

The Search Warrant

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... Suppose law enforcement officials unexpectedly appear at your office and inform you that they are there to execute a search warrant for the treatment file belonging to one of your patients. They ask you to cooperate and to lead them to the file. They explain that your client is suspected of being involved with serious criminal activity. What should you do? The answer will likely vary from state to state, since the law may be very specific in this regard. Generally, however, the law enforcement official, if armed with a search warrant (usually approved by a judge after a showing of some proof – e.g., probable cause – by the requester of the warrant), will be able to lawfully seize the file.

There are several things that would generally be wise to do, such as objecting (claiming confidentiality and privilege) to the seizure and requesting that the officers not seize the file. Additionally, the therapist can request that the officers place the material in a sealed envelope and that that they bring it to a judge, letting the judge know of the claims of confidentiality and psychotherapist-patient privilege. Any such requests should be accompanied by asking that the officers document, and allow you to document, the various requests. In some states and situations the therapist might need to ask for a “special master” to accompany the officers because of the claim of privilege. The patient should be informed about the search and seizure at the earliest time possible and permissible.