

1 the individual's attorney that the individual or the attorney had 14 days from the date of the notice to
2 object;

3 H(2)(a)(ii) the notice included the proposed subpoena and sufficient information about the
4 litigation in which the individually identifiable health information was being requested to permit the
5 individual or the individual's attorney to object; and

6 H(2)(a)(iii) the individual did not object within the 14 days or, if objections were made, they
7 were resolved and the information being sought is consistent with such resolution. The party issuing a
8 subpoena must also certify that he or she will, promptly upon request, permit the patient or the
9 patient's representative to inspect and copy the records received.

10 H(2)(b) Within 14 days from the date of a notice requesting individually identifiable health
11 information, the individual or the individual's attorney objecting to the subpoena shall respond in
12 writing to the party issuing the notice, stating the reason for each objection.

13 **H(2)(b)(i) The party issuing the notice may at any time file a motion with the court to have**
14 **objections resolved or to otherwise seek compliance with the rule.**

15 H(2)(c) Except as provided in subsection (4) of this section, when a subpoena is served upon a
16 custodian of individually identifiable health information in an action in which the entity or person is not
17 a party, and the subpoena requires the production of all or part of the records of the entity or person
18 relating to the care or treatment of an individual, it is sufficient compliance therewith if a custodian
19 delivers by mail or otherwise a true and correct copy of all of the records responsive to the subpoena
20 within five days after receipt thereof. Delivery shall be accompanied by an affidavit or a declaration as
21 described in subsection (3) of this section.

22 H(2)(d) The copy of the records shall be separately enclosed in a sealed envelope or wrapper on
23 which the title and number of the action, name of the witness, and date of the subpoena are clearly
24 inscribed. The sealed envelope or wrapper shall be enclosed in an outer envelope or wrapper and
25 sealed. The outer envelope or wrapper shall be addressed as follows: if the subpoena directs
26 attendance in court, to the clerk of the court, or to the judge thereof if there is no clerk; if the

1 subpoena directs attendance at a deposition or other hearing, to the officer administering the oath for
2 the deposition, at the place designated in the subpoena for the taking of the deposition or at the
3 officer's place of business; in other cases involving a hearing, to the officer or body conducting the
4 hearing at the official place of business; if no hearing is scheduled, to the attorney or party issuing the
5 subpoena. If the subpoena directs delivery of the records to the attorney or party issuing the subpoena,
6 then a copy of the proposed subpoena shall be served on the person whose records are sought, and on
7 all other parties to the litigation, not less than 14 days prior to service of the subpoena on the entity or
8 person. Any party to the proceeding may inspect the records provided and/or request a complete copy
9 of the records. Upon request, the records must be promptly provided by the party who issued the
10 subpoena at the requesting party's expense.

11 H(2)(e) After filing and after giving reasonable notice in writing to all parties who have appeared
12 of the time and place of inspection, the copy of the records may be inspected by any party or by the
13 attorney of record of a party in the presence of the custodian of the court files, but otherwise shall
14 remain sealed and shall be opened only at the time of trial, deposition, or other hearing at the direction
15 of the judge, officer, or body conducting the proceeding. The records shall be opened in the presence
16 of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records
17 which are not introduced in evidence or required as part of the record shall be returned to the
18 custodian who produced them.

19 H(2)(f) For purposes of this section, the subpoena duces tecum to the custodian of the records
20 may be served by first class mail. Service of subpoena by mail under this section shall not be subject to
21 the requirements of subsection (3) of section D.

22 **H(3) Affidavit or declaration of custodian of records.**

23 H(3)(a) The records described in subsection (2) of this section shall be accompanied by the
24 affidavit or declaration of a custodian of the records, stating in substance each of the following:

25 H(3)(a)(i) that the affiant or declarant is a duly authorized custodian of the records and has
26 authority to certify records;

1 H(3)(a)(ii) that the copy is a true copy of all the records responsive to the subpoena; and
2 H(3)(a)(iii) that the records were prepared by the personnel of the entity or person acting under
3 the control of either, in the ordinary course of the entity's or person's business, at or near the time of
4 the act, condition, or event described or referred to therein.

5 H(3)(b) If the entity or person has none of the records described in the subpoena, or only a part
6 thereof, the affiant or declarant shall so state in the affidavit or declaration and shall send only those
7 records of which the affiant or declarant has custody.

8 H(3)(c) When more than one person has knowledge of the facts required to be stated in the
9 affidavit or declaration, more than one affidavit or declaration may be used.

10 **H(4) Personal attendance of custodian of records may be required.**

11 H(4)(a) The personal attendance of a custodian of records and the production of original
12 records is required if the subpoena duces tecum contains the following statement:

13 _____
14 The personal attendance of a custodian of records and the production of original records is
15 required by this subpoena. The procedure authorized pursuant to Oregon Rule of Civil Procedure 55
16 H(2) shall not be deemed sufficient compliance with this subpoena.

17 _____
18 H(4)(b) If more than one subpoena duces tecum is served on a custodian of records and
19 personal attendance is required under each pursuant to paragraph (a) of this subsection, the custodian
20 shall be deemed to be the witness of the party serving the first such subpoena.

21 **H(5) Tender and payment of fees.** Nothing in this section requires the tender or payment of
22 more than one witness and mileage fee or other charge unless there has been agreement to the
23 contrary.

24 **H(6) Scope of discovery.** Notwithstanding any other provision, this rule does not expand the
25 scope of discovery beyond that provided in Rule 36 or Rule 44.

1 D(2)(b) **Time limitation.** If a peace officer's attendance at trial is required as a result of
2 employment as a peace officer, a subpoena may be served on such officer by delivering a copy
3 personally to the officer or to one of the individuals designated by the agency that employs the officer.
4 A subpoena may be served by delivery to one of the individuals designated by the agency that employs
5 the officer only if the subpoena is delivered at least 10 days before the date the officer's attendance is
6 required, the officer is currently employed as a peace officer
7 by the agency, and the officer is present within the state at the time of service.

8 D(2)(c) **Notice to officer.** When a subpoena has been served as provided in paragraph (b) of this
9 subsection, the law enforcement agency shall make a good faith effort to give actual notice to the
10 officer whose attendance is sought of the date, time, and location of the court appearance. If the
11 officer cannot be notified, the law enforcement agency shall promptly notify the court and a
12 postponement or continuance may be granted to allow the officer to be personally served.

13 D(2)(d) **"Law enforcement agency" defined.** As used in this subsection, "law enforcement
14 agency" means the Oregon State Police, a county sheriff's department, or a municipal police
15 department.

16 *[D(3) Service by mail.]*

17 **D(3) Service by mail.** Under the following circumstances, service of a subpoena to a witness by
18 mail shall be of the same legal force and effect as personal service otherwise authorized by this section:

19 D(3)(a) **Contact with willing witness.** The attorney certifies in connection with or upon the
20 return of service that the attorney, or the attorney's agent, has had personal or telephone contact with
21 the witness, and the witness indicated a willingness to appear at trial if subpoenaed;

22 D(3)(b) **Payment to witness of fees and mileage.** The attorney, or the attorney's agent, made
23 arrangements for payment to the witness of fees and mileage satisfactory to the witness; and

24 D(3)(c) **Time limitations.** The subpoena was mailed to the witness more than 10 days before
25 trial by certified mail or some other designation of mail that provides a receipt for the mail signed by
26 the recipient, and the attorney received a return receipt signed by the witness more than three days

1 prior to trial.

2 **D(4) Service by mail[; exception] of subpoena not accompanied by command to appear.**

3 Service of subpoena by mail may be used for a subpoena commanding production of books, papers,
4 documents, or tangible things, not accompanied by a command to appear at trial or hearing or at
5 deposition.

6 D(5) Proof of service. Proof of service of a subpoena is made in the same manner as proof of
7 service of a summons except that the server need not certify that the server is not a party in the action,
8 an attorney for a party in the action or an officer, director or employee of a party in the action.

9 *****

10 **H Individually identifiable health information.**

11 H(1) **Definitions.** As used in this rule, the terms “individually identifiable health information”
12 and “qualified protective order” are defined as follows:

13 H(1)(a) “Individually identifiable health information” means information which identifies an
14 individual or which could be used to identify an individual; which has been collected from an individual
15 and created or received by a health care provider, health plan, employer, or health care clearinghouse;
16 and which relates to the past, present, or future physical or mental health or condition of an individual;
17 the provision of health care to an individual; or the past, present, or future payment for the provision of
18 health care to an individual.

19 H(1)(b) “Qualified protective order” means an order of the court, by stipulation of the parties to
20 the litigation, or otherwise that prohibits the parties from using or disclosing individually identifiable
21 health information for any purpose other than the litigation for which such information was requested
22 and which requires the return to the original custodian of such information or the destruction of the
23 individually identifiable health information (including all copies made) at the end of the litigation.

24 H(2) **Mode of Compliance.** Individually identifiable health information may be obtained by
25 subpoena only as provided in this section. However, if disclosure of any requested records is restricted
26 or otherwise limited by state or federal law, then the protected records shall not be disclosed in

1 response to the subpoena unless the requesting party has complied with the applicable law.

2 H(2)(a) The attorney for the party issuing a subpoena requesting production of individually
3 identifiable health information must serve the custodian or other keeper of such information either
4 with a qualified protective order or with an affidavit or declaration together with attached supporting
5 documentation demonstrating that:

6 H(2)(a)(i) the party has made a good faith attempt to provide written notice to the individual or
7 the individual's attorney that the individual or the attorney had 14 days from the date of the notice to
8 object;

9 H(2)(a)(ii) the notice included the proposed subpoena and sufficient information about the
10 litigation in which the individually identifiable health information was being requested to permit the
11 individual or the individual's attorney to object; and

12 H(2)(a)(iii) the individual did not object within the 14 days or, if objections were made, they
13 were resolved and the information being sought is consistent with such resolution. The party issuing a
14 subpoena must also certify that he or she will, promptly upon request, permit the patient or the
15 patient's representative to inspect and copy the records received.

16 H(2)(b) Within 14 days from the date of a notice requesting individually identifiable health
17 information, the individual or the individual's attorney objecting to the subpoena shall respond in
18 writing to the party issuing the notice, stating the reason for each objection. **The party issuing the**
19 **notice may at any time file a motion with the court to have objections resolved or to otherwise seek**
20 **compliance with the rule.**

21 H(2)(c) Except as provided in subsection (4) of this section, when a subpoena is served upon a
22 custodian of individually identifiable health information in an action in which the entity or person is not
23 a party, and the subpoena requires the production of all or part of the records of the entity or person
24 relating to the care or treatment of an individual, it is sufficient compliance therewith if a custodian
25 delivers by mail or otherwise a true and correct copy of all of the records responsive to the subpoena
26 within five days after receipt thereof. Delivery shall be accompanied by an affidavit or a declaration as

1 described in subsection (3) of this section.

2 H(2)(d) The copy of the records shall be separately enclosed in a sealed envelope or wrapper on
3 which the title and number of the action, name of the witness, and date of the subpoena are clearly
4 inscribed. The sealed envelope or wrapper shall be enclosed in an outer envelope or wrapper and
5 sealed. The outer envelope or wrapper shall be addressed as follows: if the subpoena directs
6 attendance in court, to the clerk of the court, or to the judge thereof if there is no clerk; if the
7 subpoena directs attendance at a deposition or other hearing, to the officer administering the oath for
8 the deposition, at the place designated in the subpoena for the taking of the deposition or at the
9 officer's place of business; in other cases involving a hearing, to the officer or body conducting the
10 hearing at the official place of business; if no hearing is scheduled, to the attorney or party issuing the
11 subpoena. If the subpoena directs delivery of the records to the attorney or party issuing the subpoena,
12 then a copy of the proposed subpoena shall be served on the person whose records are sought, and on
13 all other parties to the litigation, not less than 14 days prior to service of the subpoena on the entity or
14 person. Any party to the proceeding may inspect the records provided and/or request a complete copy
15 of the records. Upon request, the records must be promptly provided by the party who issued the
16 subpoena at the requesting party's expense.

17 H(2)(e) After filing and after giving reasonable notice in writing to all parties who have appeared
18 of the time and place of inspection, the copy of the records may be inspected by any party or by the
19 attorney of record of a party in the presence of the custodian of the court files, but otherwise shall
20 remain sealed and shall be opened only at the time of trial, deposition, or other hearing at the direction
21 of the judge, officer, or body conducting the proceeding. The records shall be opened in the presence
22 of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records
23 which are not introduced in evidence or required as part of the record shall be returned to the
24 custodian who produced them.

25 H(2)(f) For purposes of this section, the subpoena duces tecum to the custodian of the records
26 may be served by first class mail. Service of subpoena by mail under this section shall not be subject to

1 the requirements of subsection (3) of section D.

