

Dear Law Enforcement Professional:

(SAMPLE)

Thank you for your good work and dedication to service.

Federal confidentiality law and regulations (see 42 U.S.C. § 290dd-2, 42 C.F.R. Part 2) prohibit this program and its personnel from complying with your request or even acknowledging whether or not this individual is a patient in our program unless the court issues an order authorizing disclosure in accordance with Subpart E of the federal confidentiality regulations. (42 C.F.R. § 2.13). A subpoena, search warrant, or arrest warrant, even when it is signed by a judge, is not sufficient, by itself, to require or even permit a program to make a disclosure. **In order for us both to comply with the law we therefore we must ask you to vacate the premises.**

The federal confidentiality law and regulations prohibit a program from disclosing information in response to a subpoena (even a judicial subpoena) when the information is sought as part of a criminal investigation or prosecution of a patient or former patient unless a court issues a special authorizing order in accordance with Subpart E of the federal regulations, §§ 2.61 - 2.67.

Subpart E of the regulations provides that before the court may issue an order authorizing a program to release patient information sought in a criminal investigation or prosecution, the program must be notified that a hearing will be held to decide whether an authorizing court order will be issued. The program must be given an opportunity to appear in person or file a responsive statement and to be represented by counsel independent of counsel for an applicant for the order who is performing a law enforcement function. (42 C.F.R. § 2.65(b).)

In order to issue an authorizing order, at the required hearing, the court must find that:

- (1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and [criminal] child abuse and neglect;
- (2) There is reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution;
- (3) Other ways of obtaining the information are not available or would not be effective;
- (4) The potential injury to the patient, to the physician-patient relationship and to the ability of the program to provide services to other patients is outweighed by the public interest and need for the disclosure; and
- (5) If the applicant for the order is a person performing a law enforcement function, the person holding the records has been given the opportunity to be represented by independent counsel (if the person holding the records is within a government entity, he or she must actually be represented by independent counsel). § 2.65(d).

In addition, § 2.65(e) provides that an order must: (1) "limit disclosure and use to those parts of the patient's record which are essential to fulfill the objective of the order"; (2) "limit disclosure to those law enforcement and prosecutorial officials who are responsible for, or are conducting, the investigation or prosecution, and limit their use of the records to investigation and prosecution of [the] extremely serious crime or suspected crime specified in the application"; and (3) "include such other measures as are necessary to limit disclosure and use to the fulfillment of only that public interest and need found by the court." § 2.65(e).

Since no authorizing court order has been obtained under 42 C.F.R. Part 2, Subpart E, we are compelled by federal law not to release any information, and we politely are asking you to vacate the premises.

This decision was reached after a thorough review of the federal law and regulations governing the confidentiality of alcohol and drug abuse patient records, and is not intended in any way to impede justice.

Sincerely,

Program Director, Wilson Recovery Center

Please note: Your interaction with us may be videotaped for your protection as well as ours. The courts have ruled (Smith v. Cumming, U.S. Court of Appeals, 11th Circuit; Glik v. Cunniffe) that the First Amendment guarantees us the right to videotape public officials (including police officers) acting in public space in an official capacity, providing we do not interfere with the investigation. Thank you for respecting our rights and our obligation to follow federal regulations.

(this form can be downloaded at fatherhugs.com; more information about 42 CFR can be found at the Legal Action Center: lac.org)