

ORGANIZATION POLICY

POLICY TITLE: DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR
LAW ENFORCEMENT PURPOSES

POLICY NUMBER: 1315

Onslow Memorial Hospital's (OMH) primary obligation to all patients is caring for their medical needs. When a patient is also involved in a criminal investigation, either as a suspect, witness or victim, that obligation remains the priority. Law enforcement officials, however, also have an important job to do that often involves seeking access to patients, their medical information or other evidence held by OMH. This Policy is designed to help hospital staff and law enforcement officials understand the access and information OMH may provide to law enforcement.

- I. DEFINITIONS:** Certain terms having specific definitions are used in this Policy, and these terms and definitions are as follows:
- A. Individually identifiable health information means information that is a subset of health information, including demographic information collected from an individual, and:
1. Is created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse; and
 2. Relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and
 - i. That identifies the individual; or
 - ii. With respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- B. Protected health information means individually identifiable health information:
1. Except as provided in paragraph (ii) of this definition, that is:
 - i. Transmitted by electronic media;
 - ii. Maintained in any medium described of *electronic media* at 45 CFR § 162.103; or
 - iii. Transmitted or maintained in any other form or medium.
 2. Protected health information excludes individually identifiable information in:
 - i. Education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232g; and
 - ii. Records described at 20 U.S.C 1232g(a)(4)(B)(iv).

II. PURPOSE AND APPLICABLE LAW: The purpose of this Policy is to establish OMH's disclosure of protected health information for law enforcement purposes.

OMH is permitted to disclose protected health information to law enforcement officials and otherwise for the purpose of law enforcement as and to the extent permitted in this Policy and Procedure.

- A. If Required by Law. OMH may disclose protected health information to law enforcement officials and for law enforcement purposes if such disclosure is "required by law" and is enforceable in a court of law.

Unless otherwise required by law, and as is applicable, OMH may disclose protected health information in compliance with, and as limited by, the relevant requirements of:

- **Court Order or Court-Ordered Warrants;**
- **Subpoena or Summons** *issued by a judicial officer*, but not by an attorney;
- **Grand Jury Subpoena;** or
- **Administrative Request**, including an administrative subpoena or summons, a civil or an authorized investigative demand or similar process authorized under law, provided that:
 - (1) the information sought is relevant and material to a legitimate law enforcement inquiry;
 - (2) the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
 - (3) De-Identified information could not reasonably be used.

Disclosures made under this paragraph must be limited to only the amount necessary to comply with the request made pursuant to a requirement by law.

- B. Suspects, Fugitives, Material Witnesses or Missing Persons. OMH may disclose **ONLY** the following protected health information in response to a law enforcement official's request for information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person:

- Name and Address
- Date and Place of Birth
- Social Security Number
- ABO blood type and rh factor
- Type of Injury
- Date and Time of Treatment

- A description of distinguishing physical characteristics, including, height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos
- Date and time of death (if applicable)

In addition, OMH may voluntarily provide such limited protected health information at the oral or written request of someone acting on behalf of law enforcement (e.g., in response to a radio or television broadcast for assistance in identifying a suspect, “Wanted” posters and other public service announcements).

Protected health information related to the individual’s DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue **MAY NOT** be disclosed for the purpose described in this section.

- C. Regarding Victims of Crime (requires opportunity for Patient to agree). Except as required by law, OMH **MAY NOT** disclose protected health information to a law enforcement official’s request for such information about an individual who is, or is suspected to be, a victim of a crime unless OMH determines that the Patient agrees to such a disclosure.

If OMH is unable to obtain the individual’s agreement because of incapacity or other emergency circumstances, OMH may still disclose the requested protected health information provided that:

- the law enforcement official represents that such information is **needed** to determine whether a violation of law by a person other than the victim has occurred, and such information is **not intended to be used against the victim**;
- the law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be **materially** and adversely affected by waiting until the individual is able to agree to the disclosure; AND
- the disclosure is in the **best interests of the individual** as determined by OMH, in the exercise of professional judgment.

