

COUNCIL ON COURT PROCEDURES

DRAFT HISTORY

OF ORCP 55

2011-2013 BIENNIUM

1 | **SUBPOENA**

2 | **RULE 55**

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

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

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

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

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

24 | H(2)(a) The attorney for the party issuing a subpoena requesting production of
25 | individually identifiable health information must serve the custodian or other keeper of such
26 |

1 information either with a qualified protective order or with an affidavit or declaration together
2 with attached supporting documentation demonstrating that:

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

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

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

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

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

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

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

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

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

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

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

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

8 **H(3)(a)(iii)** that the records were prepared by the personnel of the entity or person
9 acting under the control of either, in the ordinary course of the entity's or person's business, at
10 or near the time of 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
12 only a part thereof, the affiant or declarant shall so state in the affidavit or declaration and shall
13 send only those 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
15 the 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
21 records is required by this subpoena. The procedure authorized pursuant to Oregon Rule of
22 Civil Procedure 55 H(2) shall not be deemed sufficient compliance with this subpoena.
23 _____

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

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

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

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1 SUBPOENA

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9 individual and created or received by a health care provider, health plan, employer, or health care
10 clearinghouse; and which relates to the past, present, or future physical or mental health or
11 condition of an individual; the provision of health care to an individual; or the past, present, or
12 future payment for the provision of health care to an individual.

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

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

24 H(2)(a) The attorney for the party issuing a subpoena requesting production of individually
25 identifiable health information must serve the custodian or other keeper of such information either
26 with a qualified protective order or with an affidavit or declaration together with attached

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

5 **H(2)(a)(ii)** the notice included the proposed subpoena and sufficient information about the
6 litigation in which the individually identifiable health information was being requested to permit
7 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, they
9 were resolved and the information being sought is consistent with such resolution. The party
10 issuing a subpoena must also certify that he or she will, promptly upon request, permit the patient
11 or the patient's representative to inspect and copy the records received.

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

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

23 H(2)[(c)](d) The copy of the records shall be separately enclosed in a sealed envelope or
24 wrapper on which the title and number of the action, name of the witness, and date of the
25 subpoena are clearly inscribed. The sealed envelope or wrapper shall be enclosed in an outer
26 envelope or wrapper and sealed. The outer envelope or wrapper shall be addressed as follows: [(i)]

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

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

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

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

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

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

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

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

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

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

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

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

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

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22 H(4)(b) If more than one subpoena duces tecum is served on a custodian of records and
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24 custodian shall be deemed to be the witness of the party serving the first such subpoena.

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

1 | contrary.

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

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12 the patient or the patient's representative to inspect and copy the records received.

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18 served upon a custodian of individually identifiable health information in an action in which the
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5 subpoena for the taking of the deposition or at the officer's place of business; [(iii)] in other
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10 or near the time of 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
12 only a part thereof, the affiant or declarant shall so state in the affidavit or declaration and shall
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14 H(3)(c) When more than one person has knowledge of the facts required to be stated in
15 the affidavit or declaration, more than one affidavit or declaration may be used.

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23 Civil Procedure 55 H(2) shall not be deemed sufficient compliance with this subpoena.
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SUBPOENA

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

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2 personal attendance is required under each pursuant to paragraph (a) of this subsection, the
3 custodian shall be deemed to be the witness of the party serving the first such subpoena.

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

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

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1 SUBPOENA

2 RULE 55

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4 H Individually identifiable health information.

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

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

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

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

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

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

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

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

13 **H(2)(b) Within 14 days from the issuance of a notice requesting individually**
14 **identifiable health information, the party objecting to any such request shall respond in**
15 **writing to the party issuing the subpoena, specifying in detail the grounds for each objection.**

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

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

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

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

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

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

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

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

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

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

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

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

18 _____
19
20 The personal attendance of a custodian of records and the production of original
21 records is required by this subpoena. The procedure authorized pursuant to Oregon Rule of
22 Civil Procedure 55 H(2) shall not be deemed sufficient compliance with this subpoena.
23 _____
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1 H(4)(b) If more than one subpoena duces tecum is served on a custodian of records and
2 personal attendance is required under each pursuant to paragraph (a) of this subsection, the
3 custodian shall be deemed to be the witness of the party serving the first such subpoena.

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

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

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