2 **H(3) Affidavit or declaration of custodian of records.**

3 H(3)(a) The records described in subsection (2) of this section shall be accompanied by the
4 affidavit or declaration of a custodian of the records, stating in substance each of the following:

5 H(3)(a)(i) that the affiant or declarant is a duly authorized custodian of the records and has
6 authority to certify records;

7 H(3)(a)(ii) that the copy is a true copy of all the records responsive to the subpoena; and

8 H(3)(a)(iii) that the records were prepared by the personnel of the entity or person acting under
9 the control of either, in the ordinary course of the entity's or person's business, at or near the time of
10 the act, condition, or event described or referred to therein.

11 H(3)(b) If the entity or person has none of the records described in the subpoena, or only a part
12 thereof, the affiant or declarant shall so state in the affidavit or declaration and shall send only those
13 records of which the affiant or declarant has custody.

14 H(3)(c) When more than one person has knowledge of the facts required to be stated in the
15 affidavit or declaration, more than one affidavit or declaration may be used.

16 **H(4) Personal attendance of custodian of records may be required.**

17 H(4)(a) The personal attendance of a custodian of records and the production of original
18 records is required if the subpoena duces tecum contains the following statement:

19 _____
20 The personal attendance of a custodian of records and the production of original records is
21 required by this subpoena. The procedure authorized pursuant to Oregon Rule of Civil Procedure 55
22 H(2) shall not be deemed sufficient compliance with this subpoena.

23 _____
24 H(4)(b) If more than one subpoena duces tecum is served on a custodian of records and
25 personal attendance is required under each pursuant to paragraph (a) of this subsection, the custodian
26 shall be deemed to be the witness of the party serving the first such subpoena.

1 H(5) **Tender and payment of fees.** Nothing in this section requires the tender or payment of
2 more than one witness and mileage fee or other charge unless there has been agreement to the
3 contrary.

4 H(6) **Scope of discovery.** Notwithstanding any other provision, this rule does not expand the
5 scope of discovery beyond that provided in Rule 36 or Rule 44.

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1 | charge of the law enforcement agency.

2 | D(2)(b) **Time limitation.** If a peace officer’s attendance at trial is required as a result of
3 | employment as a peace officer, a subpoena may be served on such officer by delivering a copy
4 | personally to the officer or to one of the individuals designated by the agency that employs the officer.
5 | A subpoena may be served by delivery to one of the individuals designated by the agency that employs
6 | the officer only if the subpoena is delivered at least 10 days before the date the officer’s attendance is
7 | required, the officer is currently employed as a peace officer
8 | by the agency, and the officer is present within the state at the time of service.

9 | D(2)(c) **Notice to officer.** When a subpoena has been served as provided in paragraph **D(2)(b)** of
10 | this [*subsection*] **rule**, the law enforcement agency shall make a good faith effort to give actual notice
11 | to the officer whose attendance is sought of the date, time, and location of the court appearance. If the
12 | officer cannot be notified, the law enforcement agency shall promptly notify the court and a
13 | postponement or continuance may be granted to allow the officer to be personally served.

14 | D(2)(d) **“Law enforcement agency” defined.** As used in this subsection, “law enforcement
15 | agency” means the Oregon State Police, a county sheriff’s department, or a municipal police
16 | department.

17 | [D(3) *Service by mail.*]

18 | **D(3) Service by mail.** Under the following circumstances, service of a subpoena to a witness by
19 | mail shall be of the same legal force and effect as personal service otherwise authorized by this section:

20 | D(3)(a) **Contact with willing witness.** The attorney certifies in connection with or upon the
21 | return of service that the attorney, or the attorney’s agent, has had personal or telephone contact with
22 | the witness, and the witness indicated a willingness to appear at trial if subpoenaed;

23 | D(3)(b) **Payment to witness of fees and mileage.** The attorney, or the attorney’s agent, made
24 | arrangements for payment to the witness of fees and mileage satisfactory to the witness; and

25 | D(3)(c) **Time limitations.** The subpoena was mailed to the witness more than 10 days before
26 | trial by certified mail or some other [*designation*] **form** of mail that provides a receipt for the mail **that**

1 is signed by the recipient, and the attorney received a return receipt signed by the witness more than
2 three days prior to trial.

3 D(4) **Service by mail**[; *exception*] **of subpoena not accompanied by command to appear.**

4 Service of a subpoena by mail may be used for a subpoena commanding production of books, papers,
5 documents, or tangible things, not accompanied by a command to appear at trial or hearing or at
6 deposition.

7 D(5) Proof of service. Proof of service of a subpoena is made in the same manner as proof of
8 service of a summons except that the server need not certify that the server is not a party in the
9 action[,]; an attorney for a party in the action; or an officer, director, or employee of a party in the
10 action.

11 *****

12 **H Individually identifiable health information.**

13 H(1) **Definitions.** As used in this rule, the terms “individually identifiable health information”
14 and “qualified protective order” are defined as follows:

15 H(1)(a) “Individually identifiable health information” means information [*which*] **that** identifies
16 an individual or [*which*] **that** could be used to identify an individual; [*which*] **that** has been collected
17 from an individual and created or received by a health care provider, health plan, employer, or health
18 care clearinghouse; and [*which*] **that** relates to the past, present, or future physical or mental health or
19 condition of an individual; the provision of health care to an individual; or the past, present, or future
20 payment for the provision of health care to an individual.

21 H(1)(b) “Qualified protective order” means an order of the court, by stipulation of the parties to
22 the litigation, or otherwise that prohibits the parties from using or disclosing individually identifiable
23 health information for any purpose other than the litigation for which such information was requested
24 and [*which*] **that** requires the return to the original custodian of such information or the destruction of
25 the individually identifiable health information (including all copies made) at the end of the litigation.

26 H(2) **Mode of Compliance.** Individually identifiable health information may be obtained by

1 subpoena only as provided in this section. However, if disclosure of any requested records is restricted
2 or otherwise limited by state or federal law, then the protected records shall not be disclosed in
3 response to the subpoena unless the requesting party has complied with the applicable law.

4 H(2)(a) The attorney for the party issuing a subpoena requesting production of individually
5 identifiable health information **to an attorney's office, a hearing, or otherwise** must serve the
6 custodian or other keeper of such information either with: *[a qualified protective order or with an*
7 *affidavit or declaration together with attached supporting documentation demonstrating that:]*

8 **H(2)(a)(i) a qualified protective order;**

9 **H(2)(a)(ii) a copy of a pending motion for a qualified protective order; or**

10 **H(2)(a)(iii) an affidavit or a declaration, together with attached supporting documentation,**
11 **demonstrating that:**

12 *[H(2)(a)(i)]* **H(2)(a)(i)(A)** the party has made a good faith attempt to provide written notice to
13 the individual or the individual's attorney that the individual or the attorney had 14 days from the date
14 of the notice to object;

15 *[H(2)(a)(ii)]* **H(2)(a)(i)(B)** the notice included the proposed subpoena and sufficient information
16 about the litigation in which the individually identifiable health information was being requested to
17 permit the individual or the individual's attorney to object; *[and]*

18 *[H(2)(a)(iii)]* **H(2)(a)(i)(C)** the individual did not object within the 14 days or, if objections were
19 made, they were resolved and the information being sought is consistent with such resolution[.]; **and**

20 **H(2)(a)(i)(D)** *[The]* **the** party issuing a subpoena *[must also certify]* **certifies** that he or she will,
21 promptly upon request, permit the patient or the patient's representative to inspect and copy the
22 records received.

23 H(2)(b) Within 14 days from the date of a notice requesting individually identifiable health
24 information, the individual or the individual's attorney objecting to the subpoena shall respond in
25 writing to the party issuing the notice, stating the reason for each objection.

26 H(2)(c) Except as provided in subsection **H(4)** of this [section] **rule**, when a subpoena is served

1 upon a custodian of individually identifiable health information in an action in which the entity or
2 person is not a party, and the subpoena requires the production of all or part of the records of the
3 entity or person relating to the care or treatment of an individual, it is sufficient compliance [*therewith*]
4 **with the subpoena** if a custodian delivers by mail or otherwise a true and correct copy of all of the
5 records responsive to the subpoena within five days after receipt thereof. Delivery shall be
6 accompanied by an affidavit or a declaration as described in subsection **H(3)** of this [section] **rule**.

7 H(2)(d) The copy of the records shall be separately enclosed in a sealed envelope or wrapper on
8 which the title and number of the action, name of the witness, and date of the subpoena are clearly
9 inscribed. The sealed envelope or wrapper shall be enclosed in an outer envelope or wrapper and
10 sealed. The outer envelope or wrapper shall be addressed as follows: if the subpoena directs
11 attendance in court, to the clerk of the court, or to the judge thereof if there is no clerk; if the
12 subpoena directs attendance at a deposition or other hearing, to the officer administering the oath for
13 the deposition[,] at the place designated in the subpoena for the taking of the deposition or at the
14 officer's place of business; in other cases involving a hearing, to the officer or body conducting the
15 hearing at the official place of business; if no hearing is scheduled, to the attorney or party issuing the
16 subpoena. If the subpoena directs delivery of the records to the attorney or party issuing the subpoena,
17 then a copy of the proposed subpoena shall be served on the person whose records are sought, and on
18 all other parties to the litigation, not less than 14 days prior to service of the subpoena on the entity or
19 person. Any party to the proceeding may inspect the records provided and/or request a complete copy
20 of the records. Upon request, the records must be promptly provided by the party who issued the
21 subpoena at the requesting party's expense.

22 H(2)(e) After filing and after giving reasonable notice in writing to all parties who have appeared
23 of the time and place of inspection, the copy of the records may be inspected by any party or by the
24 attorney of record of a party in the presence of the custodian of the court files, but otherwise shall
25 remain sealed and shall be opened only at the time of trial, deposition, or other hearing at the direction
26 of the judge, officer, or body conducting the proceeding. The records shall be opened in the presence

1 of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records
2 [which] **that** are not introduced in evidence or required as part of the record shall be returned to the
3 custodian who produced them.

4 H(2)(f) For purposes of this section, the subpoena duces tecum to the custodian of the records
5 may be served by first class mail. Service of subpoena by mail under this section shall not be subject to
6 the requirements of subsection **D(3)** of [section D] **this rule**.

7 **H(3) Affidavit or declaration of custodian of records.**

8 H(3)(a) The records described in subsection **H(2)** of this [section] **rule** shall be accompanied by
9 the affidavit or declaration of a custodian of the records, stating in substance each of the following:

10 H(3)(a)(i) that the affiant or declarant is a duly authorized custodian of the records and has
11 authority to certify records;

12 H(3)(a)(ii) that the copy is a true copy of all the records responsive to the subpoena; and

13 H(3)(a)(iii) that the records were prepared by the personnel of the entity or person acting under
14 the control of either, in the ordinary course of the entity's or person's business, at or near the time of
15 the act, condition, or event described or referred to therein.

16 H(3)(b) If the entity or person has none of the records described in the subpoena, or only a part
17 thereof, the affiant or declarant shall so state in the affidavit or declaration and shall send only those
18 records of which the affiant or declarant has custody.

19 H(3)(c) When more than one person has knowledge of the facts required to be stated in the
20 affidavit or declaration, more than one affidavit or declaration may be used.

21 **H(4) Personal attendance of custodian of records may be required.**

22 H(4)(a) The personal attendance of a custodian of records and the production of original
23 records is required if the subpoena duces tecum contains the following statement:

24 _____
25 The personal attendance of a custodian of records and the production of original records is
26 required by this subpoena. The procedure authorized pursuant to Oregon Rule of Civil Procedure 55

1 H(2) shall not be deemed sufficient compliance with this subpoena.

2 _____
3 H(4)(b) If more than one subpoena duces tecum is served on a custodian of records and
4 personal attendance is required under each pursuant to paragraph **H(4)(a)** of this [subsection] **rule**, the
5 custodian shall be deemed to be the witness of the party serving the first such subpoena.

6 H(5) **Tender and payment of fees.** Nothing in this section requires the tender or payment of
7 more than one witness and mileage fee or other charge unless there has been agreement to the
8 contrary.

9 H(6) **Scope of discovery.** Notwithstanding any other provision, this rule does not expand the
10 scope of discovery beyond that provided in Rule 36 or Rule 44.

1 notice to the person commanded to produce, move for an order at any time to compel production.
2 In any case, where a subpoena commands production of books, papers, documents, or tangible
3 things the court, upon motion made promptly and, in any event, at or before the time specified in
4 the subpoena for compliance therewith, may [(1)] quash or modify the subpoena if it is
5 unreasonable and oppressive or [(2)] condition denial of the motion upon the advancement by the
6 person in whose behalf the subpoena is issued of the reasonable cost of producing the books,
7 papers, documents, or tangible things.

