

# INSTRUCTIONS FOR EX PARTE PETITION FOR ORDER TO RELEASE MEDICAL RECORDS

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The Health Insurance Portability and Accountability Act (HIPAA) provides that certain entities, like most healthcare insurance companies and providers, are responsible for safeguarding a patient's protected health information. Because of that, if you need the decedent's medical records, you will need to petition the court for an order providing that the medical facility turn over the medical records to you. (NRS 629.061.) A common reason you might need medical records released to you is because a life insurance company wants to see the reason or cause of death before releasing insurance proceeds.

In order to obtain a court order that authorizes a hospital or medical provider to turn over medical records to you, follow these eight steps:

## **Step 1: Collect information.**

First, you will need to know the name and address of every medical facility (*e.g.* hospitals, doctors' offices) from whom you want records.

**NOTE!** Make sure you list the facility that is holding the medical records you want. A doctor can work for a hospital and have her own clinic, so you will have to decide who has the decedent's medical records. Use the facility name and address where you think the records are held, and when in doubt, list both. If you are looking for medical records to show the cause of death, you should include the facility and address of the place where the decedent died.

Then, gather a list of all the persons who have equal or higher priority than you to authorize the release of medical records. You will need their names, ages, relationships to decedent, and addresses. The order of priority of persons who can request medical records is as follows:

1. The decedent's spouse;
  2. The decedent's adult son or daughter;
  3. The decedent's parents;
  4. The decedent's adult brother or sister;
  5. The decedent's grandchildren;
  6. Any family entitled to share in the distribution of the estate.
- (NRS 139.040.)

Find out where you are in the list above, then gather the names, ages, and addresses of all the people who are equal or higher than you on that list.

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*This document has been prepared as a courtesy and to assist you with completing your court filing. It is not to be construed as providing legal advice or representation on how to prepare your case.*

## **Step 2: Fill out packet.**

Fill out the attached packet and complete all the forms carefully, providing all the requested information in all blanks. You, the person completing the packet, are the petitioner. Do not forget to sign the petition and verification.

This packet also includes the consent form in Step 3. (Remember, you do not fill out the consent form. Read through Step 3 for more information.)

## **Step 3: Gather consent forms.**

Refer back to your list of family members that you compiled in Step 1 and that you included in your petition. Each person on that list who consents to the release of medical records should complete a consent form. Remember, you do not fill out this form; the family members who consent do. Also remember that if you are the person of highest priority, or if you do *not* have the consent of the family members of equal or higher priority than you, then you will not need this step. If you do have the consents of family members, have each person fill out a consent form. You might need to ask for, copy, or print out more than one consent form if you have more than one family member filling out a consent.

## **Step 4: Fill out affidavit.**

Refer back to your list of family members that you compiled in Step 1 and that you included in your petition. Go through that list and note which family members on that list did not fill out a consent to the release of medical records in Step 3. An explanation for each of those family members needs to be provided in an affidavit. You can pick up a blank affidavit from the Civil Law Self-Help Center or get one from [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org).

You will explain in the affidavit why you did not get the consent from each of those family members (*e.g.*, no one knows how to contact that person, the person is estranged from the family, or the person consents but is deployed and can't fill out a consent, etc.). Once you have completed the affidavit, get it notarized by a notary public.

## **Step 5: Attach documents to your petition.**

Gather the following documents and attach them to the back of your petition behind the appropriate Exhibit sheet:

1. A copy of your picture ID.
2. A copy of the death certificate.
3. A copy of the will, if there was one.
4. Consent forms filled out by the people of equal or higher priority than you who consent to the release of medical records, if there are such people.
5. An affidavit filled out by you explaining why the people of equal or higher priority than you have not filled out a consent form, if there are such people.

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### **Step 6: File packet.**

After you complete the petition and order and the packet is ready with your attachments, submit the entire packet to the Eighth Judicial District Court. The clerk's office where you submit the packet is on the 3rd floor of the Regional Justice Center at 200 Lewis Avenue, Las Vegas, NV 89101. There is no fee to file.

### **Step 7: Check status of case.**

After filing your petition, you should continuously check the court docket to see if anyone has filed an objection. You can go to the Eighth Judicial Court website (<https://www.clarkcountycourts.us/Anonymous/default.aspx>) and search under "Family Records" by the decedent's name to see if anyone has filed an objection. If an objection gets filed, the court might set the matter for hearing. Note that hearing date and attend the hearing. However, if there are no objections, generally the court will not set the matter for hearing.

You should also continuously check the probate court's matter listing or "Pickup List" to see if the court has granted your petition. Go to the probate webpage (<http://www.clarkcountycourts.us/departments/probate/>) and click on the link for "The District Court Probate Pickup List." Search for the decedent's name under the column "Name of the Estate" then follow it to the "Status" column. If your petition has been granted, you will see the list will reflect "OK," and that means the judge has signed off on the order.

### **Step 8: Get Order.**

Once the judge has signed off on the order, you can wait for the order to be mailed to you. If there are no objections filed to your petition, you can expect to receive the order in the mail about 3 to 4 weeks after filing your petition. You will receive a plain order as well as a certified order in the mail. You can also pick up a certified copy of the order at the clerk's office on the 3rd floor where you filed. Once you have the order, you can bring it to the medical facility and show them that the court has authorized the release of medical records to you. Some medical facilities might request to see the certified copy of the order.