COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: **EVELYN B. BROWN**
Executive Director
Board of Psychology

FROM: **LYNNE R. FLEMING** Lynne Fleming
Assistant Attorney General

RE: **HOUSE BILL 2733**

DATE: **April 7, 1997**

The provisions of House Bill 2733 will become effective on July 1, 1997. The statute (a) enacts revisions to existing Va. Code § 8.01-413; (b) repeals the current health care records provision in Va. Code § 32.1-127.1:02, and (c) creates a comprehensive, new health care records statute at Va. Code § 32.1-127.1:03. A copy of HB 2733 is attached.

Va. Code § 8.01-413: This statute, which specifies procedures for obtaining medical records for use during civil litigation, has been in effect for many years. The only substantive changes in this statute caused by HB 2733 are the deletion of provisions pertaining to obtaining records of a deceased patient and the change from the permissive "may" to a mandatory "shall" of a provision authorizing the health care provider to obtain written authorization from the patient for release of records to his attorney.

Note: This statute applies only when the records requested are those of a patient who is a party to litigation and to requests made by an attorney, or his client in anticipation of litigation or in the course of litigation.

This statute limits the charges which can be assessed for copying the patient records to fifty cents per page for up to 50 pages and 25 cents per page thereafter. (excluding copies of X-rays).

This statute provides a method for compelling compliance.

Va. Code § 32.1-127.1:03. Patient Health Records Privacy.

Subpart A.

1. Recognizes a patient's right of privacy in the content health care records.
2. Patient records are the property of the provider maintaining them.
3. Except when permitted by this statute or another provision of law no person may disclose a patient's records.
4. No third party to whom disclosure was made by provider may redisclose the records without the patient's consent. However, a health care provider may disclose patient records received from another provider consistently with the provisions of this statute.

Subpart B. Definitions.

Subpart C. Exclusions.

Subpart D. Permissive disclosures.

Providers may disclose the records of a patient in certain circumstances, e.g. with consent of patient, for law enforcement or licensure purposes (24 situations).

Subpart E. Specifics of how request for records must be made.

Subpart F. Grounds for refusal to turn over record, procedure to be followed.

Subpart G. Suggested patient consent form.

Subpart H. Notice requirements for persons requesting issuance of a subpoena for medical records. Directions to health care provider when Motion to Quash has been filed. Patient's right to file a Motion to Quash. Standards for judicial review of such motions.

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HB 2733 Health care; records.

Patron-Jean W. Cunningham

Summary:
Health care; records.0 Revises the laws relating to obtaining, copying, ownership, and storage of patient records. The new provision in this bill sets out elaborate procedures for obtaining copies of records (written requests only), subpoenas for records, motions to quash subpoenas for records, and the records of a pro se party (for self) or nonparty (one who becomes ensnared in lawsuit, but is not a party). The civil procedure statute (§ 8.01-413) is modified to remove the provision relating to the records of deceased or incompetent patients which currently provides for a prioritized list of individuals who may consent to disclosure of the records. This list begins with the personal representative of the deceased patient and ends with the adult brother or sister or any other relative in descending order. Provider is defined to include all individuals regulated by a board within the Department of Health Professions and every body in § 8.01-581.1 and the state-operated facilities. Record includes communication made by the patient to the provider in confidence. The patient records are declared, as in the present law, to be the property of the provider maintaining them. The provider is prohibited from disclosing the records except in compliance with this or other applicable law. Third parties to whom the records are revealed may not disclose the information. Exceptions to the confidentiality requirements included: Workers Compensation, minor's records (written consent according to § 54.1-2969); subpoenas; malpractice, disciplinary, and collection actions; evidence; other reporting statutes; when necessary for care of patient; normal course of business in practice; waiver of patient's rights; judicial or administrative order; guardian ad litem of adult or minor; attorney in civil commitment (involuntary); Court Appointed Special Advocates; attorney in fact/agent or decision maker under advance directive; third-party payors; for application for health care benefits (Medicaid/Medicare); transfer of a practice; when patient's specific and immediate threat to hurt another must be communicated; to the patient; when permitted by federal law relating to substance abuse records; peer review panels, etc.; to the personal representative or executor of a deceased patient's estate; etc.