8 **[C Issuance.**

9 **C(1) By whom issued.** *A subpoena is issued as follows: (a) to require attendance before a*
10 *court, or at the trial of an issue therein, or upon the taking of a deposition in an action pending*
11 *therein or, if separate from a subpoena commanding the attendance of a person, to produce books,*
12 *papers, documents or tangible things and to permit inspection thereof: (i) it may be issued in blank*
13 *by the clerk of the court in which the action is pending, or if there is no clerk, then by a judge or*
14 *justice of such court; or (ii) it may be issued by an attorney of record of the party to the action in*
15 *whose behalf the witness is required to appear, subscribed by the signature of such attorney; (b) to*
16 *require attendance before any person authorized to take the testimony of a witness in this state*
17 *under Rule 38 C, or before any officer empowered by the laws of the United States to take*
18 *testimony, it may be issued by the clerk of a circuit court in the county in which the witness is to be*
19 *examined; (c) to require attendance out of court in cases not provided for in paragraph (a) of this*
20 *subsection, before a judge, justice, or other officer authorized to administer oaths or take testimony*
21 *in any matter under the laws of this state, it may be issued by the judge, justice, or other officer*
22 *before whom the attendance is required.*

23 **C(2) By clerk in blank.** *Upon request of a party or attorney, any subpoena issued by a clerk*
24 *of court shall be issued in blank and delivered to the party or attorney requesting it, who shall fill it*
25 *in before service.]*

26 *////*

1 **C Purpose; issuance.**

2 **C(1) Purpose.**

3 **C(1)(a) Civil actions. A subpoena may be issued to require attendance before a court, or at**
4 **the trial of an issue therein, or upon the taking of a deposition in an action pending therein or, if**
5 **separate from a subpoena commanding the attendance of a person, to produce books, papers,**
6 **documents, or tangible things and to permit inspection thereof.**

7 **C(1)(b) Foreign depositions. A subpoena may be issued to require attendance before any**
8 **person authorized to take the testimony of a witness in this state under Rule 38 C, or before any**
9 **officer empowered by the laws of the United States to take testimony.**

10 **C(1)(c) Other uses. A subpoena may be issued to require attendance out of court in cases**
11 **not provided for in paragraphs C(1)(a) or C(1)(b) of this rule, before a judge, justice, or other**
12 **officer authorized to administer oaths or to take testimony in any matter under the laws of this**
13 **state.**

14 **C(2) By whom issued.**

15 **C(2)(a) By the clerk of the court, or a judge or justice of the court for civil actions. A**
16 **subpoena may be issued in blank by the clerk of the court in which the action is pending or, if**
17 **there is no clerk, by a judge or justice of that court.**

18 **C(2)(a)(i) Requirements for subpoenas issued in blank. Upon request of a party or**
19 **attorney, any subpoena issued by a clerk of the court shall be issued in blank and delivered to**
20 **the party or attorney requesting it, who shall before service include on the subpoena the name**
21 **of the person commanded to appear; or the books, papers, documents, or tangible things to be**
22 **produced or inspected; and the particular time and location for the attendance of the person or**
23 **the production or the inspection, as applicable.**

24 **C(2)(b) By the clerk of the court for foreign depositions. A subpoena for a foreign**
25 **deposition may be issued as specified in Rule 38 C(2) by the clerk of a circuit court in the county**
26 **in which the witness is to be examined.**

1 **C(2)(c) By a judge, justice, or other officer. A subpoena to require attendance out of court**
2 **in cases not provided for in paragraphs C(1)(a) or C(1)(b) of this rule may be issued by the judge,**
3 **justice, or other officer before whom the attendance is required.**

4 **C(2)(d) By an attorney. A subpoena may be issued by an attorney of record of the party**
5 **to the action on whose behalf the witness is required to appear, subscribed by the attorney.**

6 **D Service; service on law enforcement agency; service by mail; proof of service.**

7 **D(1) Service.** Except as provided in [*subsection (2) of this section*] **subsection D(2) of this**
8 **rule**, a subpoena may be served by the party or any other person 18 years of age or older. The
9 service shall be made by delivering a copy to the witness personally and giving or offering to the
10 witness at the same time the fees to which the witness is entitled for travel to and from the place
11 designated and, whether or not personal attendance is required, one day's attendance fees. If the
12 witness is under 14 years of age, the subpoena may be served by delivering a copy to the witness
13 or to the witness's parent, guardian, or guardian ad litem. The service must be made so as to allow
14 the witness a reasonable time for preparation and travel to the place of attendance. A subpoena
15 for **the** taking of a deposition, served upon an organization as provided in Rule 39 C(6), shall be
16 served in the same manner as provided for service of summons in Rule 7 D(3)(b)(i), D(3)(c)(i),
17 D(3)(d)(i), D(3)(e), D(3)(f), or D(3)(h). [*Copies*] **A copy** of each subpoena commanding production of
18 books, papers, documents, or tangible things and inspection thereof before trial[,] **that is** not
19 accompanied by **a** command to appear at trial or hearing or at deposition, whether the subpoena
20 is served personally or by mail, shall be served on each party at least [*seven*] **7** days before the
21 subpoena is served on the person required to produce and permit inspection, unless the court
22 orders a shorter period. In addition, a subpoena shall not require production less than 14 days
23 from the date of service upon the person required to produce and permit inspection, unless the
24 court orders a shorter period.

25 **D(2) Service on law enforcement agency.**

26 **D(2)(a) Designated individuals.** Every law enforcement agency shall designate **an** individual

1 or individuals upon whom service of a subpoena may be made. At least one of the designated
2 individuals shall be available during normal business hours. In the absence of the designated
3 individuals, service of a subpoena pursuant to paragraph [(b) of this subsection] **D(2)(b) of this rule**
4 may be made upon the officer in charge of the law enforcement agency.

5 D(2)(b) **Time limitation.** If a peace officer's attendance at trial is required as a result of **the**
6 **officer's** employment as a peace officer, a subpoena may be served on [such] **the** officer by
7 delivering a copy personally to the officer or to one of the individuals designated by the agency
8 that employs the officer. A subpoena may be served by delivery to one of the individuals
9 designated by the agency that employs the officer only if the subpoena is delivered at least 10 days
10 before the date the officer's attendance is required, the officer is currently employed as a peace
11 officer by the agency, and the officer is present within the state at the time of service.

12 D(2)(c) **Notice to officer.** When a subpoena has been served as provided in [paragraph (b)
13 of this subsection] **paragraph D(2)(b) of this rule**, the law enforcement agency shall make a good
14 faith effort to give actual notice to the officer whose attendance is sought of the date, time, and
15 location of the court appearance. If the officer cannot be notified, the law enforcement agency
16 shall promptly notify the court and a postponement or continuance may be granted to allow the
17 officer to be personally served.

18 D(2)(d) **Law enforcement agency defined.** As used in this subsection, "law enforcement
19 agency" means the Oregon State Police, a county sheriff's department, or a municipal police
20 department.

21 [D(3) Service by mail.]

22 **D(3) Service by mail.** Under the following circumstances, service of a subpoena to a witness
23 by mail shall be of the same legal force and effect as personal service otherwise authorized by this
24 section:

25 D(3)(a) **Contact with willing witness.** The attorney certifies in connection with or upon the
26 return of service that the attorney, or the attorney's agent, has had personal or telephone contact

1 with the witness[,] and the witness indicated a willingness to appear at trial if subpoenaed;

2 D(3)(b) **Payment to witness of fees and mileage.** The attorney, or the attorney's agent,
3 made arrangements for payment to the witness of fees and mileage satisfactory to the witness;
4 and

5 D(3)(c) **Time limitations.** The subpoena was mailed to the witness more than 10 days
6 before trial by certified mail or some other [*designation*] **form** of mail that provides a receipt for
7 the mail **that is** signed by the recipient, and the attorney received a return receipt signed by the
8 witness more than [*three*] **3** days prior to trial.

9 D(4) **Service by mail[; exception] of subpoena not accompanied by command to appear.**
10 Service of **a** subpoena by mail may be used for a subpoena commanding production of books,
11 papers, documents, or tangible things, not accompanied by a command to appear at trial or
12 hearing or at deposition.

13 D(5) **Proof of service; qualifications.** Proof of service of a subpoena is made in the same
14 manner as proof of service of a summons except that the server need not certify that the server is
15 not a party in the action[;]; an attorney for a party in the action; or an officer, director, or
16 employee of a party in the action.

17 **E Subpoena for hearing or trial; prisoners.** If the witness is confined in a prison or jail in
18 this state, a subpoena may be served on [*such*] **that** person only upon leave of court[,] and
19 attendance of the witness may be compelled only upon [*such*] **the** terms [*as*] **that** the court
20 prescribes. The court may order temporary removal and production of the prisoner for the
21 purpose of giving testimony or may order that testimony only be taken upon deposition at the
22 place of confinement. The subpoena and court order shall be served upon the custodian of the
23 prisoner.

24 **F Subpoena for taking depositions or requiring production of books, papers, documents,**
25 **or tangible things; place of production and examination.**

26 **F(1) Subpoena for taking deposition.** Proof of service of a notice to take a deposition as

1 provided in Rules 39 C and 40 A, or of notice of subpoena to command production of books,
2 papers, documents, or tangible things before trial as provided in subsection D(1) of this rule or a
3 certificate that [such] notice will be served if the subpoena can be served, constitutes a sufficient
4 authorization for the issuance by a clerk of court of subpoenas for the persons named or described
5 therein.

6 **F(2) Place of examination.** A resident of this state who is not a party to the action may be
7 required by subpoena to attend an examination or to produce books, papers, documents, or
8 tangible things only in the county wherein [such] **the** person resides, is employed, or transacts
9 business in person, or at [such] **any** other convenient place [as] **that** is fixed by an order of **the**
10 court. A nonresident of this state who is not a party to the action may be required by subpoena to
11 attend an examination or to produce books, papers, documents, or tangible things only in the
12 county wherein [such] **the** person is served with a subpoena, or at [such] **any** other convenient
13 place [as] **that** is fixed by an order of **the** court.

14 **F(3) Production without examination or deposition.** A party who issues a subpoena may
15 command the person to whom it is issued to produce books, papers, documents, or tangible
16 things, other than individually identifiable health information as described in section H **of this rule**,
17 by mail or otherwise, at a time and place specified in the subpoena, without commanding
18 inspection of the originals or a deposition. In such instances, the person to whom the subpoena is
19 directed complies if the person produces copies of the specified items in the specified manner and
20 certifies that the copies are true copies of all **of** the items responsive to the subpoena or, if [all]
21 **any** items are not included, why they are not.

22 **G Disobedience of subpoena; refusal to be sworn or to answer as a witness.** Disobedience
23 to a subpoena or a refusal to be sworn or **to** answer as a witness may be punished as contempt by
24 a court before whom the action is pending or by the judge or justice issuing the subpoena. Upon
25 hearing or trial, if the witness is a party and disobeys a subpoena or refuses to be sworn or **to**
26 answer as a witness, [such] **that** party's complaint, answer, or reply may be stricken.

1 **H Individually identifiable health information.**

2 H(1) **Definitions.** As used in this rule, the terms “individually identifiable health
3 information” and “qualified protective order” are defined as follows:

4 H(1)(a) **Individually identifiable health information.** “Individually identifiable health
5 information” means information [*which*] **that** identifies an individual or [*which*] **that** could be used
6 to identify an individual; [*which*] **that** has been collected from an individual and created or
7 received by a health care provider, health plan, employer, or health care clearinghouse; and
8 [*which*] **that** relates to the past, present, or future physical or mental health or condition of an
9 individual; the provision of health care to an individual; or the past, present, or future payment for
10 the provision of health care to an individual.

11 H(1)(b) **Qualified protective order.** “Qualified protective order” means an order of the
12 court, by stipulation of the parties to the litigation[,] or otherwise, that prohibits the parties from
13 using or disclosing individually identifiable health information for any purpose other than the
14 litigation for which [*such*] **the** information was requested and [*which*] **that** requires the return to
15 the original custodian of [*such*] **the** information or the destruction of the individually identifiable
16 health information (including all copies made) at the end of the litigation.

17 H(2) **[Mode of Compliance.] Procedure.** Individually identifiable health information may be
18 obtained by subpoena only as provided in this section. However, if disclosure of any requested
19 records is restricted or otherwise limited by state or federal law, then the protected records shall
20 not be disclosed in response to the subpoena unless the requesting party has complied with the
21 applicable law.

