

### **839-002-0030**

#### **Circumstances under Which a Subpoena May be Issued**

(1) The commissioner may issue a subpoena ad testificandum to compel a person to testify under oath when:

(a) A Division determines that the person is a material witness in an investigation being conducted by the Division under ORS 279C.800 to 279C.870, 651.030, 651.050, 651.120 and 651.170, or chapters 652, 653, 658, and 659A;

(b) The information sought from the person is relevant to a lawful investigative purpose and is reasonable in scope; and

(c) The Division has been unable to interview the person after having made reasonable attempts to do so, or the person states that he or she will only consent to an interview if first served with a subpoena.

(2) The commissioner may also issue a subpoena ad testificandum to compel a person to testify under oath about the contents of documents or other things produced in response to a subpoena duces tecum served on the same person.

(3) The commissioner may issue a subpoena duces tecum to compel a person to produce documents or other things when:

(a) A Division determines that the documents or other things are relevant to the Division's investigation being conducted under ORS 279C.800 to 279C.870, 651.030, 651.050, 651.120 and 651.170, or Chapters 652, 653, 658, and 659A;

(b) The documents or other things sought are relevant to a lawful investigative purpose and are reasonable in scope; and

(c) The Division has made a written request for production of documents or things and the person to whom the request was made has failed to comply within the time specified by the Division, unless the commissioner finds a subpoena is necessary to protect the documents and things from destruction.

Stat. Auth.: ORS 651.060, 658.220 & 659A.800

Stats. Implemented: ORS chapter 279C, 651, 652, 653, 658 & 659A

### **839-002-0040**

#### **Subpoena Duces Tecum**

(1) A subpoena duces tecum may be issued to any person who has custody, possession, or control of documents or other things named in the subpoena duces tecum when the conditions set out in OAR 839-002-0030(3) have been met.

(2) A subpoena duces tecum issued to a corporation will be addressed to the records custodian of the corporation.

(3) A subpoena duces tecum will not require production of documents or other things less than 14 days from the date of service upon the person required to produce and permit inspection of the documents or things unless the commissioner finds a shorter period necessary to protect the documents and things from destruction or if the Division has an immediate need for the documents or things being subpoenaed.

(4) The commissioner may also command the person to whom a subpoena duces tecum is issued to produce documents and other things by mail or otherwise, at a time and place specified in the subpoena, without commanding inspection of the originals. The person to whom the subpoena is directed complies if the person produces copies of the specified

items in the specified manner and certifies that the copies are true copies of all documents and other things responsive to the subpoena.

(5) The subpoenaed documents and other things must be produced at the location, time, and date required in the subpoena.

Stat. Auth.: ORS 651.060, 658.220 & 659A.800

Stats. Implemented: ORS chapter 279C, 651, 652, 653, 658 & 659A

### **839-002-0045**

#### **Subpoena Ad Testificandum**

(1) A subpoena ad testificandum may be issued to any person when the conditions set out in 839-002-0030(1) or 839-002-0030(2) have been met.

(2) The subpoena ad testificandum must give the person a reasonable time for preparation and travel to the place of attendance and the place of attendance must be in a suitable place in the vicinity to which testimony is applicable.

Stat. Auth.: ORS 651.060, 658.220 & 659A.800

Stats. Implemented: ORS chapter 279C, 651, 652, 653, 658 & 659A

### **839-002-0050**

#### **Method of Service**

(1) Except as noted in subsections (2) and (3) of this rule, subpoenas must be served in person by delivering a copy to the witness personally and, at the same time, giving or offering to the witness the fees to which the person is entitled for travel to and from the place where the witness is commanded to appear, along with one day's attendance fee. A subpoena may be served by any person 18 years of age or older.

(2) Subpoenas ad testificandum may be served by mail under the following circumstances:

(a) The Division must have, by personal or telephone contact, confirmed the witness's willingness to appear if subpoenaed and certify this on the return of service;

(b) The Division made arrangements for payment to the witness of fees and mileage satisfactory to the witness and pays those fees and mileage; and

(c) The subpoena is sent by certified mail to the witness more than 10 days before the date set for appearance or production of documents or other things and the Division receives a return receipt signed by the witness more than three days prior to that date.

(3) A subpoena duces tecum that commands production of documents or other things but is not accompanied by a subpoena ad testificandum may be served by mailing the subpoena to the person required to produce and permit inspection of the documents or things by first class mail and by certified or registered mail, return receipt requested.

(4) A subpoena duces tecum issued to a corporation will be served in accordance with requirements for service of summons on a corporation pursuant to ORCP 7 D(3)(b).

Stat. Auth.: ORS 651.060, 658.220 & 659A.800

Stats. Implemented: ORS chapter 279C, 651, 652, 653, 658 & 659A; ORCP 7