



## Civil Court Orders Authorizing Disclosure of SUD Treatment Records Protected by 42 CFR Part 2

### WHAT YOU NEED TO KNOW

Substance use disorder (SUD) treatment providers frequently receive court orders and other requests for confidential patient information protected by the federal confidentiality protections for SUD treatment (42 USC § 290dd-2 and 42 CFR Part 2, referred to collectively as “Part 2”).<sup>1</sup> A general court order, subpoena, or official request for records, however, is not sufficient to permit the disclosure of Part 2 records.<sup>2</sup> Many lawyers and judges are more familiar with privacy protections for general health information and may not be aware of the heightened confidentiality for SUD treatment records under Part 2. To help clarify Part 2’s heightened court order requirements, this resource provides sample provisions for a civil court order authorizing disclosure of a patient’s Part 2 records.<sup>3</sup>

SUD treatment providers may use this as a resource to help determine whether they have received a Part 2 compliant court order, but it should not replace legal advice from local counsel. Court orders authorizing disclosures of a patient’s confidential communications must meet additional requirements (42 CFR § 2.63), as must criminal court orders (42 CFR § 2.65).

### WHAT DOES A VALID PART 2 COURT ORDER LOOK LIKE IN A CIVIL CASE?

A court order authorizing disclosure of Part 2 records in a civil case must contain the following two elements:

- ① Good cause determination. The court must find “good cause” for the disclosure of a patient’s confidential Part 2 records, including the following findings: other ways of obtaining the information are not available or would not be effective; and the public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship, and the treatment services.<sup>4</sup>

- ② Limitations on disclosure. After the court makes a finding of “good cause,” it must impose limitations on the disclosure of any Part 2 records, including the following: limiting the amount of information to be disclosed to the parts of the patient’s record that are essential to fulfill the objective of the order; limiting disclosure to the people who need the information; and imposing other measures as necessary, including sealing the record.<sup>5</sup>

The sample court order language below illustrates the minimum legal requirements for a Part 2 court order. Additional federal, state, or local provisions may also be required for a valid court order in your jurisdiction. The formatting and style of the court order may also vary by jurisdiction.

## SAMPLE CIVIL COURT ORDER PROVISIONS AUTHORIZING DISCLOSURE OF PART 2 RECORDS<sup>6</sup>

Upon reading petitioner’s application for disclosure of Jane Doe’s records from Green Valley Treatment Program and following a hearing at which Jane Doe and Green Valley Treatment Program had an opportunity to present evidence, in accordance with 42 USC § 290dd-2 and 42 CFR §§ 2.61 and 2.64, this court finds:

That there is good cause for authorizing the disclosure of the records and testimony specified in the application, as there is no other effective way to obtain the information. Further, the public’s interest and need for the disclosure outweigh the potential injury to Jane Doe (as the patient), to their physician-patient relationship, and to treatment services.

IT IS HEREBY:

ORDERED that Green Valley Treatment Program comply with this order by producing the following:

[Description of any Part 2 records to be disclosed; must be limited to “essential” information but may include information such as date of admission, diagnosis, summary of treatment plan, attendance, date of discharge, and more. Information contained in confidential patient communications may not be included unless the court order meets the additional requirements in 42 CFR § 2.63.];

[Description of any testimony to be required.].

ORDERED that in accordance with 42 CFR § 2.64(e)(1), disclosure of the records and testimony referenced in this order is limited to the parts of Jane Doe’s records which are essential to fulfill the objective of the order.

ORDERED that in accordance with 42 CFR § 2.64(e)(2), disclosure of the records and testimony referenced in this order is limited to the following persons whose need for the information is the basis for the order:

[Description of parties authorized to receive records; may include parties to the litigation (including their attorneys) and the court.].

ORDERED that in accordance with 42 CFR § 2.64(e)(3), the following measures must be taken to limit disclosure for the protection of the patient, the physician-patient relationship, and the treatment services:

[May include measures such as sealing the record.].

## ADDITIONAL CONSIDERATIONS AND PRACTICE TIPS

**Communicating with the patient.** In some cases, a patient may be willing to authorize disclosure of all or some of the requested records. In practice, a helpful first step after receiving a request for patient records is to contact the patient and see if they want to authorize the disclosure with written consent.<sup>7</sup> Even if the patient does not want to sign a consent form, it may be helpful to clarify the patient's opinion and preferences about which records should be subject to disclosure.