This section of OMH’s policy does not preempt state mandatory reporting requirements regarding certain crime victims.

In addition, any disclosure of protected health information concerning victims of abuse, neglect or domestic violence must be in compliance with the policy and procedure Disclosure About Victims of Abuse, Neglect or Violence.

- D. Information About Decedents. OMH may disclose protected health information about a deceased patient to a law enforcement official, in order to alert such officials that the death of the patient may have resulted from criminal conduct.
- E. Reporting Crime on Premises. OMH may disclose to a law enforcement official protected health information that OMH believes, in good faith, constitutes evidence of criminal conduct that occurred on the premises of OMH.

III. PROCEDURE:

- A. As Required by Law. In the case where an employee is presented with a court order or subpoena or other administrative request for the release of protected health information, the employee must forward such document or request to the Privacy Officer.

The Privacy Officer must then arrange for the release of the protected health information requested in accordance with the following, as applicable:

- 1. Court Order, Subpoenas or Summons
When a request is made in a court order, subpoena or summons issued by a judicial officer or a grand jury, the Privacy Officer need only examine the written document and release or disclose the information requested.

A SUBPOENA THAT IS NOT ACCOMPANIED BY A COURT ORDER MUST BE MADE IN ACCORDANCE WITH the HIPAA policy and procedure Disclosure of protected health information in Response to Civil Subpoenas/Discovery Requests or "Qualified Protective Orders".

- 2. Administrative Requests
If an "administrative request" for protected health information has been made, the Privacy Officer must assure that such request meets the three-part test outlined in the section regarding administrative requests above before he or she releases protected health information.

The Privacy Officer may rely on the fact that the administrative request indicates, either on its face or in a separate document, that it meets the three-part test identified above.

- B. Suspects, Fugitives, Material Witnesses, or Missing Persons. Any employee of OMH that is approached by a law enforcement official seeking information about a person for the purpose of identifying a suspect, fugitive, material witness or missing person should direct the law enforcement official to the Privacy Officer.

The Privacy Officer may release ONLY the protected health information listed above in the corresponding section of this Policy.

- C. Crime Victims. Any employee of OMH that is approached by a law enforcement official seeking protected health information concerning a crime victim (or a suspected victim), should direct the law enforcement official to the Privacy Officer.

The Privacy Officer must obtain the Patient's agreement (either orally or in writing) prior to disclosing any information to the law enforcement official.

If OMH chooses to document the Patient's agreement in writing, the **Authorization to Disclose Health Information** may be used.

1. Requesting Patient Permission. The Privacy Officer should contact the Patient and explain the nature of the law enforcement officer's request and determine if the Patient agrees to the disclosures. If the Patient agrees, the Privacy Officer may disclose to the law enforcement official, in accordance with any restrictions the Patient may make on such disclosures.
2. Patient is Not Reachable. If the Patient is not reachable, unless the situation is an emergency (in which case, see paragraph C.3. below) or the request is made to avert serious risk to health or safety (in which case, see Disclosures of protected health information to Avert a Serious Risk to Health or Safety) the law enforcement official should be told that protected health information cannot be released until the Patient is informed and given the opportunity to agree or disagree to the release of such information.

The Privacy Officer may attempt to contact the Patient by telephone in order to obtain authorization. If the Patient answers the phone call in person, the Privacy Officer may discuss the law enforcement officer's request and ask whether the Patient agrees or disagrees to such release of information.

If the Patient does not answer the phone, the Privacy Officer **MUST NOT LEAVE ANY INFORMATION REGARDING THE NATURE OF THE CALL ON THE PATIENT'S VOICEMAIL**. Given the sensitivity of the situation, especially in the case of victims of abuse and violence, information regarding the fact that the Patient has sought treatment may endanger the Patient. Thus, where the Privacy Officer is unable to reach the Patient in person, he or she should politely explain to the law enforcement official that the Patient's protected health information cannot be released until the Patient is contacted in person and the Patient agrees to such disclosure.