Full text:
01/20/97 House: Presented & ordered printed 978560132
01/28/97 House: Committee substitute printed 977857188-H1
03/03/97 House: Enrolled bill text (HB2733ER)
03/24/97 Governor: Acts of Assembly Chapter text (CHAP0682)

Amendments:
Senate Amendments

Status:
01/20/97 House: Referred to Committee on Health, Welfare and Institutions
01/21/97 House: Assigned to H. W. I. sub-committee: 1
01/28/97 House: Reported from H. W. I. w/substitute (22-Y 0-N)
01/29/97 House: Read first time
01/30/97 House: Read second time
01/30/97 House: Committee substitute agreed to 977857188-H1
01/30/97 House: Engrossed by House - com. sub. 977857188-H1

01/31/97 House: Read third time and passed House (Block Vote) (98-Y 0-N)
01/31/97 House: VOTE: BLOCK VOTE PASSAGE (98-Y 0-N)
01/31/97 House: Communicated to Senate
02/03/97 Senate: Constitutional reading dispensed (36-Y 4-N)
02/03/97 Senate: Referred to Committee on Education and Health
02/05/97 Senate: Assigned to Ed. & Health sub-committee: Health Care
02/16/97 Senate: Reported from Ed. & H. with amendments (15-Y 0-N)
02/17/97 Senate: Const. reading disp., passed by for the day (40-Y 0-N)
02/17/97 Senate: VOTE: CONST. READING DISPENSED (40-Y 0-N)
02/18/97 Senate: Read third time
02/18/97 Senate: Reading of amendments waived
02/18/97 Senate: Committee amendments agreed to
02/18/97 Senate: Engrossed by Senate as amended
02/18/97 Senate: Passed Senate with amendments (40-Y 0-N)
02/18/97 Senate: VOTE: PASSAGE (40-Y 0-N)
02/19/97 House: Placed on Calendar
02/20/97 House: Senate amendments agreed to by House (96-Y 1-N)
02/20/97 House: VOTE: ADOPTION (96-Y 1-N)
03/11/97 House: Enrolled
03/12/97 House: Signed by Speaker
03/13/97 Senate: Signed by President
03/21/97 Governor: Approved by Governor-Chapter 682 (effective 7/1/97)

Go to (General Assembly Home) or (Bills and Resolutions)

CHAPTER 682

An Act to amend and reenact §§ 8.01-413 and 54.1-2403.3 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 32.1-127.1:03, and to repeal § 32.1-127.1:02 of the Code of Virginia, relating to health care provider records.

[H 2733]

Approved March 21, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§8.01-413 and 54.1-2403.3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 32.1-127.1:03 as follows:

§8.01-413. Certain copies of health care provider's records or papers of patient admissible; right of patient or his attorney to copies of such records or papers; subpoena; damages, costs and attorney's fees.

A. In any case where the hospital, nursing facility, physician's, or other health care provider's original records or papers of any patient in a hospital or institution for the treatment of physical or mental illness are admissible or would be admissible as evidence, any typewritten copy, photograph, ~~photostatic~~ *photostatted* copy, or microphotograph or printout or other hard copy generated from computerized or other electronic storage, microfilm, or other photographic, mechanical, electronic or chemical storage process thereof shall be admissible as evidence in any court of this Commonwealth in like manner as the original, if the printout or hard copy or microphotograph or photograph is properly authenticated by the employees having authority to release or produce the original records.

