

Policy Name	Subpoenas for Disciplinary Hearings			Policy Number	76-10.03
Section Title	Case Decision and Discipline	Section Number	76-10	Former Policy No.	76-3.3
Approval Authority	Agency Director			Effective Date	3/7/2022
Responsible Executive	Chief Operating Officer			Revised Date	7/23/2021
Responsible Office	Administrative Proceedings			Last Reviewed	7/19/2021
Responsible Reviewer	Barrett, Erin				

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**Purpose:**

The purpose of this Directive is to provide for the issuance of subpoenas and for the handling of subpoenaed evidence in connection with disciplinary hearings.

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**Policy:**

The policy is to develop procedures for compliance with Virginia Code § 2.2-4022, which authorizes the issuance of subpoenas.

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**Authority:**

Section 2.2-4022 of the *Code of Virginia* states in part, "The agency or its designated subordinates shall have power to, and on request of any party shall, issue subpoenas...." As such, it is the responsibility of agency personnel to facilitate requests in order to preserve the rights of parties in proceedings.

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**Procedures:**

A. Every notice for a formal hearing shall include a link to the specific board's page on the DHP website that contains procedural instructions for the respondent or his counsel to have the Department process any request for the issuance of a subpoena. The instructions must specify the following:

1. A requirement to provide the complete and correct full name of the person to be subpoenaed as a witness or who is the custodian of records, books, papers or other evidence being sought, or, if the name is unknown, "Records Custodian";
2. A requirement to cite the full physical address (i.e., not the post office box, but the street address, office

number and floor of the building) for the person who is to be subpoenaed. The business or home address of the person may be used;

3. The need to specify the county or city in which such address is located. (The mailing address may be "Richmond;" but the party may be located in Henrico County);
4. The specific description of physical evidence, papers, etc., if the subpoena is for records, papers or other evidence;
5. The name and physical address of the person to whom the records should be delivered;
6. The return date by which records shall be delivered;
7. The requester must inform the Assistant Attorney General OR the APD staff assigned to present the case of each requested subpoena; and
8. For subpoenas for health records, the requester must **simultaneously** provide a copy of the request to counsel for the other party, if known, or to the other party if pro se, and if the request is for the health records of a non-party witness, to the non-party witness as well. Proof of such notice must be attached to the subpoena request. Without a copy of the notice, the Department will not issue the subpoena.

B. Upon receipt of the request, the Director of the Administrative Proceedings Division or his designee shall prepare, approve and sign the subpoena as soon as practical.

1. A copy of any subpoena issued will be mailed by the Director of Administrative Proceedings to the respondent's counsel or the respondent if the subpoena was requested by the Commonwealth; and a copy of any subpoena requested by or on behalf of the respondent will be provided to the prosecutor upon issuance.
2. For subpoenas for health records, the Director of Administrative Proceedings will attach to the subpoena a notice to the individual whose health records are being sought regarding their right to move to quash the

subpoena.

3. A copy of each served and unserved subpoena shall be retained by the Custodian of Records of the appropriate Board.

C. A link to instructions for requesting subpoenas shall also be provided in the notice of an informal fact-finding conference held pursuant to Virginia Code § 2.2-4019.

D. Each subpoena for records, papers or other evidence issued at the request of the Office of the Attorney General shall direct the person to whom it is addressed to deliver the requested items to the Administrative Proceedings Division.

E. Motions concerning subpoenas shall be considered by the presiding Board member.

F. The following instructions shall be used to allow individuals or their legal counsel to request the issuance of subpoenas:

### **INSTRUCTIONS FOR REQUESTING SUBPOENAS**

In accordance with the state law Virginia Code § 2.2-4022, you may request that subpoenas be issued requiring testimony or the production of books, papers, and/or other physical evidence at the proceeding cited in the enclosed notice.

Such requests must be made in writing to the Administrative Proceedings Division at the following address:

Director of Administrative Proceedings

Department of Health Professions

9960 Mayland Drive, Suite 300

Henrico, VA 23233-1463

The person requesting the subpoena must be a party to the proceeding or a legal representative for that party.

Copies of all requests must also be delivered or mailed to the Assistant Attorney General presenting the case, if applicable, simultaneously with the delivery of the request to the Department of Health Professions, Director of Administrative Proceedings. The request should contain a statement or certification of delivery or mailing to the Assistant Attorney General whose name is shown as receiving a copy of the notice of this proceeding. Their street address is: Office of the Attorney General, 202 North Ninth Street, Richmond, Virginia 23219, Telephone: 804-786-2071.

A. All requests for a witness (testimony) must include the following:

1. The full and complete name of the person to be subpoenaed.
2. The full and complete physical address (post office box will not suffice) of the person. Also, the county or city of that location must be specified. For example:

Leslie K. Doe, Jr., R.N.

Short Pump Hospital

6606 West Broad Street, 4th floor

Richmond, Virginia 23230-1717

County of Henrico