22 H(2)(a) **Supporting Documentation.** The attorney for the party issuing a subpoena
23 requesting production of individually identifiable health information **to an attorney’s office, a**
24 **hearing, or otherwise** must serve the custodian or other keeper of [*such*] **that** information either
25 with: [*a qualified protective order or with an affidavit or declaration together with attached*
26 *supporting documentation demonstrating that:*]

1 **H(2)(a)(i) a qualified protective order;**

2 **H(2)(a)(ii) a copy of a pending motion for a qualified protective order; or**

3 **H(2)(a)(iii) an affidavit or a declaration, together with attached supporting**
4 **documentation, demonstrating that:**

5 [H(2)(a)(i)] **H(2)(a)(i)(A)** the party has made a good faith attempt to provide written notice
6 to the individual or the individual's attorney that the individual or the attorney had 14 days from
7 the date of the notice to object;

8 [H(2)(a)(ii)] **H(2)(a)(i)(B)** the notice included the proposed subpoena and sufficient
9 information about the litigation in which the individually identifiable health information was being
10 requested to permit the individual or the individual's attorney to object; [and]

11 [H(2)(a)(iii)] **H(2)(a)(i)(C)** the individual did not object within the 14 days or, if objections
12 were made, they were resolved and the information being sought is consistent with [such] **that**
13 **resolution[.]; and**

14 **H(2)(a)(i)(D)** [The] **the** party issuing a subpoena [must also certify] **certifies** that he or she
15 will, promptly upon request, permit the patient or the patient's representative to inspect and copy
16 the records received.

17 H(2)(b) **Objection.** Within 14 days from the date of a notice requesting individually
18 identifiable health information, the individual or the individual's attorney objecting to the
19 subpoena shall respond in writing to the party issuing the notice, stating the reason for each
20 objection.

21 H(2)(c) **Time for Compliance.** Except as provided in subsection [(4) of this section] **H(4) of**
22 **this rule,** when a subpoena is served upon a custodian of individually identifiable health
23 information in an action in which the entity or person is not a party, and the subpoena requires
24 the production of all or part of the records of the entity or person relating to the care or treatment
25 of an individual, it is sufficient compliance [therewith] **with the subpoena** if a custodian delivers by
26 mail or otherwise a true and correct copy of all of the records responsive to the subpoena within

1 [five] 5 days after receipt thereof. Delivery shall be accompanied by an affidavit or a declaration as
2 described in subsection [(3) of this section] **H(3) of this rule.**

3 H(2)(d) **Method of Compliance.** The copy of the records shall be separately enclosed in a
4 sealed envelope or wrapper on which the [title] **name of the court, case name** and number of the
5 action, name of the witness, and date of the subpoena are clearly inscribed. The sealed envelope
6 or wrapper shall be enclosed in an outer envelope or wrapper and sealed. The outer envelope or
7 wrapper shall be addressed as follows: if the subpoena directs attendance in court, to the clerk of
8 the court, or to the judge thereof if there is no clerk; if the subpoena directs attendance at a
9 deposition or other hearing, to the officer administering the oath for the deposition[,] at the place
10 designated in the subpoena for the taking of the deposition or at the officer's place of business; in
11 other cases involving a hearing, to the officer or body conducting the hearing at the official place
12 of business; if no hearing is scheduled, to the attorney or party issuing the subpoena. If the
13 subpoena directs delivery of the records to the attorney or party issuing the subpoena, then a copy
14 of the proposed subpoena shall be served on the person whose records are sought, and on all
15 other parties to the litigation, not less than 14 days prior to service of the subpoena on the entity
16 or person. Any party to the proceeding may inspect the records provided and/or request a
17 complete copy of the records. Upon request, the records must be promptly provided by the party
18 who issued the subpoena at the requesting party's expense.

19 H(2)(e) **Inspection of Records.** After filing and after giving reasonable notice in writing to all
20 parties who have appeared of the time and place of inspection, the copy of the records may be
21 inspected by any party or by the attorney of record of a party in the presence of the custodian of
22 the court files, but otherwise shall remain sealed and shall be opened only at the time of trial,
23 deposition, or other hearing at the direction of the judge, officer, or body conducting the
24 proceeding. The records shall be opened in the presence of all parties who have appeared in
25 person or by counsel at the trial, deposition, or hearing. Records [which] **that** are not introduced in
26 evidence or required as part of the record shall be returned to the custodian who produced them.

1 H(2)(f) **Service of Subpoena.** For purposes of this section, the subpoena duces tecum to the
2 custodian of the records may be served by first class mail. Service of subpoena by mail under this
3 section shall not be subject to the requirements of subsection [(3) of section D] **D(3) of this rule.**

4 H(3) **Affidavit or declaration of custodian of records.**

5 H(3)(a) **Content.** The records described in subsection [(2) of this section] **H(2) of this rule**
6 shall be accompanied by the affidavit or declaration of a custodian of the records, stating in
7 substance each of the following:

8 H(3)(a)(i) that the affiant or declarant is a duly authorized custodian of the records and has
9 authority to certify records;

10 H(3)(a)(ii) that the copy is a true copy of all the records responsive to the subpoena; and

11 H(3)(a)(iii) that the records were; prepared by the personnel of the entity or **the person,**
12 acting under the control of either[,]; **prepared** in the ordinary course of the entity's or **the person's**
13 business[,]; **and prepared** at or near the time of the act, condition, or event described or referred
14 to therein.

15 H(3)(b) **When custodian has no records or fewer records than requested.** If the entity or
16 person has none of the records described in the subpoena, or only a part thereof, the affiant or
17 declarant shall so state in the affidavit or declaration and shall send only those records of which
18 the affiant or declarant has custody.

19 H(3)(c) **Multiple affidavits or declarations.** When more than one person has knowledge of
20 the facts required to be stated in the affidavit or declaration, more than one affidavit or
21 declaration may be used.

22 H(4) **Personal attendance of custodian of records may be required.**

23 H(4)(a) **Required statement.** The personal attendance of a custodian of records and the
24 production of original records is required if the subpoena duces tecum contains the following
25 statement:

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The personal attendance of a custodian of records and the production of original records is required by this subpoena. The procedure authorized pursuant to Oregon Rule of Civil Procedure 55 H(2) shall not be deemed sufficient compliance with this subpoena.

H(4)(b) **Multiple subpoenas.** If more than one subpoena duces tecum is served on a custodian of records and personal attendance is required under each pursuant to paragraph [(a) of this subsection] **H(4)(a) of this rule**, the custodian shall be deemed to be the witness of the party serving the first such subpoena.

H(5) **Tender and payment of fees.** Nothing in this section requires the tender or payment of more than one witness and mileage fee or other charge unless there has been agreement to the contrary.

H(6) **Scope of discovery.** Notwithstanding any other provision, this rule does not expand the scope of discovery beyond that provided in Rule 36 or Rule 44.

1 notice to the person commanded to produce, move for an order at any time to compel production.
2 In any case, where a subpoena commands production of books, papers, documents, or tangible
3 things the court, upon motion made promptly and, in any event, at or before the time specified in
4 the subpoena for compliance therewith, may [(1)] quash or modify the subpoena if it is
5 unreasonable and oppressive or [(2)] condition denial of the motion upon the advancement by the
6 person in whose behalf the subpoena is issued of the reasonable cost of producing the books,
7 papers, documents, or tangible things.

8 **[C Issuance.**

9 **C(1) By whom issued.** *A subpoena is issued as follows: (a) to require attendance before a*
10 *court, or at the trial of an issue therein, or upon the taking of a deposition in an action pending*
11 *therein or, if separate from a subpoena commanding the attendance of a person, to produce books,*
12 *papers, documents or tangible things and to permit inspection thereof: (i) it may be issued in blank*
13 *by the clerk of the court in which the action is pending, or if there is no clerk, then by a judge or*
14 *justice of such court; or (ii) it may be issued by an attorney of record of the party to the action in*
15 *whose behalf the witness is required to appear, subscribed by the signature of such attorney; (b) to*
16 *require attendance before any person authorized to take the testimony of a witness in this state*
17 *under Rule 38 C, or before any officer empowered by the laws of the United States to take*
18 *testimony, it may be issued by the clerk of a circuit court in the county in which the witness is to be*
19 *examined; (c) to require attendance out of court in cases not provided for in paragraph (a) of this*
20 *subsection, before a judge, justice, or other officer authorized to administer oaths or take testimony*
21 *in any matter under the laws of this state, it may be issued by the judge, justice, or other officer*
22 *before whom the attendance is required.*

23 **C(2) By clerk in blank.** *Upon request of a party or attorney, any subpoena issued by a clerk*
24 *of court shall be issued in blank and delivered to the party or attorney requesting it, who shall fill it*
25 *in before service.]*

26 *////*

1 **C Purpose; issuance.**

2 **C(1) Purpose.**

3 **C(1)(a) Civil actions. A subpoena may be issued to require attendance before a court, or at**
4 **the trial of an issue therein, or upon the taking of a deposition in an action pending therein or, if**
5 **separate from a subpoena commanding the attendance of a person, to produce books, papers,**
6 **documents, or tangible things and to permit inspection thereof.**

7 **C(1)(b) Foreign depositions. A subpoena may be issued to require attendance before any**
8 **person authorized to take the testimony of a witness in this state under Rule 38 C, or before any**
9 **officer empowered by the laws of the United States to take testimony.**

10 **C(1)(c) Other uses. A subpoena may be issued to require attendance out of court in cases**
11 **not provided for in paragraphs C(1)(a) or C(1)(b) of this rule, before a judge, justice, or other**
12 **officer authorized to administer oaths or to take testimony in any matter under the laws of this**
13 **state.**

14 **C(2) By whom issued.**

15 **C(2)(a) By the clerk of the court, or a judge or justice of the court for civil actions. A**
16 **subpoena may be issued in blank by the clerk of the court in which the action is pending or, if**
17 **there is no clerk, by a judge or justice of that court.**

18 **C(2)(a)(i) Requirements for subpoenas issued in blank. Upon request of a party or**
19 **attorney, any subpoena issued by a clerk of the court shall be issued in blank and delivered to**
20 **the party or attorney requesting it, who shall before service include on the subpoena the name**
21 **of the person commanded to appear; or the books, papers, documents, or tangible things to be**
22 **produced or inspected; and the particular time and location for the attendance of the person or**
23 **the production or the inspection, as applicable.**

24 **C(2)(b) By the clerk of the court for foreign depositions. A subpoena for a foreign**
25 **deposition may be issued as specified in Rule 38 C(2) by the clerk of a circuit court in the county**
26 **in which the witness is to be examined.**

1 **C(2)(c) By a judge, justice, or other officer. A subpoena to require attendance out of court**
2 **in cases not provided for in paragraphs C(1)(a) or C(1)(b) of this rule may be issued by the judge,**
3 **justice, or other officer before whom the attendance is required.**

4 **C(2)(d) By an attorney. A subpoena may be issued by an attorney of record of the party**
5 **to the action on whose behalf the witness is required to appear, subscribed by the attorney.**

6 **D Service; service on law enforcement agency; service by mail; proof of service.**

7 **D(1) Service.** Except as provided in [*subsection (2) of this section*] **subsection D(2) of this**
8 **rule**, a subpoena may be served by the party or any other person 18 years of age or older. The
9 service shall be made by delivering a copy to the witness personally and giving or offering to the
10 witness at the same time the fees to which the witness is entitled for travel to and from the place
11 designated and, whether or not personal attendance is required, one day's attendance fees. If the
12 witness is under 14 years of age, the subpoena may be served by delivering a copy to the witness
13 or to the witness's parent, guardian, or guardian ad litem. The service must be made so as to allow
14 the witness a reasonable time for preparation and travel to the place of attendance. A subpoena
15 for **the** taking of a deposition, served upon an organization as provided in Rule 39 C(6), shall be
16 served in the same manner as provided for service of summons in Rule 7 D(3)(b)(i), D(3)(c)(i),
17 D(3)(d)(i), D(3)(e), D(3)(f), or D(3)(h). [*Copies*] **A copy** of each subpoena commanding production of
18 books, papers, documents, or tangible things and inspection thereof before trial[,] **that is** not
19 accompanied by **a** command to appear at trial or hearing or at deposition, whether the subpoena
20 is served personally or by mail, shall be served on each party at least [*seven*] **7** days before the
21 subpoena is served on the person required to produce and permit inspection, unless the court
22 orders a shorter period. In addition, a subpoena shall not require production less than 14 days
23 from the date of service upon the person required to produce and permit inspection, unless the
24 court orders a shorter period.

25 **D(2) Service on law enforcement agency.**

26 **D(2)(a) Designated individuals.** Every law enforcement agency shall designate **an** individual

1 or individuals upon whom service of a subpoena may be made. At least one of the designated
2 individuals shall be available during normal business hours. In the absence of the designated
3 individuals, service of a subpoena pursuant to paragraph [(b) of this subsection] **D(2)(b) of this rule**
4 may be made upon the officer in charge of the law enforcement agency.

5 D(2)(b) **Time limitation.** If a peace officer's attendance at trial is required as a result of **the**
6 **officer's** employment as a peace officer, a subpoena may be served on [such] **the** officer by
7 delivering a copy personally to the officer or to one of the individuals designated by the agency
8 that employs the officer. A subpoena may be served by delivery to one of the individuals
9 designated by the agency that employs the officer only if the subpoena is delivered at least 10 days
10 before the date the officer's attendance is required, the officer is currently employed as a peace
11 officer by the agency, and the officer is present within the state at the time of service.