Any hospital, nursing facility, physician, or other health care provider whose records or papers relating to any such patient are subpoenaed for production under this section or the Rules of the Supreme Court of Virginia may comply with the subpoena by a timely mailing to the clerk issuing the subpoena properly authenticated copies, photographs or microphotographs in lieu of the originals. The court whose clerk issued the subpoena may, after notice to such hospital, nursing facility, physician, or other health care provider, enter an order requiring production of the originals, if available, of any stored records or papers whose copies, photographs or microphotographs are not sufficiently legible. The party requesting the subpoena shall be liable for the reasonable charges of the hospital, nursing facility, physician, or other health care provider for the service of maintaining, retrieving, reviewing, preparing, copying and mailing the items produced. Except for copies of X-ray photographs, however, such charges shall not exceed fifty cents for each page up to fifty pages and twenty-five cents a page thereafter for copies from paper and one dollar per page for copies from microfilm or other micrographic process, plus all postage and shipping costs and a search and handling fee not to exceed ten dollars.

B. Copies of hospital, nursing facility, physician's, or other health care provider's records or papers shall be furnished within fifteen days of such request to the patient or his attorney upon such patient's or attorney's written request, *which request shall comply with the requirements of §32.1-127.1:03*. However, copies of a patient's records shall not be furnished to such patient where the patient's treating physician has made a part of the patient's records a written statement that in his opinion the furnishing to or review by the patient of such records would be injurious to the patient's health or well-being, but in any such case such records shall be furnished to the patient's attorney within fifteen days of the date of such request. A reasonable charge may be made for the service of maintaining, retrieving, reviewing and preparing such copies. Except for copies of X-ray photographs, however, such charges shall not exceed fifty cents per page for up to fifty pages and twenty-five cents a page thereafter for copies from paper and

one dollar per page for copies from microfilm or other micrographic process, plus all postage and shipping costs and a search and handling fee not to exceed ten dollars. Any hospital, nursing facility, physician, or other health care provider receiving such a request from a patient's attorney ~~may~~ *shall* require a writing signed by the patient confirming the attorney's authority to make the request. ~~Records or papers relating to a deceased patient, or a patient whose treating physician determines to be mentally incompetent to consent, or physically incapable of consenting, shall be provided to any of the following persons, in order of priority stated, upon the written request of such person, unless the hospital, nursing facility, physician, or other health care provider is aware of any available person in a higher class: (i) the personal representative of a deceased patient; (ii) the legal guardian or committee of an incompetent or incapacitated patient; (iii) the spouse; (iv) an adult son or daughter; (v) either parent; (vi) an adult brother or sister; or (vii) any of the other relatives of the patient in the descending order of blood relationship.~~

C. Upon the failure of any hospital, nursing facility, physician, or other health care provider to comply with any written request made in accordance with subsection B within the period of time specified in that subsection *and within the manner specified in §32.1-127.1:03*, the patient or his attorney may by affidavit filed with the clerk of the circuit court wherein any eventual suit, if any, would be required to be filed, upon payment of the fees required by subdivision (23) of §14.1-112, and fees for service, request that the clerk subpoena such records or papers. The clerk shall thereupon issue a subpoena, returnable within twenty days of proper service, directing the hospital, nursing facility, physician, or other health care provider to produce and furnish copies of the reports and papers to him, whereupon, the clerk shall make the same available to the patient or his attorney. If the court finds that a hospital, nursing facility, physician, or other health care provider willfully refused to comply with a written request made in accordance with subsection B, either by willfully or arbitrarily refusing or by imposing a charge in excess of the reasonable expense of making the copies and processing the request for records, the court may award damages for all expenses incurred by the patient to obtain such copies, including court costs and reasonable attorney's fees.

D. The provisions of subsections A, B, and C hereof shall apply to any health care provider whose office is located within or without the Commonwealth if the records pertain to any patient who is a party to a cause of action in any court in the Commonwealth of Virginia, and shall apply only to requests made by an attorney, or his client, in anticipation of litigation or in the course of litigation.

