to quash the subpoena.

A copy of each served and unserved subpoena shall be retained by the Custodian of Records of the appropriate Board.

C. While instructions are not required to be contained in the notice of an informal fact-finding conference, they shall be followed when issuance of a subpoena is requested for evidence or testimony at an informal conference held pursuant to § 2.2-4019 of the Code.

D. All subpoenas duces tecum issued at the request of the Office of the Attorney General shall direct the person to whom it is addressed to deliver the requested items to the Administrative Proceedings Division.

E. Motions concerning subpoenas shall be considered by the presiding Board member.

F. The following instructions shall be used to allow individuals or their legal counsel to request the issuance of subpoenas:

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INSTRUCTIONS FOR REQUESTING SUBPOENAS

In accordance with the state law (§ 2.2-4022 of the Code of Virginia (1950), as amended), you may request that subpoenas be issued requiring testimony or the production of books, papers, and/or other physical evidence at the proceeding cited in the enclosed notice.

Such requests must be made in writing to the Administrative Proceedings Division at the following address:

Director of Administrative Proceedings
Department of Health Professions
9960 Mayland Drive, Suite 300
Richmond, VA 23233-1463

The person requesting the subpoena must be a party to the proceeding or a legal representative for that party.

Copies of all requests must also be delivered or mailed to the Assistant Attorney General presenting the case, if applicable, simultaneously with the delivery of the request to the Department of Health Professions, Director of Administrative Proceedings. The request should contain a statement or certification of delivery or mailing to the Assistant Attorney General whose name is shown as receiving a copy of the notice of this proceeding. Their street address is: Office of the Attorney General, 900 East Main Street, Richmond, Virginia 23219, Telephone: 804-786-2071.

A. All requests for a witness (testimony) must include the following:

1. The full and complete name of the person to be subpoenaed.

2. The full and complete physical address (post office box will not suffice) of the person. Also, the county or city of that location must be specified. For example:

Leslie K. Doe, Jr., R.N.
Short Pump Hospital
6606 West Broad Street, 4th floor
Richmond, Virginia 23230-1717
County of Henrico

B. Requests for documents or papers, etc. (generally a subpoena duces tecum) must include the following:

1. The full and complete name of the person who is the custodian of the requested material. If the name is not known, use "Records Custodian."

2. A complete and specific description of the records, papers, etc. being requested. For example: "All dental records associated with the treatment of Leslie K. Doe, Jr., R.N., between April 1, 1990 and October 31, 1991, including radiographs, models, impressions, notes, billing and payment records."

3. The complete physical address of the person who is the custodian of these records. See A.2. above.

4. The name and address of the person to whom the records shall be delivered.

5. The date by which the records shall be delivered (the "return date").

6. For subpoenas for health records, the requester must provide a copy of the request to counsel for the other party, or to the other party if pro se, and if the request is for the health records of a non-party witness, to the non-party witness as well. Proof of such notice must be attached to the subpoena request.

C. The Department advises that requests be made as soon as possible after the notice of the proceeding is received. The failure to obtain documents or secure a witness's attendance, resulting from inadequate time, might not be sufficient grounds to continue a hearing before a Board.

The subpoena will be issued on the basis of the information provided by the party who requests the subpoena. The Department will not undertake to correct incorrect information or supplement incomplete information provided. The Department assumes no responsibility for delays or failure of service caused by such incorrect or incomplete information. Furthermore, the Department cannot assure or guarantee issuance and completion of service by the return date. Any notice of return of service or failure to make service on a subpoena that is received by the Department shall be provided to the party that requested issuance of the subpoena.

If service is to be made by a private process server or by an agency or entity other than the sheriff's office where the person or custodian is to be served, those arrangements are the sole responsibility of the requesting party. The Department must be made aware of these arrangements at the time the subpoena request is made.

D. In the case of a subpoena request for a person or entity located out-of-state (and which otherwise complies with the foregoing instructions), the Department shall issue such subpoena and send via certified mail, with return receipt requested. A copy of such return receipt shall be provided to the subpoena requester when received by the Department. It will be the responsibility of the requestor to enforce any out-of-state subpoena and delaying or failing to do may result in denial of any request for a continuance.