

PHL § 18 Requirements for Record Release

(1) “Distributee(s)” Only

- a. Preliminary check of record to determine validity of claim (e.g., is there a spouse listed when brother claims status?)
- ➔ b. Necessary documentation to release under § 18:
 - 1. Affidavit attesting to “dual” compliance with statute;
 - 2. Copy of certified copy of decedent’s death certificate;
 - 3. Fully executed HHC or OCA HIPAA-Compliant Authorization Form ***signed by the distributee.***

(2) Power of Attorney Only

- a. Power of Attorney executed by a patient empowering an ***attorney***, and no other person, to make written request for patient information.
- b. Power of attorney must be ***signed by the patient*** and notarized.
- c. Power of attorney must explicitly state that it is authorizing the holder “to execute a written request for patient information under § 18 of the Public Health Law.”
- ➔ d. Necessary documentation to release under § 18:
 - 1. Signed & notarized power of attorney;
 - 2. Fully executed HHC or OCA HIPAA-Compliant Authorization Form ***signed by the attorney*** “appointed” or named as attorney-in-fact by the power of attorney.

(3) Combination of “Distributee(s)” and Power of Attorney

- a. Simply requires all that is necessary to satisfy both situations described above (but: only one authorization form required).

- ➔ b. Necessary documentation to release under § 18:
1. Affidavit attesting to “dual” compliance with statute;
 2. Copy of certified copy of decedent’s death certificate;
 3. Notarized power of attorney ***signed by the distributee***;
 4. Fully executed HHC or OCA HIPAA-Compliant Authorization Form ***signed by the attorney*** “appointed” or named as attorney-in-fact by the power of attorney.

HHC Affidavit Form & Legal Language
Requirement for All Other Notarized Distributee Affidavits

We have drafted an affidavit form for individuals claiming to be distributees and requesting guidance concerning our § 18 requirements. The form is available for download from the Intranet HIPAA webpage; a sample appears below on page 3 of this fact sheet. Distributees who do not use our affidavit form (and inquiring attorneys seeking guidance on our requirements, as well) should be advised that any affidavit submitted to us in support of their claim of distributee status must be notarized and must contain, at a minimum, the following two attestations in substantially the same or similar language:

1. “I am a ‘distributee’ of the named decedent’s estate as the term ‘distributee’ is used in § 18 of the New York Public Health Law and defined by § 1-2.5 of the New York Estates, Powers and Trusts Law.
2. “There has been no ‘personal representative,’ as that term is defined by § 1-2.13 of the New York Estates, Powers and Trusts Law, appointed for the deceased subject named herein.”

Considerations for Appropriate Power of Attorney

There are a variety of powers of attorney provided for under the New York General Obligations Law. Some can be executed conferring very specific and limited powers (e.g., solely to execute real estate documents); others can be of a broad and general nature. Please note that a General or “Universal” power of attorney ***will not be sufficient*** to convey the power to release medical records. The new law requires that the power of attorney ***explicitly “authoriz[e] the holder to execute a written request for patient information.”*** If that specific power, in substantially the same or similar language, does not appear in the power of attorney, it should not be honored.

**Affidavit of Status as “Distributee” and “Qualified Person”
Under § 18(1)(g) of the New York Public Health Law**

State of New York }
County of _____ } **ss:**

I, _____, depose and say that I am a distributee of the estate of _____, as the term “distributee” is used in § 18(1)(g) of the New York Public Health Law and as defined by § 1–2.5 of the New York Estates, Powers and Trusts Law.

I further depose and say that a “personal representative,” as defined by § 1–2.13 of the New York Estates, Powers and Trusts Law (*i.e.*, a person who has received letters to administer the estate of the decedent from the Surrogate’s Court of the State of New York), has not been appointed for the decedent named above.

[signature of affiant]

[typed or printed name of affiant]

[affiant’s address, line 1]

[affiant’s address, line 2]

Subscribed and sworn to before me,
this ____ day of _____, 20__.

[Notary’s Seal:]

[signature of Notary]

[typed or printed name of Notary]