Shield Law affirmation in support of information request

As required by New York General Business Law Section 394-i

ATTENTION:

» Pursuant to N.Y. General Business Law Section 394-i, which is part of a collection of statutes known as New York's "Shield Law," this Affirmation must be provided with any request for information "**regarding** legally protected health activity,"* as defined in Criminal Procedure Law Section 570.17. It should also be used if it is **unclear** whether a request is regarding such activity. This Affirmation is ***not*** required if it is clear that the request is not regarding legally protected health activity.

» This Affirmation is also ***not*** required for requests for information made in writing by a patient or their legal representative for the patient's own records, or when the patient or their legal representative has granted permission to release such information through a written authorization or signed consent form.

» If a request is regarding legally protected health activity or if it is unclear whether the request is regarding legally protected health activity, the recipient ***cannot produce any information or records unless the requestor provides this Affirmation or includes equivalent language in their request***.

» For requests regarding legally protected health activity, the Shield Law also requires the recipient of an information request to provide written notice to the Office of the New York Attorney General (OAG) and affected individuals and imposes a 30-day waiting period ***before*** any production can be made, except under certain circumstances. For more information about what other requirements may be applicable under the Shield Law, please review OAG's guidance: **ag.ny.gov/shield-law-guidance**.

Instructions

» Complete all portions of Sections A and C. These sections are **required**.

» Section B: Select the appropriate statement in each Part, as applicable.

  » **Part I**, the "**Coverage Affirmation**," is used to determine whether a request is covered by the Shield Law, i.e. whether it is "regarding" legally protected health activity.

    » If the affiant checks the box indicating that the request is not regarding legally protected health activity and that any information received will not be used to penalize such activity, no further steps are required. Proceed to Part C.

    » **If the affiant checks the box indicating that the request is regarding legally protected health activity, proceed to Part II.**

  » **Part II**, the "**Affirmation of Permitted Purpose**," is required for requests that are covered by the Shield Law, i.e. for requests that are "regarding" legally protected health activity. Part II is used to determine whether the information being requested is for a purpose that is permitted under the Shield Law.

» **If the requestor provides the necessary Affirmation, the recipient can rely on it to determine whether any additional requirements apply. Submitting a false affirmation is subject to penalties.**

* "Legally protected health activity" means (i) the receipt or attempt to receive reproductive health care or gender-affirming care, regardless of such person's location; (ii) any act or omission undertaken while physically present in this state to aid or encourage, or attempt to aid or encourage, any person in the receipt of or attempt to receive reproductive health care or gender-affirming care, regardless of the location of the recipient or provider of such care; (iii) the provision of or attempt to provide insurance coverage for reproductive health care or gender-affirming care, by any entity located, headquartered, or incorporated in the state, regardless of the location of the recipient or provider of such care; or (iv) the provision of or attempt to provide reproductive health care or gender-affirming care by a person duly licensed under the laws of this state and physically present in this state, regardless of the recipient's location. This definition applies to providers, facilitators, seekers, and recipients of reproductive health care and gender-affirming care, so long as their conduct is otherwise lawful in New York. N.Y. Crim. Proc. Law Section 570.17(1)(c).

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Section A

Name of Requestor:	
Requesting Entity, if applicable:	
Type of Request (e.g., subpoena, request for documents/information, investigative demand, etc.):	
Subject Matter of Inquiry or Proceeding:	
Description of Information Sought:	
If applicable:	
Court of Record:	
Case Caption:	
Case Number:	

Section B

Instructions: Please refer to OAG's Shield Law guidance for further information on how to complete this Section: **ag.ny.gov/shield-law-guidance**

Part I – Coverage Affirmation

I affirm that (check one):

☐ The attached information request **is not** regarding legally protected health activity, as defined in Criminal Procedure Law Section 570.17; any information related to legally protected health activity included in the response is inadvertent; and any information obtained will not be used to impose civil or criminal liability, professional sanctions, or any other legal consequences upon a person or entity for any legally protected health activity.

If checked, proceed to Section C. The Shield Law does not require any further steps before information may be produced.

OR

☐ The attached information request **is** regarding legally protected health activity, as defined in Criminal Procedure Law Section 570.17.

If checked, proceed to Part II.

Part II – Affirmation of Permitted Purpose

I affirm that (check one):

☐ The attached information request is **not related** to, nor will any information obtained **be used in**, any investigation or proceeding that seeks to impose civil or criminal liability, professional sanctions, or any other legal consequences upon a person for any legally protected health activity, as defined in Criminal Procedure Law Section 570.17. (If checked, proceed to Section C. Further steps may be required under the Shield Law before any information may be produced.).

If checked, proceed to Section C. Further steps may be required under the Shield Law before any information may be produced.

OR

☐ The attached information request is related to an investigation or proceeding that seeks to impose civil or criminal liability, professional sanctions, or any other legal consequences upon a person for any legally protected health activity and, the investigation or proceeding:

- was brought by the person who received the reproductive health care or gender-affirming care, or the person's legal representative, so long as the person gives express consent unless express consent is not feasible due to their injury or death; and
- is actionable, in an equivalent or similar manner, under the laws of New York State; and
- sounds in (check at least one):
  - ☐ tort
  - ☐ contract

If checked, proceed to Section C. Further steps may be required under the Shield Law before any information may be produced.

OR

☐ The attached information request is related to an investigation or proceeding that seeks to impose civil or criminal liability, professional sanctions, or any other legal consequences upon a person for any legally protected health activity and the request is made by the subject of that investigation or proceeding or their legal representative.

If checked, proceed to Section C. Further steps may be required under the Shield Law before any information may be produced.

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Section C

I affirm this ____ day of _____ 20___ , under penalty of perjury under the laws of New York State, which may include a fine or imprisonment, that the foregoing Affirmation in Support of Information Request is true, complete, and correct. I further affirm, under penalty of perjury under the laws of New York State, my understanding that making a false statement on this Affirmation in Support of Information Request subjects me to the jurisdiction of New York State courts and may result in penalties provided by law, including, but not limited to, penalties under New York General Business Law Section 394-i, and other legal consequences.

Signature	Print name

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