E. Health care provider, as used in this section, shall have the same meaning as provided in ~~§8.01-581.1~~ *§32.1-127.1:03* and shall also include an independent medical copy retrieval service contracted to provide the service of retrieving, reviewing, and preparing such copies for distribution.

§32.1-127.1:03. Patient Health Records Privacy.

A. There is hereby recognized a patient's right of privacy in the content of a patient's medical record. Patient records are the property of the provider maintaining them, and, except when permitted by this section or by another provision of state or federal law, no provider, or other person working in a health care setting, may disclose the records of a patient.

Patient records shall not be removed from the premises where they are maintained without the approval of the provider, except in accordance with a court order or subpoena consistent with §8.01-413 C or with this section.

No third party to whom disclosure of patient records was made by a provider shall redisclose or otherwise reveal the records of a patient, beyond the purpose for which such disclosure was made, without first obtaining the patient's specific consent to such redisclosure. This redisclosure prohibition

ENROLLED

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 8.01-413 and 54.1-2403.3 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 32.1-127.1:03, and to repeal § 32.1-127.1:02 of the Code of Virginia, relating to health care provider records.

[H 2733]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-413 and 54.1-2403.3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 32.1-127.1:03 as follows:

§ 8.01-413. Certain copies of health care provider's records or papers of patient admissible; right of patient or his attorney to copies of such records or papers; subpoena; damages, costs and attorney's fees.

A. In any case where the hospital, nursing facility, physician's, or other health care provider's original records or papers of any patient in a hospital or institution for the treatment of physical or mental illness are admissible or would be admissible as evidence, any typewritten copy, photograph, ~~photostatic~~ *photostatted* copy, or microphotograph or printout or other hard copy generated from computerized or other electronic storage, microfilm, or other photographic, mechanical, electronic or chemical storage process thereof shall be admissible as evidence in any court of this Commonwealth in like manner as the original, if the printout or hard copy or microphotograph or photograph is properly authenticated by the employees having authority to release or produce the original records.

Any hospital, nursing facility, physician, or other health care provider whose records or papers relating to any such patient are subpoenaed for production under this section or the Rules of the Supreme Court of Virginia may comply with the subpoena by a timely mailing to the clerk issuing the subpoena properly authenticated copies, photographs or microphotographs in lieu of the originals. The court whose clerk issued the subpoena may, after notice to such hospital, nursing facility, physician, or other health care provider, enter an order requiring production of the originals, if available, of any stored records or papers whose copies, photographs or microphotographs are not sufficiently legible. The party requesting the subpoena shall be liable for the reasonable charges of the hospital, nursing facility, physician, or other health care provider for the service of maintaining, retrieving, reviewing, preparing, copying and mailing the items produced. Except for copies of X-ray photographs, however, such charges shall not exceed fifty cents for each page up to fifty pages and twenty-five cents a page thereafter for copies from paper and one dollar per page for copies from microfilm or other micrographic process, plus all postage and shipping costs and a search and handling fee not to exceed ten dollars.

B. Copies of hospital, nursing facility, physician's, or other health care provider's records or papers shall be furnished within fifteen days of such request to the patient or his attorney upon such patient's or attorney's written request, *which request shall comply with the requirements of § 32.1-127.1:03*. However, copies of a patient's records shall not be furnished to such patient where the patient's treating physician has made a part of the patient's records a written statement that in his opinion the furnishing to or review by the patient of such records would be injurious to the patient's health or well-being, but in any such case such records shall be furnished to the patient's attorney within fifteen days of the date of such request. A reasonable charge may be made for the service of maintaining, retrieving, reviewing and preparing such copies. Except for copies of X-ray photographs, however, such charges shall not exceed fifty cents per page for up to fifty pages and twenty-five cents a page thereafter for copies from paper and one dollar per page for copies from microfilm or other micrographic process, plus all postage and shipping costs and a search and handling fee not to exceed ten dollars. Any hospital, nursing facility, physician, or other health care provider receiving such a request from a patient's attorney ~~may~~ *shall* require a writing signed by the patient confirming the attorney's authority to make the request. ~~Records or papers relating to a deceased patient, or a patient whose treating physician determines to be mentally incompetent to consent, or physically incapable of consenting, shall be provided to any of the following persons, in order of priority stated,~~