12 D(2)(c) **Notice to officer.** When a subpoena has been served as provided in [paragraph (b)
13 of this subsection] **paragraph D(2)(b) of this rule**, the law enforcement agency shall make a good
14 faith effort to give actual notice to the officer whose attendance is sought of the date, time, and
15 location of the court appearance. If the officer cannot be notified, the law enforcement agency
16 shall promptly notify the court and a postponement or continuance may be granted to allow the
17 officer to be personally served.

18 D(2)(d) **Law enforcement agency defined.** As used in this subsection, "law enforcement
19 agency" means the Oregon State Police, a county sheriff's department, or a municipal police
20 department.

21 [D(3) Service by mail.]

22 **D(3) Service by mail.** Under the following circumstances, service of a subpoena to a witness
23 by mail shall be of the same legal force and effect as personal service otherwise authorized by this
24 section:

25 D(3)(a) **Contact with willing witness.** The attorney certifies in connection with or upon the
26 return of service that the attorney, or the attorney's agent, has had personal or telephone contact

1 with the witness[,] and the witness indicated a willingness to appear at trial if subpoenaed;

2 D(3)(b) **Payment to witness of fees and mileage.** The attorney, or the attorney's agent,
3 made arrangements for payment to the witness of fees and mileage satisfactory to the witness;
4 and

5 D(3)(c) **Time limitations.** The subpoena was mailed to the witness more than 10 days
6 before trial by certified mail or some other [*designation*] **form** of mail that provides a receipt for
7 the mail **that is** signed by the recipient, and the attorney received a return receipt signed by the
8 witness more than [*three*] **3** days prior to trial.

9 D(4) **Service by mail[; exception] of subpoena not accompanied by command to appear.**
10 Service of **a** subpoena by mail may be used for a subpoena commanding production of books,
11 papers, documents, or tangible things, not accompanied by a command to appear at trial or
12 hearing or at deposition.

13 D(5) **Proof of service; qualifications.** Proof of service of a subpoena is made in the same
14 manner as proof of service of a summons except that the server need not certify that the server is
15 not a party in the action[;]; an attorney for a party in the action; or an officer, director, or
16 employee of a party in the action.

17 **E Subpoena for hearing or trial; prisoners.** If the witness is confined in a prison or jail in
18 this state, a subpoena may be served on [*such*] **that** person only upon leave of court[,] and
19 attendance of the witness may be compelled only upon [*such*] **the** terms [*as*] **that** the court
20 prescribes. The court may order temporary removal and production of the prisoner for the
21 purpose of giving testimony or may order that testimony only be taken upon deposition at the
22 place of confinement. The subpoena and court order shall be served upon the custodian of the
23 prisoner.

24 **F Subpoena for taking depositions or requiring production of books, papers, documents,**
25 **or tangible things; place of production and examination.**

26 **F(1) Subpoena for taking deposition.** Proof of service of a notice to take a deposition as

1 provided in Rules 39 C and 40 A, or of notice of subpoena to command production of books,
2 papers, documents, or tangible things before trial as provided in subsection D(1) of this rule or a
3 certificate that [such] notice will be served if the subpoena can be served, constitutes a sufficient
4 authorization for the issuance by a clerk of court of subpoenas for the persons named or described
5 therein.

6 **F(2) Place of examination.** A resident of this state who is not a party to the action may be
7 required by subpoena to attend an examination or to produce books, papers, documents, or
8 tangible things only in the county wherein [such] **the** person resides, is employed, or transacts
9 business in person, or at [such] **any** other convenient place [as] **that** is fixed by an order of **the**
10 court. A nonresident of this state who is not a party to the action may be required by subpoena to
11 attend an examination or to produce books, papers, documents, or tangible things only in the
12 county wherein [such] **the** person is served with a subpoena, or at [such] **any** other convenient
13 place [as] **that** is fixed by an order of **the** court.

14 **F(3) Production without examination or deposition.** A party who issues a subpoena may
15 command the person to whom it is issued to produce books, papers, documents, or tangible
16 things, other than individually identifiable health information as described in section H **of this rule**,
17 by mail or otherwise, at a time and place specified in the subpoena, without commanding
18 inspection of the originals or a deposition. In such instances, the person to whom the subpoena is
19 directed complies if the person produces copies of the specified items in the specified manner and
20 certifies that the copies are true copies of all **of** the items responsive to the subpoena or, if [all]
21 **any** items are not included, why they are not.

22 **G Disobedience of subpoena; refusal to be sworn or to answer as a witness.** Disobedience
23 to a subpoena or a refusal to be sworn or **to** answer as a witness may be punished as contempt by
24 a court before whom the action is pending or by the judge or justice issuing the subpoena. Upon
25 hearing or trial, if the witness is a party and disobeys a subpoena or refuses to be sworn or **to**
26 answer as a witness, [such] **that** party's complaint, answer, or reply may be stricken.

1 **H Individually identifiable health information.**

2 H(1) **Definitions.** As used in this rule, the terms “individually identifiable health
3 information” and “qualified protective order” are defined as follows:

4 H(1)(a) **Individually identifiable health information.** “Individually identifiable health
5 information” means information [*which*] **that** identifies an individual or [*which*] **that** could be used
6 to identify an individual; [*which*] **that** has been collected from an individual and created or
7 received by a health care provider, health plan, employer, or health care clearinghouse; and
8 [*which*] **that** relates to the past, present, or future physical or mental health or condition of an
9 individual; the provision of health care to an individual; or the past, present, or future payment for
10 the provision of health care to an individual.

11 H(1)(b) **Qualified protective order.** “Qualified protective order” means an order of the
12 court, by stipulation of the parties to the litigation[,] or otherwise, that prohibits the parties from
13 using or disclosing individually identifiable health information for any purpose other than the
14 litigation for which [*such*] **the** information was requested and [*which*] **that** requires the return to
15 the original custodian of [*such*] **the** information or the destruction of the individually identifiable
16 health information (including all copies made) at the end of the litigation.

17 H(2) **[Mode of Compliance.] Procedure.** Individually identifiable health information may be
18 obtained by subpoena only as provided in this section. However, if disclosure of any requested
19 records is restricted or otherwise limited by state or federal law, then the protected records shall
20 not be disclosed in response to the subpoena unless the requesting party has complied with the
21 applicable law.

22 H(2)(a) **Supporting documentation.** The attorney for the party issuing a subpoena
23 requesting production of individually identifiable health information must serve the custodian or
24 other keeper of [*such*] **that** information either with a qualified protective order or with an affidavit
25 or declaration together with attached supporting documentation demonstrating that:

26 H(2)(a)(i) the party has made a good faith attempt to provide written notice to the

1 individual or to the individual's attorney that the individual or the attorney had 14 days from the
2 date of the notice to object;

3 H(2)(a)(ii) the notice included the proposed subpoena and sufficient information about the
4 litigation in which the individually identifiable health information was being requested to permit
5 the individual or the individual's attorney to object; *[and]*

6 H(2)(a)(iii) the individual did not object within the 14 days or, if objections were made, they
7 were resolved and the information being sought is consistent with *[such]* **that** resolution[.]; **and**

8 **H(2)(a)(iv)** *[The]* **the** party issuing a subpoena *[must also certify]* **certifies** that he or she will,
9 promptly upon request, permit the patient or the patient's representative to inspect and copy the
10 records received.

11 H(2)(b) **Objection.** Within 14 days from the date of a notice requesting individually
12 identifiable health information, the individual or the individual's attorney objecting to the
13 subpoena shall respond in writing to the party issuing the notice, stating the reason for each
14 objection.

15 H(2)(c) **Time for Compliance.** Except as provided in subsection *[(4) of this section]* **H(4) of**
16 **this rule**, when a subpoena is served upon a custodian of individually identifiable health
17 information in an action in which the entity or person is not a party, and the subpoena requires
18 the production of all or part of the records of the entity or person relating to the care or treatment
19 of an individual, it is sufficient compliance *[therewith]* **with the subpoena** if a custodian delivers by
20 mail or otherwise a true and correct copy of all of the records responsive to the subpoena within
21 *[five]* **5** days after receipt thereof. Delivery shall be accompanied by an affidavit or a declaration as
22 described in subsection *[(3) of this section]* **H(3) of this rule.**

23 H(2)(d) **Method of Compliance.** The copy of the records shall be separately enclosed in a
24 sealed envelope or wrapper on which the *[title]* **name of the court, case name** and number of the
25 action, name of the witness, and date of the subpoena are clearly inscribed. The sealed envelope
26 or wrapper shall be enclosed in an outer envelope or wrapper and sealed. The outer envelope or

1 wrapper shall be addressed as follows: if the subpoena directs attendance in court, to the clerk of
2 the court, or to the judge thereof if there is no clerk; if the subpoena directs attendance at a
3 deposition or other hearing, to the officer administering the oath for the deposition[,] at the place
4 designated in the subpoena for the taking of the deposition or at the officer's place of business; in
5 other cases involving a hearing, to the officer or body conducting the hearing at the official place
6 of business; if no hearing is scheduled, to the attorney or party issuing the subpoena. If the
7 subpoena directs delivery of the records to the attorney or party issuing the subpoena, then a copy
8 of the proposed subpoena shall be served on the person whose records are sought, and on all
9 other parties to the litigation, not less than 14 days prior to service of the subpoena on the entity
10 or person. Any party to the proceeding may inspect the records provided and/or request a
11 complete copy of the records. Upon request, the records must be promptly provided by the party
12 who issued the subpoena at the requesting party's expense.

13 H(2)(e) **Inspection of Records.** After filing and after giving reasonable notice in writing to all
14 parties who have appeared of the time and place of inspection, the copy of the records may be
15 inspected by any party or by the attorney of record of a party in the presence of the custodian of
16 the court files, but otherwise shall remain sealed and shall be opened only at the time of trial,
17 deposition, or other hearing at the direction of the judge, officer, or body conducting the
18 proceeding. The records shall be opened in the presence of all parties who have appeared in
19 person or by counsel at the trial, deposition, or hearing. Records [*which*] **that** are not introduced in
20 evidence or required as part of the record shall be returned to the custodian who produced them.

21 H(2)(f) **Service of Subpoena.** For purposes of this section, the subpoena duces tecum to the
22 custodian of the records may be served by first class mail. Service of subpoena by mail under this
23 section shall not be subject to the requirements of subsection [(3) of section D] **D(3) of this rule.**

24 H(3) **Affidavit or declaration of custodian of records.**

25 H(3)(a) **Content.** The records described in subsection [(2) of this section] **H(2) of this rule**
26 shall be accompanied by the affidavit or declaration of a custodian of the records, stating in

1 substance each of the following:

2 H(3)(a)(i) that the affiant or declarant is a duly authorized custodian of the records and has
3 authority to certify records;

4 H(3)(a)(ii) that the copy is a true copy of all the records responsive to the subpoena; and

5 H(3)(a)(iii) that the records were: prepared by the personnel of the entity or **the** person,
6 acting under the control of either[,]; **prepared** in the ordinary course of the entity's or **the** person's
7 business[,]; **and prepared** at or near the time of the act, condition, or event described or referred
8 to therein.

9 H(3)(b) **When custodian has no records or fewer records than requested.** If the entity or
10 person has none of the records described in the subpoena, or only a part thereof, the affiant or
11 declarant shall so state in the affidavit or declaration and shall send only those records of which
12 the affiant or declarant has custody.

13 H(3)(c) **Multiple affidavits or declarations.** When more than one person has knowledge of
14 the facts required to be stated in the affidavit or declaration, more than one affidavit or
15 declaration may be used.

16 H(4) **Personal attendance of custodian of records may be required.**

17 H(4)(a) **Required statement.** The personal attendance of a custodian of records and the
18 production of original records is required if the subpoena duces tecum contains the following
19 statement:

20 _____
21 The personal attendance of a custodian of records and the production of original records is
22 required by this subpoena. The procedure authorized pursuant to Oregon Rule of Civil Procedure
23 55 H(2) shall not be deemed sufficient compliance with this subpoena.

24 _____
25 H(4)(b) **Multiple subpoenas.** If more than one subpoena duces tecum is served on a
26 custodian of records and personal attendance is required under each pursuant to paragraph [(a) of

1 | *this subsection*] **H(4)(a) of this rule**, the custodian shall be deemed to be the witness of the party
2 | serving the first such subpoena.

3 | **H(5) Tender and payment of fees.** Nothing in this section requires the tender or payment
4 | of more than one witness and mileage fee or other charge unless there has been agreement to the
5 | contrary.

6 | **H(6) Scope of discovery.** Notwithstanding any other provision, this rule does not expand
7 | the scope of discovery beyond that provided in Rule 36 or Rule 44.