3. Incapacity or Emergency Situations. If the Privacy Officer cannot obtain agreement due to the Patient-victim's incapacity or in an emergency

situation, the Privacy Officer should determine from the law enforcement official that disclosure of the protected health information:

- i. is needed to determine whether a violation of law by a person **other than the victim** has occurred;
- ii. is **not intended to be used against the victim**;
- iii. is needed for **immediate law enforcement**, that would be materially and adversely affected by waiting for an authorization from the Patient; AND
- iv. is in the **best interests of the Patient**.

Except in cases of victims of abuse, neglect or domestic violence, an employee of OMH who provides emergency health care off-site in response to a medical emergency can disclose Patient Information to a law enforcement official to the (1) commission and nature of a crime; (2) location of the crime and/or victims; and (3) identity, description and location of the perpetrator.

D. Decedents. Any employee of OMH that is approached by a law enforcement official seeking Patient Information concerning a decedent should direct the law enforcement official to the Privacy Officer.

The Risk Management Department or Privacy Officer may disclose such Protected health information in order to alert law enforcement of the hospital's suspicion that the death resulted from criminal conduct.

E. Crime on Premises. In the case where an employee, in good faith, suspects that certain Protected health information he/she obtained constitutes evidence of criminal conduct that has occurred on its premises, such employee should contact the Privacy Officer with such information. The Privacy Officer, in learning such information, may disclose to a law enforcement official Protected health information that he/she believes, in good faith, constitutes evidence of criminal conduct that has occurred on its premises.

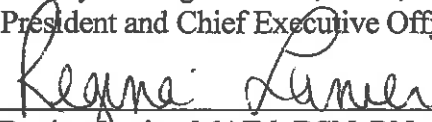
F. Documentation. Any disclosure made under this policy and procedure must be documented in the patient's record in accordance with the policy and procedure Accounting of Disclosures. This documentation must be kept for six years.

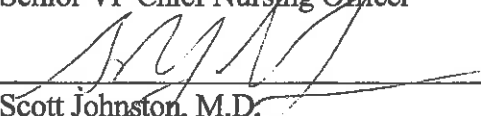
IV. **ANSWERS TO DAY TO DAY QUESTIONS:** The attached flow diagrams and Frequently Asked Questions are intended to assist OMH staff in resolving questions regarding disclosures to law enforcement.

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Frequently Asked Questions Regarding Allowable Disclosures

1. Disclosures allowed on the request of Law Enforcement.

a. May the hospital release patient health information in response to subpoena, court order, search warrant or grand jury subpoena?

Answer: Yes. HIPAA does not change these requirements and the hospital should continue to follow existing procedures. Remember, however, that law enforcement subpoenas seeking records or testimony for trial must be compliant with North Carolina law. For general subpoenas, the rule requires an affidavit or declaration indicating the appropriate notice was provided to the subject of the records or a Qualified Protective Order.

b. If a law enforcement officer presents a patient authorization to obtain the patient's records, must that authorization take a particular form?

Answer: Yes. Authorization forms used by law enforcement must be HIPAA compliant. HIPAA compliant authorization forms are different than the releases law enforcement may have been using in the past. Note also that an authorization should not be combined with other forms, such as a consent to treat form. Direct law enforcement to the hospital's authorization form.

c. What may the hospital disclose if a law enforcement officer asks if a particular person has been admitted to the hospital?

Answer: The hospital may confirm that the person is a patient if:

- The officer asks for the patient by name;
- The patient has had the opportunity to opt out of such disclosures and has not done so; or
- If the patient could not opt out due to incapacity, the hospital believes it is in the best interest of the patient to disclose to law enforcement that the patient has been admitted.