~~upon the written request of such person. unless the hospital, nursing facility, physician, or other health care provider is aware of any available person in a higher class: (i) the personal representative of a deceased patient; (ii) the legal guardian or committee of an incompetent or incapacitated patient; (iii) the spouse; (iv) an adult son or daughter; (v) either parent; (vi) an adult brother or sister; or (vii) any of the other relatives of the patient in the descending order of blood relationship.~~

C. Upon the failure of any hospital, nursing facility, physician, or other health care provider to comply with any written request made in accordance with subsection B within the period of time specified in that subsection *and within the manner specified in § 32.1-127.1:03*, the patient or his attorney may by affidavit filed with the clerk of the circuit court wherein any eventual suit, if any, would be required to be filed, upon payment of the fees required by subdivision (23) of § 14.1-112, and fees for service, request that the clerk subpoena such records or papers. The clerk shall thereupon issue a subpoena, returnable within twenty days of proper service, directing the hospital, nursing facility, physician, or other health care provider to produce and furnish copies of the reports and papers to him, whereupon, the clerk shall make the same available to the patient or his attorney. If the court finds that a hospital, nursing facility, physician, or other health care provider willfully refused to comply with a written request made in accordance with subsection B, either by willfully or arbitrarily refusing or by imposing a charge in excess of the reasonable expense of making the copies and processing the request for records, the court may award damages for all expenses incurred by the patient to obtain such copies, including court costs and reasonable attorney's fees.

D. The provisions of subsections A, B, and C hereof shall apply to any health care provider whose office is located within or without the Commonwealth if the records pertain to any patient who is a party to a cause of action in any court in the Commonwealth of Virginia, and shall apply only to requests made by an attorney, or his client, in anticipation of litigation or in the course of litigation.

E. Health care provider, as used in this section, shall have the same meaning as provided in ~~§ 8.01-581.1~~ *§ 32.1-127.1:03* and shall also include an independent medical copy retrieval service contracted to provide the service of retrieving, reviewing, and preparing such copies for distribution.

§ 32.1-127.1:03. Patient Health Records Privacy.

A. There is hereby recognized a patient's right of privacy in the content of a patient's medical record. Patient records are the property of the provider maintaining them, and, except when permitted by this section or by another provision of state or federal law, no provider, or other person working in a health care setting, may disclose the records of a patient.

Patient records shall not be removed from the premises where they are maintained without the approval of the provider, except in accordance with a court order or subpoena consistent with § 8.01-413 C or with this section.

No third party to whom disclosure of patient records was made by a provider shall redisclose or otherwise reveal the records of a patient, beyond the purpose for which such disclosure was made, without first obtaining the patient's specific consent to such redisclosure. This redisclosure prohibition shall not, however, prevent any provider who receives records from another provider from making subsequent disclosures permitted under this section.

B. As used in this section:

"Agent" means a person who has been appointed as a patient's agent under a power of attorney for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.)

"Guardian" means a court-appointed guardian of the person.

"Health services" includes but is not limited to examination, diagnosis, evaluation, treatment, pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind.

"Parent" means a biological, adoptive or foster parent.

"Patient" means a person who is receiving or has received health services from a provider.