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1 notice to the person commanded to produce, move for an order at any time to compel production.
2 In any case, where a subpoena commands production of books, papers, documents, or tangible
3 things the court, upon motion made promptly and, in any event, at or before the time specified in
4 the subpoena for compliance therewith, may [(1)] quash or modify the subpoena if it is
5 unreasonable and oppressive or [(2)] condition denial of the motion upon the advancement by the
6 person in whose behalf the subpoena is issued of the reasonable cost of producing the books,
7 papers, documents, or tangible things.

8 **[C Issuance.**

9 **C(1) By whom issued.** *A subpoena is issued as follows: (a) to require attendance before a*
10 *court, or at the trial of an issue therein, or upon the taking of a deposition in an action pending*
11 *therein or, if separate from a subpoena commanding the attendance of a person, to produce books,*
12 *papers, documents or tangible things and to permit inspection thereof: (i) it may be issued in blank*
13 *by the clerk of the court in which the action is pending, or if there is no clerk, then by a judge or*
14 *justice of such court; or (ii) it may be issued by an attorney of record of the party to the action in*
15 *whose behalf the witness is required to appear, subscribed by the signature of such attorney; (b) to*
16 *require attendance before any person authorized to take the testimony of a witness in this state*
17 *under Rule 38 C, or before any officer empowered by the laws of the United States to take*
18 *testimony, it may be issued by the clerk of a circuit court in the county in which the witness is to be*
19 *examined; (c) to require attendance out of court in cases not provided for in paragraph (a) of this*
20 *subsection, before a judge, justice, or other officer authorized to administer oaths or take testimony*
21 *in any matter under the laws of this state, it may be issued by the judge, justice, or other officer*
22 *before whom the attendance is required.*

23 **C(2) By clerk in blank.** *Upon request of a party or attorney, any subpoena issued by a*
24 *clerk of court shall be issued in blank and delivered to the party or attorney requesting it, who shall*
25 *fill it in before service.]*

26 *////*

1 **C Purpose; issuance.**

2 **C(1) Purpose.**

3 **C(1)(a) Civil actions. A subpoena may be issued to require attendance before a court, or at**
4 **the trial of an issue therein, or upon the taking of a deposition in an action pending therein or, if**
5 **separate from a subpoena commanding the attendance of a person, to produce books, papers,**
6 **documents, or tangible things and to permit inspection thereof.**

7 **C(1)(b) Foreign depositions. A subpoena may be issued to require attendance**
8 **before any person authorized to take the testimony of a witness in this state under Rule 38 C, or**
9 **before any officer empowered by the laws of the United States to take testimony.**

10 **C(1)(c) Other uses. A subpoena may be issued to require attendance out of court in cases**
11 **not provided for in paragraphs C(1)(a) or C(1)(b) of this rule, before a judge, justice, or other**
12 **officer authorized to administer oaths or to take testimony in any matter under the laws of this**
13 **state.**

14 **C(2) By whom issued.**

15 **C(2)(a) By the clerk of the court, or a judge or justice of the court for civil actions. A**
16 **subpoena may be issued in blank by the clerk of the court in which the action is pending or, if**
17 **there is no clerk, by a judge or justice of that court.**

18 **C(2)(a)(i) Requirements for subpoenas issued in blank. Upon request of a party or**
19 **attorney, any subpoena issued by a clerk of the court may be issued in blank and delivered to the**
20 **party or attorney requesting it, who shall before service include on the subpoena the name of**
21 **the person commanded to appear; or the books, papers, documents, or tangible things to be**
22 **produced or inspected; and the particular time and location for the attendance of the person or**
23 **the production or the inspection, as applicable.**

24 **C(2)(b) By the clerk of the court for foreign depositions. A subpoena for a foreign**
25 **deposition may be issued as specified in Rule 38 C(2) by the clerk of a circuit court in the county**
26 **in which the witness is to be examined.**

1 C(2)(c) By a judge, justice, or other officer. A subpoena to require attendance out of court
2 in cases not provided for in paragraphs C(1)(a) or C(1)(b) of this rule may be issued by the judge,
3 justice, or other officer before whom the attendance is required.

4 C(2)(d) By an attorney. A subpoena may be issued by an attorney of record of the
5 party to the action on whose behalf the witness is required to appear, subscribed by the
6 attorney.

7 D **Service; service on law enforcement agency; service by mail; proof of service.**

8 D(1) **Service.** Except as provided in [subsection (2) of this section] subsection D(2) of this
9 rule, a subpoena may be served by the party or any other person 18 years of age or older. The
10 service shall be made by delivering a copy to the witness personally and giving or offering to the
11 witness at the same time the fees to which the witness is entitled for travel to and from the place
12 designated and, whether or not personal attendance is required, one day's attendance fees. If the
13 witness is under 14 years of age, the subpoena may be served by delivering a copy to the witness
14 or to the witness's parent, guardian, or guardian ad litem. The service must be made so as to allow
15 the witness a reasonable time for preparation and travel to the place of attendance. A subpoena
16 for the taking of a deposition, served upon an organization as provided in Rule 39 C(6), shall be
17 served in the same manner as provided for service of summons in Rule 7 D(3)(b)(i), D(3)(c)(i),
18 D(3)(d)(i), D(3)(e), D(3)(f), or D(3)(h). [Copies] A copy of each subpoena commanding production of
19 books, papers, documents, or tangible things and inspection thereof before trial[,] that is not
20 accompanied by a command to appear at trial or hearing or at deposition, whether the subpoena
21 is served personally or by mail, shall be served on each party at least [seven] 7 days before the
22 subpoena is served on the person required to produce and permit inspection, unless the court
23 orders a shorter period. In addition, a subpoena shall not require production less than 14 days
24 from the date of service upon the person required to produce and permit inspection, unless the
25 court orders a shorter period.

26 D(2) **Service on law enforcement agency.**

1 D(2)(a) **Designated individuals.** Every law enforcement agency shall designate **an**
2 individual or individuals upon whom service of **a** subpoena may be made. At least one of the
3 designated individuals shall be available during normal business hours. In the absence of the
4 designated individuals, service of **a** subpoena pursuant to paragraph [(b) of this subsection] **D(2)(b)**
5 **of this rule** may be made upon the officer in charge of the law enforcement agency.

6 D(2)(b) **Time limitation.** If a peace officer's attendance at trial is required as a result
7 of **the officer's** employment as a peace officer, a subpoena may be served on [such] **the** officer by
8 delivering a copy personally to the officer or to one of the individuals designated by the agency
9 that employs the officer. A subpoena may be served by delivery to one of the individuals
10 designated by the agency that employs the officer only if the subpoena is delivered at least 10 days
11 before the date the officer's attendance is required, the officer is currently employed as a peace
12 officer by the agency, and the officer is present within the state at the time of service.

13 D(2)(c) **Notice to officer.** When a subpoena has been served as provided in [paragraph (b)
14 of this subsection] **paragraph D(2)(b) of this rule**, the law enforcement agency shall make a good
15 faith effort to give actual notice to the officer whose attendance is sought of the date, time, and
16 location of the court appearance. If the officer cannot be notified, the law enforcement agency
17 shall promptly notify the court and a postponement or continuance may be granted to allow the
18 officer to be personally served.

19 D(2)(d) **Law enforcement agency defined.** As used in this subsection, "law
20 enforcement agency" means the Oregon State Police, a county sheriff's department, or a
21 municipal police department.

22 [D(3) *Service by mail.*]

23 **D(3) Service by mail.** Under the following circumstances, service of a subpoena to a
24 witness by mail shall be of the same legal force and effect as personal service otherwise authorized
25 by this section:

26 D(3)(a) **Contact with willing witness.** The attorney certifies in connection with or

1 upon the return of service that the attorney, or the attorney's agent, has had personal or
2 telephone contact with the witness[,] and the witness indicated a willingness to appear at trial if
3 subpoenaed;

4 D(3)(b) **Payment to witness of fees and mileage.** The attorney, or the attorney's
5 agent, made arrangements for payment to the witness of fees and mileage satisfactory to the
6 witness; and

7 D(3)(c) **Time limitations.** The subpoena was mailed to the witness more than 10 days
8 before trial by certified mail or some other [*designation*] **form** of mail that provides a receipt for
9 the mail **that is** signed by the recipient, and the attorney received a return receipt signed by the
10 witness more than [*three*] **3** days prior to trial.

11 D(4) **Service by mail[; exception] of subpoena not accompanied by command to appear.**
12 Service of **a** subpoena by mail may be used for a subpoena commanding production of books,
13 papers, documents, or tangible things, not accompanied by a command to appear at trial or
14 hearing or at deposition.

15 D(5) **Proof of service; qualifications.** Proof of service of a subpoena is made in the same
16 manner as proof of service of a summons except that the server need not certify that the server is
17 not a party in the action[;]; an attorney for a party in the action; or an officer, director, or
18 employee of a party in the action.

19 **E Subpoena for hearing or trial; prisoners.** If the witness is confined in a prison or jail
20 in this state, a subpoena may be served on [*such*] **that** person only upon leave of court[,] and
21 attendance of the witness may be compelled only upon [*such*] **the** terms [*as*] **that** the court
22 prescribes. The court may order temporary removal and production of the prisoner for the
23 purpose of giving testimony or may order that testimony only be taken upon deposition at the
24 place of confinement. The subpoena and court order shall be served upon the custodian of the
25 prisoner.

26 **F Subpoena for taking depositions or requiring production of books, papers,**

1 **documents, or tangible things; place of production and examination.**

2 F(1) **Subpoena for taking deposition.** Proof of service of a notice to take a deposition as
3 provided in Rules 39 C and 40 A, or of notice of subpoena to command production of books,
4 papers, documents, or tangible things before trial as provided in subsection D(1) of this rule or a
5 certificate that *[such]* notice will be served if the subpoena can be served, constitutes a sufficient
6 authorization for the issuance by a clerk of court of subpoenas for the persons named or described
7 therein.

8 F(2) **Place of examination.** A resident of this state who is not a party to the action may
9 be required by subpoena to attend an examination or to produce books, papers, documents, or
10 tangible things only in the county wherein *[such]* **the** person resides, is employed, or transacts
11 business in person, or at *[such]* **any** other convenient place *[as]* **that** is fixed by an order of **the**
12 court. A nonresident of this state who is not a party to the action may be required by subpoena to
13 attend an examination or to produce books, papers, documents, or tangible things only in the
14 county wherein *[such]* **the** person is served with a subpoena, or at *[such]* **any** other convenient
15 place *[as]* **that** is fixed by an order of **the** court.

16 F(3) **Production without examination or deposition.** A party who issues a subpoena may
17 command the person to whom it is issued to produce books, papers, documents, or tangible
18 things, other than individually identifiable health information as described in section H **of this rule**,
19 by mail or otherwise, at a time and place specified in the subpoena, without commanding
20 inspection of the originals or a deposition. In such instances, the person to whom the subpoena is
21 directed complies if the person produces copies of the specified items in the specified manner and
22 certifies that the copies are true copies of all **of** the items responsive to the subpoena or, if *[all]*
23 **any** items are not included, why they are not.

24 **G Disobedience of subpoena; refusal to be sworn or to answer as a witness.**

25 Disobedience to a subpoena or a refusal to be sworn or **to** answer as a witness may be punished as
26 contempt by a court before whom the action is pending or by the judge or justice issuing the

1 subpoena. Upon hearing or trial, if the witness is a party and disobeys a subpoena or refuses to be
2 sworn or **to** answer as a witness, [such] **that** party's complaint, answer, or reply may be stricken.

3 **H Individually identifiable health information.**

4 H(1) **Definitions.** As used in this rule, the terms "individually identifiable health
5 information" and "qualified protective order" are defined as follows:

6 H(1)(a) **Individually identifiable health information.** "Individually identifiable health
7 information" means information [which] **that** identifies an individual or [which] **that** could be used
8 to identify an individual; [which] **that** has been collected from an individual and created or
9 received by a health care provider, health plan, employer, or health care clearinghouse; and
10 [which] **that** relates to the past, present, or future physical or mental health or condition of an
11 individual; the provision of health care to an individual; or the past, present, or future payment for
12 the provision of health care to an individual.

13 H(1)(b) **Qualified protective order.** "Qualified protective order" means an order of
14 the court, by stipulation of the parties to the litigation[,] or otherwise, that prohibits the parties
15 from using or disclosing individually identifiable health information for any purpose other than the
16 litigation for which [such] **the** information was requested and [which] **that** requires the return to
17 the original custodian of [such] **the** information or the destruction of the individually identifiable
18 health information (including all copies made) at the end of the litigation.

19 H(2) **[Mode of Compliance.] Procedure.** Individually identifiable health information may
20 be obtained by subpoena only as provided in this section. However, if disclosure of any requested
21 records is restricted or otherwise limited by state or federal law, then the protected records shall
22 not be disclosed in response to the subpoena unless the requesting party has complied with the
23 applicable law.

