



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Coming Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

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DOH GC Opinion No. 07-01  
Authorization to Disclose Patient Information

Dear Ms. Ciardullo:

I acknowledge receipt of your letter of November 27, 2006, to Donald P. Berens, Jr., the Department of Health's former General Counsel, requesting clarification regarding patient authorization for providers to disclose health information to third parties. Specifically, you asked whether a provider may refuse to honor a patient authorization to disclose health information to a third party simply for the reason that it was not prepared on the provider's own form. I assume the authorization is not for purposes of treatment or payment. See, Public Health Law (PHL) § 17, DOH GC Opinion No. 03-06.

Both State and federal law distinguish between an authorization and exercising the right of access: (1) A provider may disclose health information to a third party pursuant to an authorization containing specified elements; and (2) a provider must provide a patient with access to the patient's own health information upon written request. See, Education Law § 6530(23), PHL § 18, 45 CFR §§ 164.508, 164.524.

It is sometimes difficult to distinguish between (1) and (2) above, because it may be unclear in some instances whether patient A is authorizing disclosure to party B or party B is a "qualified person" exercising the right of access of patient A. See, DOH GC Opinion No. 06-03. Nevertheless, once the distinction is made, the law is applied as follows.

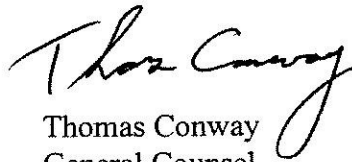
For practical reasons, many providers require patients to use the provider's own form for an authorization, so that the medical records clerk who is actually doing the work of disclosing the health information does not have to determine whether the authorization complies with (as applicable) HIPAA, 42 CFR Part 2, PHL Article 27-F, PHL § 17, Civil Rights Law § 79-1, and Mental Hygiene Law §§ 22.05, 33.13 and 33.16. Providers do not want to involve their attorneys in routine activities involving the release of medical records. A provider is not generally required to honor patient authorizations unless the provider is required by law to make the disclosures. See, e.g., CPLR §§ 3120, 3122.

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On the other hand, if the request can correctly be categorized as a written request by a patient or other "qualified person" (PHL § 18(1)(g)) for access to the patient's medical records, the provider must honor it. The Department of Health (DOH) interprets the law to allow providers to impose reasonable constraints upon what is considered to be a written request from a patient or other qualified person. For example, an unsigned request on a napkin written in crayon could obviously be rejected. Also, the provider is obligated to verify the requester's identity and status to make the request and to keep accurate records and account for disclosures made in error. Thus, a provider may require that the request be dated and signed and that the requester provide identification and evidence to show that the person is a qualified person.

The laws requiring patient authorization are intended to protect patient privacy, and there may be instances in which providers improperly use these laws not as a shield but as a sword. Both the Office of Court Administration (OCA) Official Form No. 960, available at [https://www.courts.state.ny.us/forms/Hipaa\\_fillable.pdf](https://www.courts.state.ny.us/forms/Hipaa_fillable.pdf), and DOH form 2557, available at <http://www.health.state.ny.us/forms/doh-2557.pdf>, have been approved by DOH to authorize providers to disclose health information to third parties. While no law mandates the use of these forms, providers should be familiar with them and should have procedures in place to honor them.

Very truly yours,

  
Thomas Conway  
General Counsel