"Provider" shall have the same meaning as set forth in the definition of "Health care provider" in § 8.01-581.1, except that state-operated facilities shall also be considered providers for the purposes of this section. Provider shall also include all individuals who are licensed or certified by any of the health regulatory boards within the Department of Health Professions, except individuals regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

"Record" means any written, printed or electronically recorded material maintained by a provider in the course of providing health services to a patient concerning the patient and the services

provided. "Record" also includes the substance of any communication made by a patient to a provider in confidence during or in connection with the provision of health services to a patient or information otherwise acquired by the provider about a patient in confidence and in connection with the provision of health services to the patient.

C. The provisions of this section shall not apply to any of the following:

1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia Workers Compensation Act; or

2. Except where specifically provided herein, the records of minor patients.

D. Providers may disclose the records of a patient:

1. As set forth in subsection E of this section, pursuant to the written consent of the patient or in the case of a minor patient, his custodial parent, guardian or other person authorized to consent to treatment of minors pursuant to § 54.1-2969; also, in emergency cases or situations where it is impractical to obtain the patient's written consent, pursuant to the patient's oral consent for a provider to discuss the patient's records with a third party specified by the patient;

2. In compliance with a subpoena issued in accord with subsection H of this section, pursuant to court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C of § 8.01-413;

3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure is reasonably necessary to establish or collect a fee or to defend a provider or the provider's employees or staff against any accusation of wrongful conduct; also as required in the course of an investigation, audit, review or proceedings regarding a provider's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity;

4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;

5. In compliance with the provisions of § 8.01-413;

6. As required or authorized by any other provision of law including contagious disease, public safety, and suspected child or adult abuse reporting requirements, including but not limited to those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-276.5, 32.1-283, 32.1-283.1, 37.1-98.2, 53.1-40.10, 54.1-2403.3, 54.1-2906, 54.1-2907, 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 63.1-55.3 and 63.1-248.11;

7. Where necessary in connection with the care of the patient;

8. In the normal course of business in accordance with accepted standards of practice within the health services setting;

9. When the patient has waived his right to the privacy of the medical records;

10. When examination and evaluation of a patient is undertaken pursuant to judicial or administrative law order, but only to the extent as required by such;

11. To the guardian ad litem in the course of a guardianship proceeding of an adult patient authorized under §§ 37.1-128.1, 37.1-128.2 and 37.1-132;

12. To the attorney appointed by the court to represent a patient in a civil commitment proceeding under § 37.1-67.3;

13. To the attorney and/or guardian ad litem of a minor patient who represents such minor in any judicial or administrative proceeding, provided that the court or administrative hearing officer has entered an order granting the attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the provider of such order;

14. With regard to the Court Appointed Special Advocate (CASA) program, a minor's records in accord with § 9-173.12;

15. To an agent appointed under a patient's power of attorney or to an agent or decision maker designated in a patient's advance directive for health care or to any other person consistent with the provisions of the Health Care Decisions Act (§ 54.1-2981 et seq.);

16. To third-party payors and their agents pursuant to the deemed consent provisions of §§ 37.1-226 and 37.1-227 when the patient has requested the provider to submit bills to the third-party payor for payment under a contract or insurance policy;

17. As is necessary to support an application for receipt of health care benefits from a governmental agency or as required by an authorized governmental agency reviewing such application or reviewing benefits already provided;

18. Upon the sale of a medical practice as provided in § 54.1-2405;

19. In accord with § 54.1-2400.1 B, to communicate a patient's specific and immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;

20. To the patient, except as provided in subsections E and F of this section and subsection B of § 8.01-413;

21. In the case of substance abuse records when permitted by and in conformity with requirements of federal law found in 42 U.S.C 290dd-2 and 42 C.F.R. Part 2;

22. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the adequacy or quality of professional services or the competency and qualifications for professional staff privileges;

23. Records of a deceased or mentally incapacitated patient to the personal representative or executor of the deceased patient or the legal guardian or committee of the incompetent or incapacitated patient or if there is no such person appointed, to the following persons in the following order of priority: a spouse, an adult son or daughter, either parent, an adult brother or sister, or any other relative of the deceased patient in order of blood relationship; and