The hospital may disclose the patient's presence in the facility, general condition, and location.

d. If law enforcement asks about a patient who was previously in the hospital but has been discharged or died, may the hospital acknowledge that the patient had been in the hospital?

Answer: Yes. If the officer asks about the patient by name, the hospital may indicate that the patient was previously “treated and released,” or died.

e. Law enforcement wants to arrest a patient upon discharge. May the health care facility disclose actual or anticipated discharge date?

Answer: Not unless disclosure is made to avert a serious and imminent threat to a person or the public. For example, if law enforcement represents that a patient has a warrant for a violent crime, the facility may make those disclosures necessary to avert the threat.

f. If a patient is under arrest or in lawful custody during the hospitalization may the hospital disclose PHI to the law enforcement officer with custody of the patient?

Answer: Yes. For the following purposes:

- The provision of health care to the patient;
- The health and safety of the patient, others in custody, officers, or persons transporting patient;
- Law enforcement activities on the premises of the correctional institution; or
- The safety, security, and good order of the correctional institution.

g. What information can the hospital give to law enforcement about suspects, material witnesses, fugitives, or missing person?

Answer: The fact that a patient is a criminal suspect does not give law enforcement access to unlimited information about the patient. HIPAA does provide, however, for disclosure of specific information. Even if law enforcement does not have the patient name, if the officer 1) initiates the inquiry, 2) identifies the person as a suspect, material witness, fugitive or missing person; and 3) indicates that the purpose of the inquiry is only to identify or locate the person, the facility may disclose the following information:

- Name and address;
- Date and place of birth;
- Social security number;
- ABO blood type and RH factor;
- Type of injury;

- Date and time of treatment (does not include future discharge date and time);
- Date and time of death, if applicable; and
- A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars, and tattoos.

h. May the hospital disclose information about crime victims?

Answer: Yes. Protected Health information (PHI) may be disclosed to law enforcement officials in response to a law enforcement official's request, for such information about an individual who is or is suspected to be a victim of a crime, if:

- The patient agrees to the disclosure; or
- If the patient is unable to agree to disclosure because of incapacity or other emergency circumstances, and all three of the following conditions are met:
 - The law enforcement official represents that the information is needed to determine whether the violation has occurred and that the information is not intended to be used against the victim;
 - The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and
 - The patient's provider determines in the exercise of his or her professional judgment that the disclosure is in the best interests of the patient.

i. What information may the hospital provide to law enforcement over the telephone?

Answer: The hospital may provide the same information to law enforcement over the telephone that they may provide in person provided the hospital engages in appropriate verification that the caller is actually a law enforcement officer. This verification procedure may include such steps as establishing a telephone call-back list or requiring the officer to send a fax that includes appropriate identifying information and call-back telephone number.

2. Mandatory Reports of Patient Information to Law Enforcement

a. May the hospital continue to report child abuse, elder abuse and other abuse of vulnerable adults to law enforcement?

Answer: Yes. Hospitals must continue to abide by North Carolina law and report this information consistent with existing procedures. The following is a summary of the applicable law:

Child abuse: NC law requires a health care facility to immediately make a report of any abuse of a child to the local Department of Social Services office or to a law enforcement agency within the county where the abuse is detected. The report should include the following, if possible:

- Names and address of the child and the parents of the child or other persons required for care of the child;
- Child's age;
- Nature and extent of the abuse (including any evidence of previous abuse);
- Explanation given for the abuse, and any other information, which the facility believes, might be helpful in establishing the cause of the abuse and identity of the perpetrator.

Elder abuse: NC law requires a health care facility to immediately make a report of any abuse of an elder or disabled adult to the local Department of Social Services office or to a law enforcement agency within the county where the abuse is detected.

Domestic Violence: Disclosure of domestic violence is not mandatory or specifically authorized by NC law. A facility may only disclose information to the extent the disclosure is required by another law (e.g. domestic violence perpetrated with a deadly weapon or in the presence of a child) and the disclosure complies with and is limited to the requirements of the law, or to the extent the patient agrees to the disclosure.

b. May hospitals continue to report injuries caused by a deadly weapon, or suspicious death?

