

Records, release of patient records by subpoena

Number: INFORMAL

Date: October 06, 1998

Mr. Jerome Hoffman
General Counsel
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308

Dear Mr. Hoffman:

You have advised this office that based upon Attorney General Opinion 89-12, the Agency for Health Care Administration (AHCA) has taken the position that it is not authorized to release patient records in response to a lawfully issued subpoena duces tecum.

Attorney General Opinion 89-12 considered only the general question of whether the then Department of Professional Regulation could release patient records obtained by the department during its investigation to a law enforcement agency or any other regulatory agency. The opinion neither discusses nor reaches any conclusion regarding the release of such records pursuant to a lawfully issued subpoena duces tecum.

As this office observed in Attorney General Opinion 94-86, a state attorney acts as the investigatory and accusatory arm of the judicial branch, subject only to limitations imposed by the Constitution, common law, and statutes for the protection of individual rights.[1] The state attorney is expressly authorized by statute to exercise the process of court to summon witnesses. This office has stated that the term "process" as used in section 27.04, Florida Statutes, includes subpoena duces tecum.[2] Thus the state attorney is authorized to issue a subpoena duces tecum independently of a court, but in doing so operates as an adjunct of the judicial system.

The statewide prosecutor is authorized by statute to exercise any power granted by law to a state attorney.[3] Thus, the statewide prosecutor, in issuing subpoenas duces tecum, is operating as an arm of the judiciary.[4]

Failure to comply with lawfully issued judicial process may subject the agency to sanctions.[5] If the agency is of the opinion that the records should not be released, it may assert that position in a motion to quash the subpoena.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] *Imparato v. Spicola*, 238 So. 2d 503 (Fla. 2d DCA 1970).

[2] Attorney General Opinion 67-56 (1967).

[3] Section 16.56(3), Fla. Stat. (1995).

[4] *Cf. Department of Professional Regulation v. Spiva*, 478 So. 2d 382, 383 (Fla. 1st DCA 1985), concluding that the statutes exempting public documents from disclosure does not remove the authority of the judicial branch to compel the production of documents in discovery.

[5] *Cf.* Fla.R.Crim.P. 3.220(n); Fla.R.Civ.P. 1.410(e).