

721—25.18(17A) Issuance of subpoenas in a complaint proceeding.

25.18(1) Subpoenas issued in a complaint proceeding may compel the attendance of witnesses at depositions or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or may be issued separately. Subpoenas shall be issued by the presiding officer upon written request. In the case of a request for a subpoena of mental health records, the request must confirm compliance with the following conditions prior to the issuance of the subpoena:

- a.* The nature of the issues in the proceeding reasonably justifies the issuance of the requested subpoena;
- b.* Adequate safeguards have been established to prevent unauthorized disclosure;
- c.* An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d.* An attempt was made to notify the patient and to secure an authorization from the patient for the release of the records at issue.

25.18(2) A request for a subpoena shall include the following information, as applicable:

- a.* The name, address and telephone number of the person requesting the subpoena;
- b.* The name and address of the person to whom the subpoena shall be directed;
- c.* The date, time, and location at which the person shall be commanded to attend and give testimony;
- d.* Whether the testimony is requested in connection with a deposition or hearing;
- e.* A description of the books, papers, records or other real evidence requested;
- f.* The date, time, and location for production or inspection and copying;
- g.* In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 25.18(1) have been satisfied.

25.18(3) Each subpoena shall contain, as applicable:

- a.* The caption of the proceeding;
- b.* The name, address and telephone number of the person who requested the subpoena;
- c.* The name and address of the person to whom the subpoena is directed;
- d.* The date, time, and location at which the person is commanded to appear;
- e.* Whether the testimony is commanded in connection with a deposition or hearing;
- f.* A description of the books, papers, records or other real evidence the person is commanded to produce;
- g.* The date, time, and location for production or inspection and copying;
- h.* The time within which a motion to quash or modify the subpoena must be filed;
- i.* The signature, address and telephone number of the executive secretary or designee;
- j.* The date of issuance;
- k.* A return of service.

25.18(4) The presiding officer or designee shall mail copies of all subpoenas to the parties to the complaint proceeding. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

25.18(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the complaint proceeding who desires to challenge the subpoena, must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the presiding officer a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

25.18(6) Upon receipt of a timely motion to quash or modify a subpoena, the presiding officer may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the presiding officer may quash or modify the subpoena, deny the motion, or issue an appropriate protective order. Prior to ruling on the motion, the presiding officer or administrative law judge may schedule oral argument or hearing by telephone or in person.

25.18(7) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge the ruling must appeal the ruling to the presiding officer in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rules 721—25.29(17A) and 25.30(17A), provided that all of the time frames are reduced by one-half.

25.18(8) If the person contesting the subpoena is not a party to the proceeding, the presiding officer's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the proceeding, the presiding officer's decision is not final for purposes of judicial review until there is a final decision in the complaint proceeding.