Answer: Yes. Hospitals must continue to report gunshot wounds, knife wounds or other injuries caused by a deadly weapon, and suspicious deaths to the appropriate medical examiner or the examiner's designee as required by state law. It is not uncommon for law enforcement to serve as the designee and learn of particular injuries or deaths in this manner. The following are examples of required reports to the medical examiner:

- Drug overdose that results in the death of an individual.
- Apparent suicide or homicide occurring under suspicious or unknown circumstances.

- Poisonings due to ingestion of or exposure to hazardous substances or chemicals resulting in the death of an individual.
- Injuries caused by deadly weapons. Physicians and registered nurses are required to report injuries that they suspect to have resulted from the use of a knife, gun, pistol or other deadly weapon inflicted by another, which are not suspected to be by accidental means to the medical examiner or designee.
- Deaths related to disease, which might constitute a threat to the public health.

c. A baby has been abandoned at the hospital. May the hospital contact the appropriate authorities?

Answer: Yes. Under NC law, when an infant is abandoned on the premises of a health care facility, the facility is deemed to have protective custody from the moment the infant was left at the facility. NC law requires the facility to notify and disclose all information that it has regarding an abandoned infant to the Department of Social Services no later than 24 hours after receiving the infant.

3. Permitted Reports of Patient Information to Law Enforcement

a. If hospital personnel believe that a patient has engaged or intends to engage in conduct that presents a serious and imminent threat to a person or the public, may the hospital notify law enforcement and or the intended victim?

Answer: Yes, if hospital personnel reasonably believe the disclosure to law enforcement is necessary to prevent or lessen the threat. If law enforcement is not aware of the intended victim or potential crime, the hospital may disclose information to law enforcement on its own initiative if the disclosure is necessary to avert a serious and imminent threat to a person or the public. The hospital may also disclose to the intended target/victim.

b. Hospital personnel see a patient or visitor attempt to drive away from the hospital while intoxicated. May the hospital on its own initiative disclose that information to law enforcement?

Answer: Yes. The HIPAA Privacy Regulations allow a hospital to notify law enforcement of the patient's actions if notification is necessary to avert a serious and immediate threat to the health and safety of the public. NC law allows a health care provider who is providing medical care to a person in a health care facility and believes the person is under the influence of intoxicants and about to drive a motor vehicle on public roads, and appears to be a clear and present danger to society, to notify the law

however, that this provision does not apply to emergency care provided on the premises of the hospital, so does not apply to hospital Emergency Department personnel. The most likely application of this provision will be to Emergency Medical Technicians providing care outside the hospital.

g. If a hospital believes a patient has committed a crime on its premises, may it notify law enforcement?

Answer: Yes, a hospital may disclose evidence of a crime occurring on the premises of the facility. If a person is disruptive and the hospital has asked the person to leave and they refuse, that likely qualifies as trespassing and the police may be called.

h. If a person attempts to obtain services using a false identity or presents fraudulent documents, may the police be notified?

Answer: Yes. This may constitute identity theft or theft of services and may be considered a crime on the premises of the hospital, therefore law enforcement may be contacted.

i. The hospital finds illegal drugs on the patient. May the hospital on its own initiative provide this information to law enforcement?

Answer: Yes. A person found with illegal drugs on the premises of the hospital is committing a crime on the premises of the hospital. As such, the facility may contact law enforcement.

j. May the hospital disclose patient information for national security activities?

Answer: Yes. A health care facility may disclose protected health information to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. 401). The hospital may also disclose protected health information to authorized federal officials for the provision of protective services to the President or other persons authorized by 18 U.S.C. 3056 or to foreign heads of state or other persons authorized by 22 U.S. C. 209(a)(3) or for the conduct of investigations authorized by 18 U.S.C. 871 and 879. The HIPAA privacy regulations do not define who qualifies as an authorized federal official. Typically, however, this will be FBI, Secret Service or representatives of the U.S. Attorney's office.

