

**SEARCH WARRANTS RELATED TO DRUG
AND ALCOHOL ABUSE REHABILITATION**

The purpose of this order is to prevent the inadvertent and unlawful interference with the confidentiality of patient records maintained by drug or alcohol abuse programs, while outlining the procedures necessary to ensure the admissibility of such records in court pursuant to a search warrant. If any questions arise with respect to the interpretation or application of this order, members should contact the Legal Division.

I. POLICY

It is the policy of the San Francisco Police Department to comply with applicable State and Federal laws in executing search warrants related to drug and alcohol abuse rehabilitation programs.

II. GUIDELINES

Volume 42 United States Code (Section 290dd-3, 290ee-3), 42 CFR Ch. 1 (A), Part 2, California Health and Safety Code Sections 11878, 11977, and Welfare and Institutions Code Section 5325 et seq. regulate the confidentiality of patient records. The following summarizes these sections:

- A. Absent the express consent of the person(s) under investigation, patient records of a drug or alcohol abuse program may never be obtained for use in connection with a criminal action unless a subpoena is served and a court order is secured.
- B. "Good cause" must be shown for production of these records. Good cause consists of proof that disclosure is necessary to protect against a threat to life or serious bodily injury, to aid in the investigation of a serious crime, or where the patient has offered testimony pertaining to the content of the records.

- C. Advance notice of the application for the court order must be given to the program and/or the patient (if known), and a reasonable opportunity for the program/patient to appear at the hearing or submit a responsible statement must be afforded. It is recommended that whenever circumstances reasonably permit, the required notice be made in writing, specifying the date, time and place of the hearing and be presented 48 hours in advance.
 - D. If the program is operated by any department or agency of the federal, state or local government, counsel for the program must be present to represent the program. Such counsel must be independent of any attorney appearing in support of the issuance of the court order.
 - E. The judge must make explicit findings (preferably on record) that the criteria for issuance of the court order have been satisfied and that the requirement for appearance of counsel for the program has been satisfied.
 - F. Such records shall remain confidential and shall be disclosed only as expressly authorized by the court order.
 - G. It is also recommended that at the hearing, copies of the federal statute and rules be provided to the judge for reference.
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