# Subpoenas for Trial - A Strategy for Accommodation

By Greg Snell, Esq.,

It is common for physicians and others in the medical field to be served with a subpoena to appear as a witness at trial in a case in which they are not a party. For some it is a frequent occurrence. Rarely are such subpoenas received favorably or willingly. For good reason they are often met with disdain.

It is not unusual for trial subpoenas to arrive without forewarning in cases in which the designated witness had little or no prior involvement aside from having a patient relationship. Often the subpoena directs the recipient to appear at a specified time at the beginning of a trial period which lasts a minimum of one week, maybe many weeks, with no further instruction. The consequential surprise and uncertainty caused by this circumstance is generally disconcerting.

Rare is the subpoenaed witness who has the luxury or inclination to appear for a trial at a unilaterally established, and indeterminate amount of, time. Absent guidance on the particular time when the witness will actually be needed to testify, as opposed to when they have been told to appear, the witness is relegated to wondering when within the lengthy trial period they will be needed, how much of their schedule must be rearranged and at what cost.

Notwithstanding the compulsory nature of subpoenas it would seem that those who issue them would find benefit in affording the witnesses some instruction on how to best mutually coordinate their appearance at trial when needed. However, as discussed above, the apparent value of such an effort is sometimes lost.

When a trial subpoena is delivered which does not specify how the witness is to coordinate a mutually convenient time for appearance at trial the witness can likely achieve accommodation by contacting the attorney who issued the subpoena. The witness should determine prior to making contact when, if at all, during the trial period would be most convenient to appear. Every effort should be made to identify some time during the trial period when an appearance could be made. Merely being obstinate may prompt a counter productive reciprocal response and is unadvisable.

Although a polite letter will suffice for contact initially a similarly polite and civil telephone call is more personal and more conducive to gentle persuasion and rapport building, which can be very helpful. However contact is made the person making the contact, whether the witness or someone on their behalf, should simply advise that: 1) the subpoena has been received; 2) the witness is willing to appear if necessary; 3) the witness would prefer to appear at the predetermined convenient time; and 4) cooperation would be appreciated. A request should then be made for: 1) a time certain when appearance is agreeable; or 2) confirmation that no appearance is necessary; or 3) if neither 1) or 2) can be provided at that time assurance that the witness will be informed as promptly as reasonably possible when either 1) or 2) can be conveyed.

Although cases are set for a trial period it is routine in the court system that whether or when a case is to be tried during a trial period is not determined until a few days prior to the beginning of the trial period. Therefore, if an attorney asserts that they cannot yet advise when contacted whether or when the respective case will be tried during the trial period specified in the subpoena that does not reflect a lack of candor. Regardless, contact should be made with the attorney serving the subpoena as soon as reasonably possible after the subpoena is served to best insure success in managing the subpoena. Because the case may not be reached during the trial period in the original subpoena it may be necessary to respond to subsequent subpoenas or orders binding over a prior subpoena to a new trial period.

Once an understanding is reached regarding a mutually convenient appearance at trial it should be commemorated to writing in the form of a letter to the attorney. Form letters may be desirable for this purpose.

Occasionally unusual circumstances or personalities may render the process suggested here ineffective but if consistently and uniformly adopted ordinarily the objective of achieving accommodation to the schedule of the witness will be achieved.

# Release of Medical Records - Fifth District Court of Appeal

by Luella Brown, Vice President, HIPI

As you may know, state law dealing with release of a patient's office medical record is somewhat vague as to who may authorize release after the death of the patient. A recent appeals court decision upholds that only the patient's legal representative, who is confirmed by the court (probate or filing of a true bill of discovery) may authorize release. This judicial determination of the legal representative provides protection for the physician who may otherwise be accused of violating the statute and face disciplinary proceedings by the licensing board.

Requests for medical records of deceased patients should be carefully reviewed prior to releasing copies. Please share this information with the appropriate staff in your office and contact HIPI with any questions.

## FYI

**To continue to provide the best service and accessibility, the HIPI office will be implementing the use of a telephone answering machine for after hours calls. The recorded message will be updated on a daily basis and will provide the caller with a number to utilize if there is an urgent inquiry. Your feedback is welcome concerning this change.**