24. Pursuant to a medical temporary detention order as set out in subsection M of § 37.1-134.5.

E. Requests for copies of medical records shall (i) be in writing, dated and signed by the requester; (ii) identify the nature of the information requested; and (iii) include evidence of the authority of the requester to receive such copies and identification of the person to whom the information is to be disclosed. Within fifteen days of receipt of a request for copies of medical records, the provider shall do one of the following: (i) furnish such copies to any requester authorized to receive them; (ii) inform the requester if the information does not exist or cannot be found; (iii) if the provider does not maintain a record of the information, so inform the requester and provide the name and address, if known, of the provider who maintains the record; or (iv) deny the request (a) under subsection F, (b) on the grounds that the requester has not established his authority to receive such records or proof of his identity, or (c) as otherwise provided by law. Procedures set forth in this section shall apply only to requests for records not specifically governed by other provisions of this Code or of federal law.

F. Except as provided in subsection B of § 8.01-413, copies of a patient's records shall not be furnished to such patient or anyone authorized to act on the patient's behalf where the patient's attending physician or the patient's clinical psychologist has made a part of the patient's record a written statement that, in his opinion, the furnishing to or review by the patient of such records would be injurious to the patient's health or well-being. If any custodian of medical records denies a request for copies of records based on such statement, the custodian shall permit examination and copying of the medical record by another such physician or clinical psychologist selected by the patient, whose licensure, training and experience relative to the patient's condition is at least equivalent to that of the physician or clinical psychologist upon whose opinion the denial is based. The person or entity denying the request shall inform the patient of the patient's right to select another reviewing physician or clinical psychologist under this subsection who shall make a judgment as to whether to make the record available to the patient. Any record copied for review by the physician or clinical psychologist selected by the patient shall be accompanied by a statement from the custodian of the record that the patient's attending physician or clinical psychologist determined that the patient's review of his record would be injurious to the patient's health or well-being.

G. A written consent to allow release of patient records may, but need not, be in the following form:

CONSENT TO RELEASE OF CONFIDENTIAL HEALTH CARE INFORMATION

Patient Name.....

Provider Name.....

Person, agency or provider to whom
disclosure is to be made.....

Information or Records to be disclosed.....

As the person signing this consent, I understand that I am giving my permission to the above-named provider or other named third party for disclosure of confidential health care records. I

also understand that I have the right to revoke this consent, but that my revocation is not effective until delivered in writing to the person who is in possession of my records. A copy of this consent and a notation concerning the persons or agencies to whom disclosure was made shall be included with my original records. The person who receives the records to which this consent pertains may not redisclose them to anyone else without my separate written consent unless such recipient is a provider who makes a disclosure permitted by law.

This consent expires on (date).....

Signature of Patient..... Date .....

H.1. No party to an action shall request the issuance of a subpoena duces tecum for an opposing party's medical records unless a copy of the request for the subpoena is provided to opposing counsel or the opposing party if they are pro se, simultaneously with filing the request. No party to an action shall request the issuance of a subpoena duces tecum for the medical records of a nonparty witness unless a copy of the request for the subpoena is provided to the nonparty witness simultaneously with filing the request.

In instances where medical records being subpoenaed are those of a pro se party or nonparty witness, the party requesting the issuance of the subpoena shall deliver to the pro se party or nonparty witness together with the copy of the request for subpoena, a statement informing them of their rights and remedies. The statement shall include the following language and the heading shall be in boldface capital letters:

NOTICE TO PATIENT

The attached Request for Subpoena means that (insert name of party requesting subpoena) has asked the court to issue a subpoena to your doctor or other health care providers (names of health care providers inserted here) requiring them to produce your medical records. Your doctor or other health care provider is required to respond by providing a copy of your medical records. If you believe your records should not be disclosed and object to their disclosure, you have the right to file a motion with the clerk of the court to quash the subpoena. You may contact the clerk's office to determine the requirements that must be satisfied when filing a motion to quash and you may elect to contact an attorney to represent your interest. If you elect to file a motion to quash, it must be filed as soon as possible before the provider sends out the records in response to the subpoena. If you elect to file a motion to quash, you must notify your doctor or other health care provider(s) that you are filing the motion so that the provider knows to send the records to the clerk of court in a sealed envelope or package for safekeeping while your motion is decided.