**Preliminary hearing.** A valid Part 2 court order for civil litigation should only be issued after a hearing at which both the patient and the record holder have an opportunity to present evidence about whether the court should authorize the disclosure.<sup>8</sup> If you receive a court order but did not receive notice of a preliminary hearing and have never appeared before the judge, this may be a flag that the court order does not comply with Part 2. In practice, however, this does not mean you should ignore the court order. Always consult with local counsel and contact the court if you have any questions about the preliminary hearing.

**No patient-identifying information disclosed prior to the court order.** The application for a court order and the court order itself must use a fictitious name (like Jane Doe) and not disclose any patient-identifying information.<sup>9</sup> When responding to a court order and speaking with attorneys, litigants, and court employees, remember that you must continue to maintain the patient's confidentiality until the court order is actually entered. This means that you may not confirm the individual's identity as a patient at the Part 2 program or share any other identifying information until the court has issued its court order.<sup>10</sup>

**HIPAA-protected health information.** A court order issued under 42 CFR § 2.64 also meets the requirements for a court order authorizing disclosure of protected health information under the HIPAA Privacy Rule.<sup>11</sup>



## For More Information

### Resources

This resource is one of many that are available within the Center of Excellence for Protected Health Information's resource library, which can be found at [coephi.org](https://coephi.org).

### Request Technical Assistance

You can request brief, individualized technical assistance and join our mailing list for updates, including news about the publication of new resources and training opportunities, [here](#).



### Disclaimer

Resources, training, technical assistance, and any other information provided through the Center of Excellence for Protected Health Information do not constitute legal advice. For legal advice, including legal advice on other applicable state and federal laws, please seek out local counsel.

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## References

1. For more information about how to determine when Part 2 applies to SUD treatment records, see [https://coephi.org/sites/default/files/31741026\\_i\\_provide\\_sud\\_services\\_in\\_an\\_fqhc.pdf](https://coephi.org/sites/default/files/31741026_i_provide_sud_services_in_an_fqhc.pdf)
2. See 42 CFR § 2.61(b)(1) ("A person holding records subject to the regulations in this part . . . may not disclose the records in response to the subpoena unless a court of competent jurisdiction enters an authorizing order under the regulations in this part."). For more information about responding to a subpoena in a civil case, see Legal Action Center's "Sample Letter in Response to a Subpoena," [https://www.lac.org/assets/files/Sample\\_Form\\_4-response-to-subpoena-civil-case.pdf](https://www.lac.org/assets/files/Sample_Form_4-response-to-subpoena-civil-case.pdf) For information about how to respond to arrest warrants and inquiries from law enforcement, see CoE-PHI InFocus Brief: [Arrest Warrants & Law Enforcement Inquiries in SUD Settings](#).
3. See 42 CFR §§ 2.61, 2.64.
4. See 42 USC § 290dd-2(b)(2)(C); 42 CFR § 2.64(d); see, e.g., *Vannoy v. FRB of Richmond*, No. 3:13-CV-797, 2014 U.S. Dist. LEXIS 80133, at \*1 (E.D. Va. June 9, 2014).
5. See 42 CFR § 2.64(e), see, e.g., *Colon v. Metro-North Commuter R.R. Co.*, No. 3:13CV325(JAM), 2014 U.S. Dist. LEXIS 45992, at \*1 (D. Conn. Apr. 3, 2014).
6. These sample provisions illustrate the minimum necessary requirements to comply with the Part 2 court order requirements. Additional information may be required to comply with other applicable laws and local court rules.
7. See 42 CFR § 2.31.
8. See 42 CFR § 2.64(a)-(c).
9. See 42 CFR § 2.64(a). The application may disclose patient-identifying information in only three circumstances: 1) the applicant is the patient; 2) the patient has given written consent; or 3) the court has ordered that the record of the proceeding be sealed from the public eye. See *id.*
10. See 42 CFR § 2.11 (definition of "patient identifying information").
11. See 45 CFR § 164.512(e).