

**Arizona State Board of Nursing  
Substantive Policy Statement**

**Guidelines for Requesting Respondent's Medical Records and Medical Information via  
Subpoena or Written Request**

**October 14, 2009**

**Revised September 23, 2010**

This Substantive Policy Statement is advisory only. A Substantive Policy Statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on the regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedures Act. If you believe that this Substantive Policy Statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes Section 41-1033 for a review of the statement. (ARS § 41-1091)

32-1664. Investigation; hearing; notice

A. In connection with an investigation, the Board or its duly authorized agents or employees may obtain any documents, reports, records, papers, books and materials, including hospital records, medical staff records and medical staff review committee records, or any other physical evidence that indicates that a person or regulated party may have violated this Chapter or a rule adopted pursuant to this Chapter:

4. In the case of an applicant's or a regulated party's personal medical records, as defined in Section 12-2291, by any means permitted by this Section if the Board either:

(a) obtains from the applicant or regulated party, or the health care decision maker of the applicant or regulated party, a written authorization that satisfies the requirements of Title 12, Chapter 13, Article 7.1.

(b) reasonably believes that the records relate to information already in the Board's possession regarding the competence, unprofessional conduct or mental or physical ability of the applicant or regulated party as it pertains to safe practice. If the Board adopts a Substantive Policy Statement pursuant to Section 41-1091, it may authorize the Executive Director or a Designee in the absence of the Executive Director, to make the determination of reasonable belief.

## **Policy**

If information received during the course of a complaint or during the investigation indicates a potential competence, unprofessional conduct or mental or physical ability to safely practice, the individual will be requested to sign a release for Board staff to obtain their personal medical records from their treating provider(s). If the individual declines to sign a release for the medical records, fails to respond to the request to sign releases for their medical records, or is unable to be contacted, the Executive Director or in their absence, Designee, shall make a determination if reasonable belief exists that the records are needed and pertain to competence, unprofessional conduct or mental or physical ability to safely practice. Upon determination of reasonable belief by the Executive Director or Designee, a subpoena or written request shall be issued for relevant records.

**Examples of information which may indicate a potential competence, unprofessional conduct or mental physical ability to safely practice include:**

- a. Information received from a licensed independent practitioner or medical provider indicating that the individual may be unsafe to practice as a result of a medical condition or medications prescribed
- b. Information received related to impairment whereby the source of impairment may be from medications obtained from licensed independent practitioners
- c. Information received that the individual may be obtaining controlled substances illegally or from multiple providers
- d. Information received from a pharmacy or similar source indicating that the individual may be obtaining medications (controlled substances or other potentially impairing medications) from multiple providers or multiple pharmacies
- e. Information received regarding potential impairment on duty in which the individual indicates that the impairment is related to prescribed medications or a medical condition
- f. Information received that may indicate conduct reflective of decreasing cognitive abilities that may be reasonably associated with a medical condition or the use of controlled substances.
- g. Cases in which individual has a chronic or acute medical condition that contributed to being reported to the Board for unsafe practice
- h. Cases in which the interview conducted or file review raises red flags, i.e. individual discloses taking pain medication and the nature, dosage and frequency of use has potential to compromise safe nursing practice; rationalizes that health impacted practice, etc.
- i. Allegations involving positive drug screen results in which Respondent claims to have a valid prescription not provided.
- j. Allegations of diverting and/or possessing controlled substances on duty in which Respondent claims the controlled substances are his/her prescribed medication
- k. Allegations of impairment whereby the source of impairment may be from medication being obtained via multiple medical providers without disclosure (i.e. doctor shopping).

This list is not intended to be exhaustive but rather is intended to provide examples of information which may indicate a potential competence, unprofessional conduct or mental physical ability to safely practice in which the respondent/applicant's person medical records are required and may be obtained via subpoena or written request.