2. Any party filing a request for a subpoena duces tecum for a patient's medical records shall include a Notice to Providers in the same part of the request where the provider is directed where and when to return the records. Such notice shall be in boldface capital letters and shall include the following language:

NOTICE TO PROVIDERS

IF YOU RECEIVE NOTICE THAT YOUR PATIENT HAS FILED A MOTION TO QUASH (OBJECTING TO) THIS SUBPOENA, OR IF YOU FILE A MOTION TO QUASH THIS SUBPOENA, SEND THE RECORDS ONLY TO THE CLERK OF THE COURT WHICH ISSUED THE SUBPOENA USING THE FOLLOWING PROCEDURE: PLACE THE RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED ENVELOPE A COVER LETTER TO THE CLERK OF COURT WHICH STATES THAT CONFIDENTIAL HEALTH CARE RECORDS ARE ENCLOSED AND ARE TO BE HELD UNDER SEAL PENDING THE COURT'S RULING ON THE MOTION TO QUASH THE SUBPOENA. THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT.

3. Health care providers shall provide a copy of all records as required by a subpoena duces tecum or court order for such medical records. If the health care provider has, however, actual receipt of notice that a motion to quash the subpoena has been filed or if the health care provider files a motion to quash the subpoena for medical records, then the health care provider shall produce the records to the clerk of the court issuing the subpoena, where the court shall place the records under seal until a determination is made regarding the motion to quash. The securely sealed envelope shall only be opened on order of the judge. In the event the court grants the motion to quash, the

records shall be returned to the health care provider in the same sealed envelope in which they were delivered to the court. In the event that a judge orders the sealed envelope to be opened to review the records in camera, a copy of the judge's order shall accompany any records returned to the provider. The records returned to the provider shall be in a securely sealed envelope.

4. It is the duty of any party requesting a subpoena duces tecum for medical records to determine whether the patient whose records are sought is pro se or a nonparty. Any request for a subpoena duces tecum for the medical records of a nonparty or of a pro se party shall direct the provider (in boldface type) not to produce the records until ten days after the date on which the provider is served with the subpoena duces tecum and shall be produced no later than twenty days after the date of such service.

In the event that the individual whose records are being sought files a motion to quash the subpoena, the court shall decide whether good cause has been shown by the discovering party to compel disclosure of the patient's private records over the patient's objections. In determining whether good cause has been shown, the court shall consider (i) the particular purpose for which the information was collected; (ii) the degree to which the disclosure of the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or proceeding; and (v) any other relevant factor.

The provisions of this subsection have no application to subpoenas for medical records requested under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation, audit, review or proceedings regarding a provider's conduct. The provisions of this subsection apply to the medical records of both minors and adults.

A subpoena for substance abuse records must conform to the requirements of federal law found in 42 C.F.R. Part 2, Subpart E.

Providers may testify about the medical records of a patient in compliance with §§ 8.01-399 and 8.01-400.2.

§ 54.1-2403.3. Medical records; ownership; provision of copies.

Medical records maintained by any health care provider as defined in ~~§ 8.01-581.1~~ *§ 32.1-127.1:03* shall be the property of such health care provider. Such health care provider shall release copies of any such medical records in compliance with ~~§ 32.1-127.1:02~~ *§ 32.1-127.1:03* or § 8.01-413, if the request is made for purposes of litigation, or as otherwise provided by state or federal law.

2. That § 32.1-127.1:02 of the Code of Virginia is repealed.