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§ 2020.410. What deposition subpoena commanding only production of business records to contain; Description of records; Records pertaining to consumer

- (a) A deposition subpoena that commands only the production of business records for copying shall designate the business records to be produced either by specifically describing each individual item or by reasonably particularizing each category of item, and shall specify the form in which any electronically stored information is to be produced, if a particular form is desired.
- (b) Notwithstanding subdivision (a), specific information identifiable only to the deponent's records system, like a policy number or the date when a consumer interacted with the witness, is not required.
- (c) A deposition subpoena that commands only the production of business records for copying need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it. It shall be directed to the custodian of those records or another person qualified to certify the records. It shall command compliance in accordance with [Section 2020.430](#) on a date that is no earlier than 20 days after the issuance, or 15 days after the service, of the deposition subpoena, whichever date is later.
- (d) If, under [Section 1985.3](#) or [1985.6](#), the one to whom the deposition subpoena is directed is a witness, and the business records described in the deposition subpoena are personal records pertaining to a consumer, the service of the deposition subpoena shall be accompanied either by a copy of the proof of service of the notice to the consumer described in subdivision (e) of [Section 1985.3](#), or subdivision (b) of [Section 1985.6](#), as applicable, or by the consumer's written authorization to release personal records described in paragraph (2) of subdivision (c) of [Section 1985.3](#), or paragraph (2) of subdivision (c) of [Section 1985.6](#), as applicable.

History

Added [Stats 2004 ch 182 § 23 \(AB 3081\)](#), operative July 1, 2005. Amended [Stats 2012 ch 72 § 17 \(SB 1574\)](#), effective January 1, 2013.

Notes

↳ Derivation:

↳ Editor's Notes—

↳ Amendments:

↳ Derivation:

Former CCP § 2020(d)(1), (2), added Stats 1986 ch 1334 § 2, amended [Stats 1987 ch 86 § 5](#), [Stats 1992 ch 876 § 9](#), [Stats 1993 ch 926 § 8](#), [Stats 1999 ch 444 § 3](#), [Stats 2002 ch 1068 § 1](#).

↳ Editor's Notes—

For notes of decisions derived from cases decided under [CCP § 2020](#), see [CCP § 2020.010](#).

↳ Amendments:

2012 Amendment:

Added “, and shall specify the form in which any electronically stored information is to be produced, if a particular form is desired” in subd (a).

Commentary

Law Revision Commission Comments:

2004—

Subdivisions (a) and (b) of [Section 2020.410](#) continue the first sentence of former [Section 2020\(d\)\(1\)](#) without substantive change.

Subdivision (c) continues the second, third, and fourth sentences of former [Section 2020\(d\)\(1\)](#) without substantive change.

Subdivision (d) continues former [Section 2020\(d\)\(2\)](#) without change.

Notes to Decisions

↳ 1. Generally

↳ 2. Construction with Other Law

↳ 3. Sanctions

↳ 4. Consumer Notice

↳ 1. Generally

Contrary provisions in [CCP §§ 1985](#) and [1987.5](#) are inconsistent with, and therefore superseded by, [CCP § 2020.510](#) because [CCP § 2020.030](#) provides that the general subpoena provisions that include §§ 1985 and 1987.5 apply to a deposition subpoena except as modified in the chapter, and treating §§ 1985 and 1987.5 as the controlling provision would be at odds with § 2020.030 and with the fundamental understanding that has prevailed since the adoption of California's Civil Discovery Act, [CCP §§ 2016.010](#) et seq., that to the extent that its provisions concerning nonparty discovery overlap or conflict with other provisions of more general application, the provisions of the Civil Discovery Act prevail. Moreover, because a supporting affidavit need not be served with a deposition subpoena under [CCP § 2020.310](#), requiring only attendance and testimony, or with a deposition subpoena under [CCP § 2020.410](#), requiring only the production of business records, there is no apparent reason why an affidavit should be required when a deposition subpoena under § 2020.510 calls for both attendance and testimony and the production of documents. [Terry v. SLICO \(Cal. App. 1st Dist. 2009\)](#), [175 Cal. App. 4th 352](#), [95 Cal. Rptr. 3d 900](#), [2009 Cal. App. LEXIS 1022](#).

↳ 2. Construction with Other Law

Trial court properly refused to enforce a subpoena served eight days before trial. [Rosenfeld v. Abraham Joshua Heschel Day School, Inc. \(Cal. App. 2d Dist. 2014\)](#), [226 Cal. App. 4th 886](#), [172 Cal. Rptr. 3d 465](#), [2014 Cal. App. LEXIS 465](#).

3. Sanctions

Because a deposition subpoena for production of business records relating to the amount a third-party factor paid to purchase a medical lien from a health care provider was reasonably calculated to lead to the discovery of admissible evidence relating to the reasonable value of medical services provided, the documents were discoverable in a personal injury action. The defense thus had substantial justification to oppose a motion to quash, and an award of sanctions was error. [Dodd v. Cruz \(Cal. App. 2d Dist. 2014\)](#), 223 Cal. App. 4th 933, 167 Cal. Rptr. 3d 601, 2014 Cal. App. LEXIS 118, op. withdrawn, (Cal. June 11, 2014), 2014 Cal. LEXIS 3829.

4. Consumer Notice

Business records deposition subpoenas served on nonparty state agencies were defective because the subpoenas sought records containing consumer personal information, as to which disclosure was unauthorized without consumer notice. [Board of Registered Nursing v. Superior Court \(Cal. App. 4th Dist. 2021\)](#), 273 Cal. Rptr. 3d 889, 59 Cal. App. 5th 1011, 2021 Cal. App. LEXIS 42.

Research References & Practice Aids

Treatises:

- [Cal. Forms Pleading & Practice \(Matthew Bender\) ch 193 "Discovery: Depositions"](#).
- [Cal. Points & Authorities \(Matthew Bender\) ch 83 "Discovery: Depositions" § 83.46](#).
- [Cal. Points & Authorities \(Matthew Bender\) ch 83 "Discovery: Depositions" § 83.50](#).
- [Cal. Points & Authorities \(Matthew Bender\) ch 83 "Discovery: Depositions" § 83.60](#).
- [Cal. Employment Law \(Matthew Bender\), § 61.04](#).
- [Cal. Fam. Law Practice & Procedure \(Matthew Bender\), § 110.30](#).
- [Cal. Fam. Law Practice & Procedure \(Matthew Bender\), § 110.32](#).

Practice Guides

- Matthew Bender® Practice Guide: California E-Discovery and Evidence, 6.14.
- Matthew Bender® Practice Guide: California E-Discovery and Evidence, 6.17-6.18.

Hierarchy Notes:

- [Cal Code Civ Proc Pt. 4](#)
- [Cal Code Civ Proc Pt. 4, Title 4](#)
- [Cal Code Civ Proc Pt. 4, Title 4, Ch. 6](#)
- [Cal Code Civ Proc Pt. 4, Title 4, Ch. 6, Art. 4](#)

