

Department of Mental Health
Routine Disclosures – Chart # 4
Court Proceedings, Legal & Fiduciary Representation, Client Advocacy

Purpose of Disclosure	Disclosed to	Authority for Disclosure (When the authority is a document, a copy of the authorizing document must be in the DMH records for the disclosure to occur)	Permitted Amount of Information to be Disclosed (May be verbal or written unless limited by the authority for disclosure)	Special Requirements
Administer deceased patient's estate	Nearest relative; probate court, voluntary administrator/executor	G.L. c.123, §27; Probate Court appointment	Name, address, facility, date of death, known heirs, estate value and any other information required by the Probate Court	See also Fiduciary Activities on Chart #4
Commitment hearings and §8B treatment order hearings	Court, patient's attorney	G.L. c.123, §§7&8, 8B, 12(b), 15(e), 16(b), 16(c) and 18(a)	Petitions, affidavits, and related documents; testimony at hearings	Information to be disclosed may be limited by psychotherapy privilege and other applicable confidentiality requirements
Court clinic determination of bed availability and referral for inpatient admission	Private hospitals	G.L. c.123, §12(e) order	De-identified information only when surveying for bed availability; 12(e) report to accompany patient to facility	
Court clinic inquiry to determine insurance coverage	Partnership/Insurers	G.L. c.123, §12(e) order	Identifying information only	
Court order response	Court, attorney involved in the court proceeding, probation officer, guardian <u>ad-litem</u> , etc.	Court Order that meets the DMH standard for a "Proper Judicial Order". See G.L. c123, §36, 104 CMR 27.17(6)(a) and 28.09(2)(a)	The minimal amount of PHI specified in the court order	A "proper judicial order" is an order signed by a judge of a court, not an administrative tribunal, or the clerk or assistant clerk of a court acting upon the instruction of a judge. A subpoena is not a proper judicial order. Individual or Personal Representative should be

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				notified that PHI is being released pursuant to a Court Order; however, order should be honored even when notification cannot take place
Fiduciary activities		Court order or decree appointing fiduciary	As requested by fiduciary, unless restricted by law or terms of Order of Decree	A fiduciary's authority is limited to the authority granted to such fiduciaries by law, and this authority can be further limited by the particular order or decree appointing the fiduciary
Forensic patients: commitment hearings and § 8B treatment order hearings	District Attorney	G.L. c.123, §§7&8, 8B, 15(e), 16(b), 16(c) and 18(a)	Notice of filing of petition	
Forensic patients: forensic evaluations	Court, place of detention	G.L. c.123, §§15, 16, 17 and 18	As required by the evaluation order	
Forensic patients: notification of DA and Court regarding intention to discharge or intention to lift court ordered building and grounds restriction	Court with criminal jurisdiction and District Attorney with criminal jurisdiction	G.L. c.123, §16(e)	Intention to discharge or not seek recommitment, and current competence to stand trial, if applicable, or intention to lift or modify buildings and grounds restriction	

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Forensic patients: notification to court that patient is no longer incompetent	Court with criminal jurisdiction	G.L. c.123, §17(a)	Notice that patient has been restored to competence	
Filing for guardianship and hearing	Court, patient's attorney and/or guardian ad-litem; guardian/monitor, if any; next of kin (as required by law); newspaper legal notice publication if required by Court	G.L. c.201, §§6, 6B, 7, 14 16B, 17 and 21; G.L. c.123, §25	Petitions, affidavits, medical certificates and related documents; testimony at hearings; notices as required by law	Information to be disclosed may be limited by psychotherapy privilege and other applicable confidentiality requirements
Legal representation	Attorney, Representing a Client/Patient	Court appointment, letter acknowledging relationship signed by Client/Patient/Personal Representative or an Authorization	Information as requested or authorized	If attorney represents a Personal Representative, documentation of Personal Representative status required if not known (See Personal Representative, below)
Legal representation	Attorney (not representing individual, Personal Representative, or District Attorney's Office)	Authorization by individual or Personal Representative or court order	As specified in the authorization or court order	
Legislative/Governor's Office: Requests for services, interventions or inquiries regarding specific clients/patients.	Legislator; Governor's office	Authorization individual or Personal Representative required	As specified in the authorization	

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Monitoring medication treatment	Court appointed medication monitor (Rogers monitor)	Court appointment	Relevant documents and verbal information	
Personal Representative (PR) duties*	Personal Representative – a person authorized under law to make health care decisions for an individual*	Document of appointment as Personal Representative **, except for parents; proof of relationship for parents; Access Request Form required	As specified in the Access Request Form, with certain exceptions*	* Disclosure to Personal Representatives is more fully covered in the Chapter on <u>Access</u> in this Privacy Handbook ** Appropriate documentation of the individual's incompetence must be in the record for a Health Care Proxy Agent status to be activated
Protection and Advocacy	Protection and Advocacy Program attorney or legal advocate (includes MHLAC)	G.L. c. 221, §34E; (MHLAC) 42 USC 10806; (P&A) 104 CMR 27.17(6)(b); and/or authorization	As specified in authorization, if required. In some circumstances, advocates have rights to access without authorization. Consult with DMH Legal Office, if needed, for clarification.	
Subpoena response	Subpoenaing party	No disclosure without authorization or court order	As specified in authorization or court order	PHI may be disclosed in response to a subpoena only when the Individual or Personal Representative, if applicable provides an authorization, or when subpoena is accompanied by

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				a court order. In these circumstances, the authorization or order, rather than the subpoena control the amount of PHI to be disclosed. See the section of this chart concerning “court order responses”
Warrant of apprehension	Court	G.L. c.123, §12(e); G.L. c.123, §36B, if applicable; 104 CMR 27.17(6)(f) and/or 28.09(2)(d), if applicable	Information relevant to the need for a warrant of apprehension	Information to be disclosed may be limited by psychotherapy privilege and other applicable confidentiality requirements
Defense of litigation	Attorney General	G.L. c. 12, §§3, 3E	Information relevant to litigation	
Tort investigation	Attorney General/EOHHS	G. L. c. 258	Information relevant to tort claim	

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