Additional Issues Regarding Disclosures of Patient Information to Law Enforcement

4. Law Enforcement Access to the Patient/Hospital

a. May law enforcement officers be present in the hospital to provide security for the patient or to prevent the patient from fleeing?

Answer: Yes. Law enforcement may be present in the hospital as necessary for security of patients and hospital staff and to prevent flight. Remember, however, that the hospital must take all appropriate steps to limit disclosure of protected health information to law enforcement acting in this capacity. For example, it may not always be necessary for the officer to be in the patient's room; remaining immediately outside may be sufficient.

b. If a law enforcement officer asks to go to the patient's room to talk to or question the patient, must the hospital allow the officer to go to the room?

Answer: Not necessarily. Hospitals generally should not allow law enforcement access to the patient without the patient's permission. Hospitals should cooperate fully, however, in seeking the necessary patient permission.

c. Law enforcement comes to the hospital to serve a restraining order or to arrest a patient. May the hospital allow the officer to go to the patient's room without the patient's permission?

Answer: Generally, if the officer has a court ordered warrant, restraining order or other order of the court, hospitals should allow the officer to serve the order if the patient's medical condition allows.

d. May a law enforcement officer accompany a patient into the Emergency Department while the patient is being treated?

Answer: Yes, provided that the purpose of law enforcement accompanying the patient is for a legitimate law enforcement activity (i.e. requesting a blood draw or other specimen, viewing and gathering evidence from a patient) as an extension of a criminal investigation related to the patient. The hospital should take reasonable steps to limit disclosure of protected health information as much as possible. Law enforcement should not be allowed to wander through the emergency department or be exposed to or gain access to other patients' protected health information.

5. Disclosure of Patient Property to Law Enforcement

a. The hospital has patient clothing, weapons or other possible evidence of a crime that law enforcement needs for its investigation. May the hospital provide it?

Answer: Yes. If the evidence is labeled with the patient's PHI the hospital may only provide it to law enforcement pursuant to a search warrant, court order, or patient authorization. Evidence which has not been labeled may be turned over to law enforcement upon request.

b. May the hospital provide fingernail scrapings, bullets, or other physical evidence taken from the patient?

enforcement agency which has jurisdiction over the health care facility site. The notice shall consist of the name and physical description of the person being treated and the fact that the health care provider believes the person is intoxicated and is about to drive a motor vehicle. Notifying law enforcement about similar actions by a visitor to the hospital is always allowed because the disclosure does not involve protected health information (the visitor is not a patient).

Remember that reporting that a patient is attempting to drive while intoxicated must be included in an Accounting of Disclosures unless law enforcement asks for a suspension of the Accounting.

c. The hospital believes a patient has escaped from a correctional institution. May the hospital alert law enforcement?

Answer: Yes. HIPAA allows a hospital on its own initiative to disclose protected health information to law enforcement as necessary for law enforcement to identify or apprehend an individual who has escaped from a correctional institution or from lawful custody.

d. A patient is out of control and requires containment. May the hospital call law enforcement?

Answer: Yes. Call 911 if the person poses an immediate threat to health care facility patients or staff. If a patient is behaving in a way that would threaten the health and safety of others, a hospital may call law enforcement if it believes that doing so will prevent or lessen further harm to an individual or the public.

e. If a patient discloses to hospital personnel that he/she has participated in a violent crime that may have caused serious injury to someone, may the hospital notify law enforcement for the purpose of identifying or apprehending an individual?

Answer: In certain circumstances, yes. The hospital may disclose the information allowed regarding suspects discussed above. However, a hospital may not disclose this information, if the patient made the disclosure during treatment intended to affect the propensity to commit the criminal conduct or during counseling or therapy or through a patient request to initiate such counseling or therapy.

f. When may emergency medical providers disclose patient information to law enforcement?

