



April 29, 2009

Ronald Carpenter  
Clerk of the Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929

Dear Mr. Carpenter:

On behalf of this state's 97 community hospitals, the Washington State Hospital Association is writing to express its serious concern about the proposed changes to CrR 4.8(2) that allow a subpoena to be issued to require production of documents, including medical records, without first seeking court approval.

The proposed rule raises significant patient privacy concerns and creates an ambiguity regarding a healthcare provider's ability or obligation to produce records pursuant to a subpoena. RCW 70.02.060(1) currently requires attorneys seeking health information from healthcare providers pursuant to compulsory process to provide the healthcare provider and the patient or patient's attorney with 14 days advance notice.

It is unclear whether the proposed rule creates an exception to the statutory notice requirement of RCW 70.02.060(1) in criminal cases. Further, crime victims are rarely in a position to obtain protective orders. If prosecutors are not given notice of subpoenas, they will be unable to obtain a protective order for victims regarding the use and distribution of their patient records.

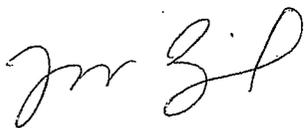
The rule fails to take into account that a subpoena may not be sufficient to obtain the records sought. See the heightened confidentiality requirements in Chapters 71.05 and 71.34 RCW for mental health records.

The rule may also circumvent state law by allowing a criminal defense attorney to obtain medical records of a sexual assault victim without a court order. See RCW 70.125.065.

We respectfully request that this rule change not be adopted or that additional consideration be given to the concerns raised by Washington's hospitals.

Thank you very much for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Taya Briley'.

Taya Briley, RN, MN, JD  
General Counsel