24 H(2)(a) **Supporting documentation.** The attorney for the party issuing a subpoena
25 requesting production of individually identifiable health information must serve the custodian or
26 other keeper of [such] **that** information either with a qualified protective order or with an affidavit

1 or declaration together with attached supporting documentation demonstrating that:

2 H(2)(a)(i) the party has made a good faith attempt to provide written notice to the
3 individual or to the individual's attorney that the individual or the attorney had 14 days from the
4 date of the notice to object;

5 H(2)(a)(ii) the notice included the proposed subpoena and sufficient information about
6 the litigation in which the individually identifiable health information was being requested to
7 permit the individual or the individual's attorney to object; *[and]*

8 H(2)(a)(iii) the individual did not object within the 14 days or, if objections were made,
9 they were resolved and the information being sought is consistent with *[such] that* resolution[.];

10 **and**

11 **H(2)(a)(iv)** *[The] the* party issuing a subpoena *[must also certify]* **certifies** that he or she
12 will, promptly upon request, permit the patient or the patient's representative to inspect and copy
13 the records received.

14 H(2)(b) **Objection.** Within 14 days from the date of a notice requesting individually
15 identifiable health information, the individual or the individual's attorney objecting to the
16 subpoena shall respond in writing to the party issuing the notice, stating the reason for each
17 objection.

18 H(2)(c) **Time for Compliance.** Except as provided in subsection *[(4) of this section]* **H(4) of**
19 **this rule**, when a subpoena is served upon a custodian of individually identifiable health
20 information in an action in which the entity or person is not a party, and the subpoena requires
21 the production of all or part of the records of the entity or person relating to the care or treatment
22 of an individual, it is sufficient compliance *[therewith]* **with the subpoena** if a custodian delivers by
23 mail or otherwise a true and correct copy of all of the records responsive to the subpoena within
24 *[five]* **5** days after receipt thereof. Delivery shall be accompanied by an affidavit or a declaration as
25 described in subsection *[(3) of this section]* **H(3) of this rule.**

26 H(2)(d) **Method of Compliance.** The copy of the records shall be separately enclosed

1 in a sealed envelope or wrapper on which the [title] **name of the court, case name** and number of
2 the action, name of the witness, and date of the subpoena are clearly inscribed. The sealed
3 envelope or wrapper shall be enclosed in an outer envelope or wrapper and sealed. The outer
4 envelope or wrapper shall be addressed as follows: if the subpoena directs attendance in court, to
5 the clerk of the court, or to the judge thereof if there is no clerk; if the subpoena directs
6 attendance at a deposition or other hearing, to the officer administering the oath for the
7 deposition[,] at the place designated in the subpoena for the taking of the deposition or at the
8 officer's place of business; in other cases involving a hearing, to the officer or body conducting the
9 hearing at the official place of business; if no hearing is scheduled, to the attorney or party issuing
10 the subpoena. If the subpoena directs delivery of the records to the attorney or party issuing the
11 subpoena, then a copy of the proposed subpoena shall be served on the person whose records are
12 sought, and on all other parties to the litigation, not less than 14 days prior to service of the
13 subpoena on the entity or person. Any party to the proceeding may inspect the records provided
14 and/or request a complete copy of the records. Upon request, the records must be promptly
15 provided by the party who issued the subpoena at the requesting party's expense.

16 H(2)(e) **Inspection of Records.** After filing and after giving reasonable notice in
17 writing to all parties who have appeared of the time and place of inspection, the copy of the
18 records may be inspected by any party or by the attorney of record of a party in the presence of
19 the custodian of the court files, but otherwise shall remain sealed and shall be opened only at the
20 time of trial, deposition, or other hearing at the direction of the judge, officer, or body conducting
21 the proceeding. The records shall be opened in the presence of all parties who have appeared in
22 person or by counsel at the trial, deposition, or hearing. Records [which] **that** are not introduced in
23 evidence or required as part of the record shall be returned to the custodian who produced them.

24 H(2)(f) **Service of Subpoena.** For purposes of this section, the subpoena duces tecum to the
25 custodian of the records may be served by first class mail. Service of subpoena by mail under this
26 section shall not be subject to the requirements of subsection [(3) of section D] **D(3) of this rule.**

1 H(3) **Affidavit or declaration of custodian of records.**

2 H(3)(a) **Content.** The records described in subsection [(2) of this section] **H(2) of this**
3 **rule** shall be accompanied by the affidavit or declaration of a custodian of the records, stating in
4 substance each of the following:

5 H(3)(a)(i) that the affiant or declarant is a duly authorized custodian of the records
6 and has authority to certify records;

7 H(3)(a)(ii) that the copy is a true copy of all the records responsive to the subpoena;
8 and

9 H(3)(a)(iii) that the records were; prepared by the personnel of the entity or **the**
10 person, acting under the control of either[.]; **prepared** in the ordinary course of the entity's or **the**
11 person's business[.]; **and prepared** at or near the time of the act, condition, or event described or
12 referred to therein.

13 H(3)(b) **When custodian has no records or fewer records than requested.** If the
14 entity or person has none of the records described in the subpoena, or only a part thereof, the
15 affiant or declarant shall so state in the affidavit or declaration and shall send only those records of
16 which the affiant or declarant has custody.

17 H(3)(c) **Multiple affidavits or declarations.** When more than one person has knowledge of
18 the facts required to be stated in the affidavit or declaration, more than one affidavit or
19 declaration may be used.

20 H(4) **Personal attendance of custodian of records may be required.**

21 H(4)(a) **Required statement.** The personal attendance of a custodian of records and
22 the production of original records is required if the subpoena duces tecum contains the following
23 statement:

24 _____
25 The personal attendance of a custodian of records and the production of original records is
26 required by this subpoena. The procedure authorized pursuant to Oregon Rule of Civil Procedure

1 55 H(2) shall not be deemed sufficient compliance with this subpoena.

2
3 H(4)(b) **Multiple subpoenas.** If more than one subpoena duces tecum is served on a
4 custodian of records and personal attendance is required under each pursuant to paragraph [(a) of
5 *this subsection*] **H(4)(a) of this rule**, the custodian shall be deemed to be the witness of the party
6 serving the first such subpoena.

7 H(5) **Tender and payment of fees.** Nothing in this section requires the tender or
8 payment of more than one witness and mileage fee or other charge unless there has been
9 agreement to the contrary.

10 H(6) **Scope of discovery.** Notwithstanding any other provision, this rule does not expand
11 the scope of discovery beyond that provided in Rule 36 or Rule 44.

1 notice to the person commanded to produce, move for an order at any time to compel production.
2 In any case, where a subpoena commands production of books, papers, documents, or tangible
3 things the court, upon motion made promptly and, in any event, at or before the time specified in
4 the subpoena for compliance therewith, may [(1)] quash or modify the subpoena if it is
5 unreasonable and oppressive or [(2)] condition denial of the motion upon the advancement by the
6 person in whose behalf the subpoena is issued of the reasonable cost of producing the books,
7 papers, documents, or tangible things.

8 **[C Issuance.]**

9 **[C(1) By whom issued.** *A subpoena is issued as follows: (a) to require attendance before a*
10 *court, or at the trial of an issue therein, or upon the taking of a deposition in an action pending*
11 *therein or, if separate from a subpoena commanding the attendance of a person, to produce books,*
12 *papers, documents or tangible things and to permit inspection thereof: (i) it may be issued in blank*
13 *by the clerk of the court in which the action is pending, or if there is no clerk, then by a judge or*
14 *justice of such court; or (ii) it may be issued by an attorney of record of the party to the action in*
15 *whose behalf the witness is required to appear, subscribed by the signature of such attorney; (b) to*
16 *require attendance before any person authorized to take the testimony of a witness in this state*
17 *under Rule 38 C, or before any officer empowered by the laws of the United States to take*
18 *testimony, it may be issued by the clerk of a circuit court in the county in which the witness is to be*
19 *examined; (c) to require attendance out of court in cases not provided for in paragraph (a) of this*
20 *subsection, before a judge, justice, or other officer authorized to administer oaths or take testimony*
21 *in any matter under the laws of this state, it may be issued by the judge, justice, or other officer*
22 *before whom the attendance is required.]*

23 **[C(2) By clerk in blank.** *Upon request of a party or attorney, any subpoena issued by a*
24 *clerk of court shall be issued in blank and delivered to the party or attorney requesting it, who shall*
25 *fill it in before service.]*

26 **C Purpose; issuance.**

1 **C(1) Purpose.**

2 **C(1)(a) Civil actions. A subpoena may be issued to require attendance before a court, or at**
3 **the trial of an issue therein, or upon the taking of a deposition in an action pending therein or, if**
4 **separate from a subpoena commanding the attendance of a person, to produce books, papers,**
5 **documents, or tangible things and to permit inspection thereof.**

6 **C(1)(b) Foreign depositions. A subpoena may be issued to require attendance**
7 **before any person authorized to take the testimony of a witness in this state under Rule 38 C, or**
8 **before any officer empowered by the laws of the United States to take testimony.**

9 **C(1)(c) Other uses. A subpoena may be issued to require attendance out of court in cases**
10 **not provided for in paragraph C(1)(a) or C(1)(b) of this rule, before a judge, justice, or other**
11 **officer authorized to administer oaths or to take testimony in any matter under the laws of this**
12 **state.**

13 **C(2) By whom issued.**

14 **C(2)(a) By the clerk of the court, or a judge or justice of the court for civil actions. A**
15 **subpoena may be issued in blank by the clerk of the court in which the action is pending or, if**
16 **there is no clerk, by a judge or justice of that court.**

17 **C(2)(a)(i) Requirements for subpoenas issued in blank. Upon request of a party or**
18 **attorney, any subpoena issued by a clerk of the court may be issued in blank and delivered to the**
19 **party or attorney requesting it, who shall before service include on the subpoena the name of**
20 **the person commanded to appear; or the books, papers, documents, or tangible things to be**
21 **produced or inspected; and the particular time and location for the attendance of the person or**
22 **the production or the inspection, as applicable.**

23 **C(2)(b) By the clerk of the court for foreign depositions. A subpoena for a foreign**
24 **deposition may be issued as specified in Rule 38 C(2) by the clerk of a circuit court in the county**
25 **in which the witness is to be examined.**

26 **C(2)(c) By a judge, justice, or other officer. A subpoena to require attendance out of court**

1 in cases not provided for in paragraph C(1)(a) or C(1)(b) of this rule may be issued by the judge,
2 justice, or other officer before whom the attendance is required.

3 C(2)(d) By an attorney. A subpoena may be issued by an attorney of record of the
4 party to the action on whose behalf the witness is required to appear, subscribed by the
5 attorney.

6 D **Service; service on law enforcement agency; service by mail; proof of service.**

7 D(1) **Service.** Except as provided in [subsection (2) of this section] subsection D(2) of this
8 rule, a subpoena may be served by the party or any other person 18 years of age or older. The
9 service shall be made by delivering a copy to the witness personally and giving or offering to the
10 witness at the same time the fees to which the witness is entitled for travel to and from the place
11 designated and, whether or not personal attendance is required, one day's attendance fees. If the
12 witness is under 14 years of age, the subpoena may be served by delivering a copy to the witness
13 or to the witness's parent, guardian, or guardian ad litem. The service must be made so as to allow
14 the witness a reasonable time for preparation and travel to the place of attendance. A subpoena
15 for the taking of a deposition, served upon an organization as provided in Rule 39 C(6), shall be
16 served in the same manner as provided for service of summons in Rule 7 D(3)(b)(i), D(3)(c)(i),
17 D(3)(d)(i), D(3)(e), D(3)(f), or D(3)(h). [Copies] A copy of each subpoena commanding production of
18 books, papers, documents, or tangible things and inspection thereof before trial[,] that is not
19 accompanied by a command to appear at trial or hearing or at deposition, whether the subpoena
20 is served personally or by mail, shall be served on each party at least [seven] 7 days before the
21 subpoena is served on the person required to produce and permit inspection, unless the court
22 orders a shorter period. In addition, a subpoena shall not require production less than 14 days
23 from the date of service upon the person required to produce and permit inspection, unless the
24 court orders a shorter period.

25 D(2) **Service on law enforcement agency.**

26 D(2)(a) Designated individuals. Every law enforcement agency shall designate an

1 individual or individuals upon whom service of a subpoena may be made. At least one of the
2 designated individuals shall be available during normal business hours. In the absence of the
3 designated individuals, service of a subpoena pursuant to paragraph [(b) of this subsection] **D(2)(b)**
4 **of this rule** may be made upon the officer in charge of the law enforcement agency.

5 D(2)(b) **Time limitation.** If a peace officer's attendance at trial is required as a result
6 of **the officer's** employment as a peace officer, a subpoena may be served on [such] **the** officer by
7 delivering a copy personally to the officer or to one of the individuals designated by the agency
8 that employs the officer. A subpoena may be served by delivery to one of the individuals
9 designated by the agency that employs the officer only if the subpoena is delivered at least 10 days
10 before the date the officer's attendance is required, the officer is currently employed as a peace
11 officer by the agency, and the officer is present within the state at the time of service.