Answer: The HIPAA privacy regulations allow an emergency medical provider to disclose patient information to law enforcement if the disclosure appears necessary to alert law enforcement to the commission of a crime, the location of the crime, the victim of the crime, and the identity, location, and description of the perpetrator. Note,

Answer: Yes. If the evidence is labeled with the patient's PHI the hospital may only provide it to law enforcement pursuant to a search warrant, court order, or patient authorization. Evidence which has not been labeled may be turned over to law enforcement upon request.

6. Disclosure of Specimens and Test Results

a. When must I disclose blood alcohol content (BAC) or the presence of a controlled substance in the patient's blood to law enforcement?

Answer: When law enforcement has secured a proper search warrant.

Remember that a report of blood alcohol content or presence of controlled substances to law enforcement must be included in an accounting of disclosures unless law enforcement asks for a suspension of the accounting.

b. A law enforcement official asks that hospital staff perform a blood draw on a patient and disclose the result. May the hospital do so?

Answer: Yes. Under the law of Implied Consent, the blood draw may be performed at the request of law enforcement on an unconscious patient who is brought to the emergency department immediately following a motor vehicle accident in which the patient is believed to have been the driver. If the patient is conscious, the patient's consent to perform the draw is required or the draw may be performed pursuant to legal process, such as a court order or court ordered warrant. Hospitals should adhere to existing practices regarding obtaining patient consent for a blood draw. In either case, if a draw is done, the result of testing performed on the blood draw is protected health information and may be disclosed only pursuant to patient authorization, subpoena, court order or court ordered warrant.

c. May the hospital provide results to law enforcement of blood tests performed on a patient to determine emergency providers' potential exposure to HIV, hepatitis?

Answer: Yes. The hepatitis results may be disclosed pursuant to the hospital's protocol. HIV testing requires patient consent or a court order.

7. Patient Authorizations.

May hospital personnel verbally disclose PHI to an attorney, including a District Attorney in connection with a case prior to trial?

Answer: Verbal disclosures to an attorney, including a District Attorney are only permitted if authorized by the patient /personal representative. If authorization is sought and the patient is a child, the facility must generally obtain the authorization from a parent or legal guardian. Remember that if the facility has reason to believe the parent is

not acting in the best interests of the child, the facility must look elsewhere for a personal representative to authorize a disclosure. In some cases, that personal representative may be the Department of Human Services, if it has taken legal custody of the child.

8. Disclosure of Specially Protected Records

Law enforcement has submitted a subpoena requesting the patient's medical records and the records contain HIV information. May the hospital disclose the entire record?

Answer: Drug and alcohol records of a treatment facility or that relate to a referral for drug/alcohol treatment, HIV positive test results or diagnosis, genetic testing records, certain mental health records may be disclosed only with patient authorization specifically allowing such disclosure, or pursuant to a court order or court ordered warrant. Subpoenas are not generally sufficient to allow for disclosures of specially protected records. Hospitals should follow existing policies and procedures when releasing these records to law enforcement.

Accounting for Disclosures

When must the hospital tell the patient that the hospital has given the patient's health information to law enforcement?

Answer: The HIPAA Privacy Regulations require a hospital to give an Accounting of certain disclosures, including disclosures to law enforcement made without patient authorization, upon the request of the patient. The regulations allow law enforcement to request a suspension of this Accounting for a time period specified by law enforcement if they provide a written statement that an Accounting would be reasonably likely to impede the agency's activities and specifying the time for which such a suspension is required. If this statement is made orally, the hospital must:

- Document the statement, including the identity of the person or agency making the request;
- Temporarily suspend the individual's right to an Accounting of Disclosures subject to the statement; and
- Limit the temporary suspension to no longer than 30 days from the oral statement unless a written statement is provided during that time.

