

Subpoena Response & Records Affidavit Cheat Sheet

Reviewed by the BastionGPT Clinical Advisory Board · August 2026

A **subpoena response and records affidavit** is the packet a practice assembles when legal process demands client records: intake log, written objection or privilege assertion where grounds exist, custodian affidavit for any copies produced, and a production letter. Confirm authority before any release (45 CFR 164.512(e)).

Intake and triage log the deadline starts here

Do: log service date and method, caption, issuing party, compliance date, and the calculated objection deadline.

Pitfall: assuming a 30-day clock; federal civil objections are due in 14 days or by the compliance date, if earlier.

Authority screen order vs subpoena

Do: classify the instrument first: judge-signed order, attorney subpoena, or demand with client authorization.

Pitfall: treating an attorney subpoena as a court order; the two sit in different legal categories.

Scope and privilege review what is actually in play

Do: map the categories demanded, separately kept psychotherapy notes, Part 2 material, and available grounds.

Pitfall: calling everything a psychotherapy note; the definition is narrow and turns on separate storage.

Written objection preserve every ground

Do: serve written objections before the deadline; name the categories, the grounds, and the relief requested.

Pitfall: silence or a blanket refusal; a late objection risks waiving the ordinary grounds.

Privilege assertion protect without revealing

Do: claim the privilege expressly and describe withheld material by category only, never its content.

Pitfall: "all records are HIPAA privileged"; privilege comes from evidence law, and HIPAA is not it.

Custodian affidavit authenticity only

Do: recite the business-record predicates: timing, knowledge, regular course, regular practice, true copies.

Pitfall: certifying clinical accuracy, necessity, or causation; the affidavit authenticates recordkeeping only.

Production letter and close-out match the authority

Do: state what is produced, the method, page count, and withheld categories; log and retain the packet.

Pitfall: producing the lifetime file against a defined-period instrument; over-disclosure is the failure mode.

Before anything is released

- ☐ Authority confirmed: order, assurance, or authorization
- ☐ Attorney subpoena not treated as a court order
- ☐ Objection served inside the deadline window
- ☐ Scope matches the instrument; nothing extra
- ☐ Psychotherapy notes and Part 2 checked separately
- ☐ Affidavit certifies recordkeeping, not opinions
- ☐ Packet logged and retained with the record

Drafting with AI

Give it the instrument's facts: service date and method, caption, compliance date, what is demanded, what authority accompanied it.

"Draft a subpoena response packet: attorney subpoena served August 3, no order or authorization, need objections, a letter seeking a qualified protective order, and an affidavit skeleton."

Never paste client-identifying information into consumer AI tools. BastionGPT is HIPAA-compliant with a signed BAA on every plan.

400 to 900 words
typical packet length

40 to 90 min by hand
clinical team estimate

14 days or less
federal objection window

Court · counsel · your log
who reads it

Subpoena Response & Records Affidavit Template

Copy or print for your practice · Adapt fields to your organization's, payer's and jurisdiction's documentation requirements.

Practice/program: _____ Date served: _____ Received by: _____

Client (initials): _____ Compliance/return date: _____ Objection deadline: _____

Instrument and case

Court and case caption · issuing attorney or agency · method of service · court order attached: yes or no · testimony also commanded

Authority screen (complete before any release)

Judge-signed order · attorney subpoena with satisfactory assurance or qualified protective order · signed client authorization · Part 2 records: order and subpoena both

Scope and privilege review

Categories and date range demanded · psychotherapy notes kept separately · privilege and confidentiality grounds · overbreadth, burden, service defects

Objection or response letter

Served by the earlier of the compliance date or the rule's window · grounds and relief requested · authorization or protective order sought · nothing produced until resolved

Custodian affidavit (recordkeeping only)

Signer, role, and basis of knowledge · records identified with page count · timing, knowledge, regular course, regular practice · true copies · no-record statement if a category is empty

Production or nonproduction and close-out

Date, method, pages or media · withheld categories and basis · retained with the underlying record and any legal hold

Completed by (name and role): _____ Signature: _____ Date: _____