12 D(2)(c) **Notice to officer.** When a subpoena has been served as provided in [paragraph (b)
13 of this subsection] **paragraph D(2)(b) of this rule**, the law enforcement agency shall make a good
14 faith effort to give actual notice to the officer whose attendance is sought of the date, time, and
15 location of the court appearance. If the officer cannot be notified, the law enforcement agency
16 shall promptly notify the court and a postponement or continuance may be granted to allow the
17 officer to be personally served.

18 D(2)(d) **"Law enforcement agency" defined.** As used in this subsection, "law
19 enforcement agency" means the Oregon State Police, a county sheriff's department, or a
20 municipal police department.

21 [D(3) *Service by mail.*]

22 **D(3) Service by mail.** Under the following circumstances, service of a subpoena to a
23 witness by mail shall be of the same legal force and effect as personal service otherwise authorized
24 by this section:

25 D(3)(a) **Contact with willing witness.** The attorney certifies in connection with or
26 upon the return of service that the attorney, or the attorney's agent, has had personal or

1 telephone contact with the witness[,] and the witness indicated a willingness to appear at trial if
2 subpoenaed;

3 D(3)(b) **Payment to witness of fees and mileage.** The attorney, or the attorney's
4 agent, made arrangements for payment to the witness of fees and mileage satisfactory to the
5 witness; and

6 D(3)(c) **Time limitations.** The subpoena was mailed to the witness more than 10 days
7 before trial by certified mail or some other [*designation*] **form** of mail that provides a receipt for
8 the mail **that is** signed by the recipient[,] and the attorney received a return receipt signed by the
9 witness more than [*three*] **3** days prior to trial.

10 D(4) **Service by mail[; exception] of subpoena not accompanied by command to appear.**
11 Service of **a** subpoena by mail may be used for a subpoena commanding production of books,
12 papers, documents, or tangible things, not accompanied by a command to appear at trial or
13 hearing or at deposition.

14 D(5) **Proof of service; qualifications.** Proof of service of a subpoena is made in the same
15 manner as proof of service of a summons except that the server need not certify that the server is
16 not a party in the action[;] an attorney for a party in the action; or an officer, director, or
17 employee of a party in the action.

18 **E Subpoena for hearing or trial; prisoners.** If the witness is confined in a prison or jail
19 in this state, a subpoena may be served on [*such*] **that** person only upon leave of court[,] and
20 attendance of the witness may be compelled only upon [*such*] **the** terms [*as*] **that** the court
21 prescribes. The court may order temporary removal and production of the prisoner for the
22 purpose of giving testimony or may order that testimony only be taken upon deposition at the
23 place of confinement. The subpoena and court order shall be served upon the custodian of the
24 prisoner.

25 **F Subpoena for taking depositions or requiring production of books, papers,**
26 **documents, or tangible things; place of production and examination.**

1 F(1) **Subpoena for taking deposition.** Proof of service of a notice to take a deposition as
2 provided in [*Rules*] **Rule** 39 C and **Rule** 40 A, or of notice of subpoena to command production of
3 books, papers, documents, or tangible things before trial as provided in subsection D(1) of this rule
4 or a certificate that [*such*] notice will be served if the subpoena can be served, constitutes a
5 sufficient authorization for the issuance by a clerk of court of subpoenas for the persons named or
6 described therein.

7 F(2) **Place of examination.** A resident of this state who is not a party to the action may
8 be required by subpoena to attend an examination or to produce books, papers, documents, or
9 tangible things only in the county wherein [*such*] **the** person resides, is employed, or transacts
10 business in person, or at [*such*] **any** other convenient place [*as*] **that** is fixed by an order of **the**
11 court. A nonresident of this state who is not a party to the action may be required by subpoena to
12 attend an examination or to produce books, papers, documents, or tangible things only in the
13 county wherein [*such*] **the** person is served with a subpoena, or at [*such*] **any** other convenient
14 place [*as*] **that** is fixed by an order of **the** court.

15 F(3) **Production without examination or deposition.** A party who issues a subpoena may
16 command the person to whom it is issued to produce books, papers, documents, or tangible
17 things, other than individually identifiable health information as described in section H **of this rule**,
18 by mail or otherwise, at a time and place specified in the subpoena, without commanding
19 inspection of the originals or a deposition. In such instances, the person to whom the subpoena is
20 directed complies if the person produces copies of the specified items in the specified manner and
21 certifies that the copies are true copies of all **of** the items responsive to the subpoena or, if [*all*]
22 **any** items are not included, why they are not.

23 **G Disobedience of subpoena; refusal to be sworn or to answer as a witness.**
24 Disobedience to a subpoena or a refusal to be sworn or **to** answer as a witness may be punished as
25 contempt by a court before whom the action is pending or by the judge or justice issuing the
26 subpoena. Upon hearing or trial, if the witness is a party and disobeys a subpoena or refuses to be

1 | sworn or **to** answer as a witness, [such] **that** party’s complaint, answer, or reply may be stricken.

2 | **H Individually identifiable health information.**

3 | H(1) **Definitions.** As used in this rule, the terms “individually identifiable health
4 | information” and “qualified protective order” are defined as follows:

5 | H(1)(a) “Individually identifiable health information.” “Individually identifiable
6 | health information” means information [which] **that** identifies an individual or [which] **that** could
7 | be used to identify an individual; [which] **that** has been collected from an individual and created or
8 | received by a health care provider, health plan, employer, or health care clearinghouse; and
9 | [which] **that** relates to the past, present, or future physical or mental health or condition of an
10 | individual; the provision of health care to an individual; or the past, present, or future payment for
11 | the provision of health care to an individual.

12 | H(1)(b) “Qualified protective order.” “Qualified protective order” means an order of
13 | the court, by stipulation of the parties to the litigation[,] or otherwise, that prohibits the parties
14 | from using or disclosing individually identifiable health information for any purpose other than the
15 | litigation for which [such] **the** information was requested and [which] **that** requires the return to
16 | the original custodian of [such] **the** information or the destruction of the individually identifiable
17 | health information (including all copies made) at the end of the litigation.

18 | H(2) **[Mode of Compliance.] Procedure.** Individually identifiable health information may
19 | be obtained by subpoena only as provided in this section. However, if disclosure of any requested
20 | records is restricted or otherwise limited by state or federal law, then the protected records shall
21 | not be disclosed in response to the subpoena unless the requesting party has complied with the
22 | applicable law.

23 | H(2)(a) Supporting documentation. The attorney for the party issuing a subpoena
24 | requesting production of individually identifiable health information must serve the custodian or
25 | other keeper of [such] **that** information either with a qualified protective order or with an affidavit
26 | or declaration together with attached supporting documentation demonstrating that:

1 H(2)(a)(i) the party has made a good faith attempt to provide written notice to the
2 individual or to the individual's attorney that the individual or the attorney had 14 days from the
3 date of the notice to object;

4 H(2)(a)(ii) the notice included the proposed subpoena and sufficient information about
5 the litigation in which the individually identifiable health information was being requested to
6 permit the individual or the individual's attorney to object; *[and]*

7 H(2)(a)(iii) the individual did not object within the 14 days or, if objections were made,
8 they were resolved and the information being sought is consistent with *[such]* that resolution[.];
9 and

10 H(2)(a)(iv) *[The]* the party issuing a subpoena *[must also certify]* certifies that he or she
11 will, promptly upon request, permit the patient or the patient's representative to inspect and copy
12 the records received.

13 H(2)(b) Objection. Within 14 days from the date of a notice requesting individually
14 identifiable health information, the individual or the individual's attorney objecting to the
15 subpoena shall respond in writing to the party issuing the notice, stating the reason for each
16 objection.

17 H(2)(c) Time for compliance. Except as provided in subsection *[(4) of this section]* H(4) of
18 this rule, when a subpoena is served upon a custodian of individually identifiable health
19 information in an action in which the entity or person is not a party, and the subpoena requires
20 the production of all or part of the records of the entity or person relating to the care or treatment
21 of an individual, it is sufficient compliance *[therewith]* with the subpoena if a custodian delivers by
22 mail or otherwise a true and correct copy of all of the records responsive to the subpoena within
23 *[five]* 5 days after receipt thereof. Delivery shall be accompanied by an affidavit or a declaration as
24 described in subsection *[(3) of this section]* H(3) of this rule.

25 H(2)(d) Method of compliance. The copy of the records shall be separately enclosed
26 in a sealed envelope or wrapper on which the *[title]* name of the court, case name and number of

1 the action, name of the witness, and date of the subpoena are clearly inscribed. The sealed
2 envelope or wrapper shall be enclosed in an outer envelope or wrapper and sealed. The outer
3 envelope or wrapper shall be addressed as follows: if the subpoena directs attendance in court, to
4 the clerk of the court, or to the judge thereof if there is no clerk; if the subpoena directs
5 attendance at a deposition or other hearing, to the officer administering the oath for the
6 deposition[,] at the place designated in the subpoena for the taking of the deposition or at the
7 officer's place of business; in other cases involving a hearing, to the officer or body conducting the
8 hearing at the official place of business; if no hearing is scheduled, to the attorney or party issuing
9 the subpoena. If the subpoena directs delivery of the records to the attorney or party issuing the
10 subpoena, then a copy of the proposed subpoena shall be served on the person whose records are
11 sought, and on all other parties to the litigation, not less than 14 days prior to service of the
12 subpoena on the entity or person. Any party to the proceeding may inspect the records provided
13 and/or request a complete copy of the records. Upon request, the records must be promptly
14 provided by the party who issued the subpoena at the requesting party's expense.

15 H(2)(e) **Inspection of records.** After filing and after giving reasonable notice in
16 writing to all parties who have appeared of the time and place of inspection, the copy of the
17 records may be inspected by any party or by the attorney of record of a party in the presence of
18 the custodian of the court files, but otherwise shall remain sealed and shall be opened only at the
19 time of trial, deposition, or other hearing at the direction of the judge, officer, or body conducting
20 the proceeding. The records shall be opened in the presence of all parties who have appeared in
21 person or by counsel at the trial, deposition, or hearing. Records [*which*] **that** are not introduced in
22 evidence or required as part of the record shall be returned to the custodian who produced them.

23 H(2)(f) **Service of subpoena.** For purposes of this section, the subpoena duces tecum to the
24 custodian of the records may be served by first class mail. Service of subpoena by mail under this
25 section shall not be subject to the requirements of subsection [(3) of section D] **D(3) of this rule.**

26 H(3) **Affidavit or declaration of custodian of records.**

1 H(3)(a) **Content.** The records described in subsection [(2) of this section] **H(2) of this**
2 **rule** shall be accompanied by the affidavit or declaration of a custodian of the records, stating in
3 substance each of the following:

4 H(3)(a)(i) that the affiant or declarant is a duly authorized custodian of the records
5 and has authority to certify records;

6 H(3)(a)(ii) that the copy is a true copy of all the records responsive to the subpoena;
7 and

8 H(3)(a)(iii) that the records were; prepared by the personnel of the entity or **the**
9 person, acting under the control of either[,]; **prepared** in the ordinary course of the entity's or **the**
10 person's business[,]; **and prepared** at or near the time of the act, condition, or event described or
11 referred to therein.

12 H(3)(b) **When custodian has no records or fewer records than requested.** If the
13 entity or person has none of the records described in the subpoena, or only a part thereof, the
14 affiant or declarant shall so state in the affidavit or declaration and shall send only those records of
15 which the affiant or declarant has custody.

16 H(3)(c) **Multiple affidavits or declarations.** When more than one person has knowledge of
17 the facts required to be stated in the affidavit or declaration, more than one affidavit or
18 declaration may be used.

19 H(4) **Personal attendance of custodian of records may be required.**

20 H(4)(a) **Required statement.** The personal attendance of a custodian of records and
21 the production of original records is required if the subpoena duces tecum contains the following
22 statement:

23 _____
24 The personal attendance of a custodian of records and the production of original records is
25 required by this subpoena. The procedure authorized pursuant to Oregon Rule of Civil Procedure
26 55 H(2) shall not be deemed sufficient compliance with this subpoena.

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H(4)(b) **Multiple subpoenas.** If more than one subpoena duces tecum is served on a custodian of records and personal attendance is required under each pursuant to paragraph [(a) of this subsection] **H(4)(a) of this rule**, the custodian shall be deemed to be the witness of the party serving the first such subpoena.

H(5) **Tender and payment of fees.** Nothing in this section requires the tender or payment of more than one witness and mileage fee or other charge unless there has been agreement to the contrary.

H(6) **Scope of discovery.** Notwithstanding any other provision, this rule does not expand the scope of discovery beyond that provided in Rule 36 or Rule 44.