



# Monterey County Behavioral Health Policy and Procedure

<b>Policy Number</b>	323
<b>Policy Title</b>	Coroner's Office Request for Protected Health Information (PHI)
<b>References</b>	California Welfare and Institutions Code 5328 Federal Code of Regulations, Title 45, Section 164.512 California Government Code 27491 California Civil Code 56.10(b)(8)
<b>Form</b>	Sample Response Letter to Coroner's Request for PHI (to be issued by Monterey County Behavioral Health Quality Improvement ONLY)
<b>Effective</b>	May 28, 2015

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## Background

California Government Code 27491 requires coroner's offices to conduct investigations into certain types of deaths. California Civil Code 56.10(b)(8) and Code of Federal Regulations, Title 45, Section 164.512(g) (aka Health Insurance Portability and Accountability Act or "HIPAA") allows a coroner or medical examiner to obtain certain types of protected health information as part of their investigations.

However, although HIPAA applies, HIPAA is preempted by state law when state laws are stricter or more stringent in favor confidentiality. California Welfare & Institutions Code 5328 sets out more stringent rules for disclosure of protected mental health information when compared to disclosure standards for physical health information. California Welfare & Institutions Code 5328 does not have provisions for the disclosure of protected mental health information for coroners' investigations in the same manner allowed by laws controlling disclosure of protected physical health information.

## Policy

All records requests from coroners' offices will be directed to Monterey County Behavioral Health (MCBH) Quality Improvement (QI). All responses to these requests will be completed by MCBH QI.

In response to requests for protected health information (PHI, aka "medical records") from coroners' offices, MCBH will require either 1) a court order; OR 2) an appropriate client representative authorization to release specialty mental health records to a judge, who will then review the records to determine their relevance in determining the cause of the client's death and whether records should be released to the coroner's office in part or in full.

29 MCBH will provide the requested records as soon as reasonably possible once MCBH QI  
30 receives either an authorization signed by an appropriate client representative or a court  
31 order to release protected mental health records.

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33 MCBH may request additional documents as necessary to verify the appropriateness of the  
34 client representative authorizing the release specialty mental health records to a judge.

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36 MCBH may also consult with Monterey County Counsel as necessary to respond to these  
37 requests for protected health information from coroners' offices.

38 **Attachment:** Sample Response Letter to Coroner’s Request for PHI (to be issued by  
39 Monterey County Behavioral Health Quality Improvement *ONLY*

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# MONTEREY COUNTY

DEPARTMENT OF HEALTH Ray Bullick, Director

ANIMAL SERVICES      EMERGENCY MEDICAL SERVICES      PUBLIC HEALTH  
BEHAVIORAL HEALTH      ENVIRONMENTAL HEALTH      PUBLIC ADMINISTRATOR/PUBLIC GUARDIAN  
CLINIC SERVICES



To Whom It May Concern:

Detective Caron:

Monterey County Behavioral Health (“MCBH”) received your request for health records as part of your coroner’s investigation into the death of the above named client as required by California Government Code Section 27491. We understand you are requesting this client’s health records pursuant to California Civil Code, Section 56.10(b)(8). We note that HIPAA also applies to coroners within 45 CFR 164.512 (g) *Standard: Uses and disclosures about decedents—(1) Coroners and medical examiners*. A covered entity may disclose protected health information to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. A covered entity that also performs the duties of a coroner or medical examiner may use protected health information for the purposes described in this paragraph. Although HIPAA applies and would allow the release of physical medical records, HIPAA is preempted by state law when state laws are stricter or more stringent in favor of confidentiality. In California, for mental health records, we look to Welfare & Institutions Code 5328 and the associated case law, which states we need a signed patient (or patient representative) signed authorization (that includes the provider signature) or a court order signed by a Judge.

Monterey County Behavioral Health is a specialty mental health provider and disclosure of protected specialty mental health information is governed by California Welfare and Institutions Code 5328, which again, has more restrictive standards in comparison to disclosure of protected physical health information. As such, MCBH requires a Court order or an appropriate patient representative authorization to release specialty mental health records to a judge, who will then review the records to determine their relevance in determining the death of the client and whether or not the records should be released to the coroner’s office in part of in full.

MCBH’s goal is to cooperate with law enforcement investigations while complying with all laws and regulations pertaining to confidentiality of protected client health information. We will provide the records as soon as reasonably possible once we receive either a Court order to release records to a judge or an authorization signed by the appropriate patient representative. If you have a HIPAA section, Civil Code Section, or Government Section that you believe entitles you to receive mental health records covered by Welfare and Institutions Section 5328 without the need for a signed authorization, please let us know and we will review the laws. Since this patient did not die in a state mental health facility Welfare & Institutions Code 5328.8 does not apply (and would only allow limited information to be disclosed, even if it did apply). So as it stands, the above mentioned laws require an appropriate patient representative signed authorization or a court order to release mental health records.