

# SESLHD PROCEDURE COVER SHEET



**Health**  
South Eastern Sydney  
Local Health District

<b>NAME OF DOCUMENT</b>	Management of Subpoenas
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<b>FUNCTIONAL GROUP(S)</b>	Corporate Governance
<b>KEY TERMS</b>	Subpoena, subpoenaed party, issuing party, patient, plaintiff, defendant, electronic medical record (EMR), conduct money
<b>SUMMARY</b>	This procedure sets out the standard practice for management of subpoenas across all facilities and services in South Eastern Sydney Local Health District.

## **COMPLIANCE WITH THIS DOCUMENT IS MANDATORY**

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# SESLHD PROCEDURE

## Management of Subpoenas

**SESLHDPR/618**

### 1. POLICY STATEMENT

The expected outcome of the procedure is a standardisation in practice across all facilities/ services in South Eastern Sydney Local Health District (SESLHD) when processing subpoenas.

Subpoenas must be dealt with promptly and processed within the specified timeframes.

### 2. BACKGROUND

Local Health Districts are often required to produce documents on subpoena.

The procedures set out in the [NSW Health Policy Directive PD2019\\_001 - Subpoenas](#) must be complied with on all occasions. This procedure supports implementation of the NSW Health policy directive and assists facilities and services of SESLHD to comply with subpoenas.

A subpoena may request clinical (patient) records, workforce (employee) records or corporate records (organisational).

### 3. DEFINITIONS

**Subpoena** is an order from a court which directs someone that they must on a given date:

- (i) produce to a court certain (existing) documents for use in legal proceedings;
- (ii) attend a court on a particular date to be a witness in a hearing and give evidence; or
- (iii) do both.

A subpoena can only be issued if legal proceedings have commenced.

**Conduct Money** A fee payable to the organisation to meet the reasonable expenses of tendering documents to court.

**Documents (or Records) includes but is not limited to**

- (i) Documents, any paper or other material on which there is writing
- (ii) Any paper or other material on which there are marks, figures, symbols which have a meaning regardless of whether persons must be qualified to interpret
- (iii) Any article or material from which sounds, images or writings may be produced regardless of whether another article or device is required to do so.

**Issuing Party** means the person who has caused the subpoena to be issued, or that person's legal representative.

**Patient** includes all clients of a public health organisation.

**Plaintiff** is the person who has commenced the proceedings.

**Defendant** is the person against whom the action is brought by the Plaintiff.

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### 4. RESPONSIBILITIES

#### 4.1 *Chief Executive*

Ensure that procedures are in place to support NSW Health policy in relation to subpoena response.

#### 4.2 *Directors and Service Managers*

Ensure all staff are aware of their obligations in relation to subpoena response.

Ensure all subpoenas for records are processed in accordance with [NSW Health Policy Directive PD2019\\_001 - Subpoenas](#).

#### 4.3 *All Employees*

Understand their obligation to respond to subpoenas.

When responding to a subpoena provide only documents which are requested under the schedule of a subpoena.

Escalate and seek advice from line managers in relation to any claim for privilege over the documents.

### 5. PROCEDURE

A subpoena may be received by mail, fax or in person.

#### 5.1 *Conduct Money*

A subpoena may or may not have conduct money (a cheque) attached at the time that it is served. A subpoena must be actioned immediately, regardless of whether the conduct money has been provided. The correct amount of conduct money may be requested after the subpoena has been processed. Fees for provision of records are set out in the [NSW Health Information Bulletin IB2019\\_036 - Health Records and Medical/Clinical Reports - Rates](#) which is reviewed annually.

Any excess conduct money is to be returned to the issuing party.

Conduct money is not paid for subpoenas issued by Police Officers, Prosecutors who are a Public Officer, the Victim's Compensation Tribunal or the NSW Coroner's Court.

#### 5.2 *Assess Validity*

For a subpoena to be valid it must sufficiently identify the party in possession of the documents that have been subpoenaed.

Assess if the subpoena has been served in time. Unless marked otherwise by the Court subpoenas must be served no less than five working days prior to the due date. If a subpoena is not able to be provided in time the Clerk or Registrar of the court must be contacted and notified in writing.

Subpoenas may be challenged on a number of grounds, for example if it is too wide or seeks privileged information. Any such challenge must be escalated to an appropriate manager.

### **5.3 Allocate subpoena**

The type of documents/records/information being requested determines the appropriate action officer.

- (i) Clinical record subpoenas are to be processed by the relevant Medico-legal department
- (ii) Employee record subpoenas are to be processed by the People and Culture directorate.
- (iii) Industrial Relations Commission or Workcover / Workers Compensation subpoenas are to be processed by the People and Culture directorate.
- (iv) Corporate record subpoenas are to be assessed by Executive Services and assigned to the appropriate Tier 2 Director, or in the case of Chief Executive records processed directly.
- (v) Subpoenas for the following must be brought to the attention of the Chief Executive and Head of Legal:
  - Seeking access to a sensitive/contentious matter,
  - issued by the Coroner's court,
  - one where SESLHD is a party to the proceedings, or
  - one which is likely to be of public interest

For further information in this regard contact SESLHD Executive Services via email to [SESLHD-ExecutiveServices@health.nsw.gov.au](mailto:SESLHD-ExecutiveServices@health.nsw.gov.au)

### **5.4 Privilege / Sensitive Records**

Care should be exercised where a record contains any sensitive or potentially privileged information. Examples include, but are not limited to:

- Sexual assault
- Child protection/child at risk
- Professional confidential relationship
- Client legal privilege
- Drug and alcohol
- HIV/AIDs
- Domestic violence
- Genetic information
- Transgender status
- Mental health

More detail on privilege is available in [NSW Health Policy Directive PD2019\\_001 - Subpoenas](#).

If there is any doubt seek advice from the Medico-legal Manager or Head of Legal.

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### 5.5 *No records are held*

If following thorough search it is determined that SESLHD does not hold the records, or document requested, a letter is to be sent to the issuing party with a copy to the clerk of the court advising that no records are held. Conduct money may be retained if significant or extensive searches have been undertaken.

### 5.6 *Records have been destroyed*

If records have been destroyed in line with retention and disposal schedules the issuing party and clerk of the court are to be advised in writing and conduct money returned.

## 6. DOCUMENTATION

Subpoenas in relation to patient records are to be retained and documented in the medical record.

Subpoenas for employee or corporate records are to be registered in the corporate Electronic Document Records Management System (EDRMS) – currently HPE Content Manager.

## 7. AUDIT

Review of EDRMS and / or medical records

## 8. REFERENCES

[NSW Health Information Bulletin IB2019\\_036 - Health Records and Medical/Clinical Reports - Rates](#)

[NSW Health Policy Directive PD2019\\_001 - Subpoenas](#)

## 9. VERSION AND APPROVAL HISTORY

Date	Version	Version and approval notes
June 2018	DRAFT	Manager Executive Services/ Executive Services Consultant
June 2018	DRAFT	Draft for Comment
July/ August 2018	DRAFT	Feedback collated.
July/ August 2018	DRAFT	Final draft approved by Executive Sponsor. Processed by Executive Services prior to progression to Executive Council.
September 2018	0	Approved by Executive Council.
March 2020	0	Executive Sponsor updated to Director Corporate and Legal Services – approved by Chief Executive.
11 April 2024	1.0	Executive Sponsor updated to Manager Office of the Chief Executive – minor update of links and references to Head of Legal (replacing Manager Professional Practice). Document checked and approved for publishing by Executive Sponsor.