

Hospitals and Utah Law Enforcement

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Basic Principles

- Although we want to cooperate with police when we can, we are not agents of the police.
- We must comply with standard of care and laws that apply to healthcare professionals, including:
 - Consent
 - HIPAA
 - Others
- Police may not understand the laws that apply to us.

Consent

NBC NEWS

Two Officers Placed on Leave Following Utah Nurse Confrontation

SHARE & SAVE —



U.S. NEWS

Two Officers Placed on Leave Following Utah Nurse Confrontation

Two police officers have been placed on administrative leave after a shocking video of a Utah nurse's arrest sparked nationwide outrage.



Nurse settled for \$500,000 damages.

 **Holland & Hart**

Patient Consent

- To provide care, must have either:
 - Valid consent from patient or personal representative,
 - Court order, or
 - Statutory authority to render care without consent.
- Competent patients generally have the right to consent or refuse care.
- If patient is incompetent, seek consent from personal representative.
- In emergency, provide necessary care until obtain necessary consent.

(UCA 78B-3-406; 42 CFR 482.13(b)(2))

Police Blood Draws: Deemed Consent

- In Utah, drivers are deemed to have consented to DUI blood draws but drivers may withdraw consent.

(UCA 41-6a-520 et seq.)

- If person is incapacitated, they are deemed not have withdrawn consent.

(UCA 41-6a-522)

- The statute does not require hospital personnel to draw the blood.

Blood Draws: Police-Ordered Tests

- Officer may require the patient to submit to blood draw for law enforcement purposes if:
 - Patient or personal representative consent to blood test;
 - Officer obtains a warrant for blood test; or
 - Utah state or federal courts recognize exception to warrant requirement.

(UCA 77-23-213)

- This statute does not require hospital personnel to perform the test.

Blood Draws: Net Effect

- Hospital personnel generally should perform blood draws only if:
 - Either patient or representative consents or officer produces a warrant;
 - Blood may be drawn in accordance with standard medical practice, e.g., no risk to patient, staff or others; and
 - Blood is drawn by physician, PA, RN, LPN, paramedic, or emergency medical service personnel.

(UCA 41-6a-523 and 77-23-213)

Court Order or Warrant

- If police produce a warrant, confirm:
 - Issued by a Utah state court or federal court with jurisdiction over Utah;
 - Expressly authorizes the specific care sought;
 - Directed to relevant hospital or hospital personnel; and
 - Any conditions or limits.
- If possible, obtain and maintain copy of order or warrant.

HIPAA and Patient Confidentiality



HIPAA and Patient Confidentiality

- HIPAA applies to individually identifiable health information concerning health, health care or payment for healthcare, including:
 - Whether or not person is or was a patient
 - Names, photos, dates
 - Location, addresses, phone numbers
 - Treatment
 - Any other identifiable information about the patient's health or healthcare

(45 CFR part 164)

https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/special/emergency/final_hipaa_guide_law_enforcement.pdf

Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule: A Guide for Law Enforcement

What is the HIPAA Privacy Rule?

The Health Insurance Portability and Accountability Act of 1996 (*HIPAA*) Privacy Rule provides Federal privacy protections for individually identifiable health information, called protected health information or PHI, held by most health care providers and health plans and their business associates. The HIPAA Privacy Rule sets out how and with whom PHI may be shared. The Privacy Rule also gives individuals certain rights regarding their health information, such as the rights to access or request corrections to their information.

Who must comply with the HIPAA Privacy Rule?

HIPAA applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically (e.g., billing a health plan). These are known as covered entities. Hospitals, and most clinics, physicians and other health care practitioners are HIPAA covered entities. In addition, HIPAA protects PHI held by business associates, such as billing services and

others, hired by covered entities to perform services or functions that involve access to PHI.

Who is not required to comply with the HIPAA Privacy Rule?

Many entities that may have health information are not subject to the HIPAA Privacy Rule, including:

- employers,
- most state and local police or other law enforcement agencies,
- many state agencies like child protective services, and
- most schools and school districts.

While schools and school districts maintain student health records, these records are in most cases protected by the Family Educational Rights and Privacy Act (FERPA) and not HIPAA. HIPAA may apply however to patient records at a university hospital or to the health records of non-students at a university health clinic.



<https://attorneygeneral.utah.gov/wp-content/uploads/2015/09/Disclosures-of-PHI-to-Law-Enforcement.pdf>

Disclosures of Protected Health Information to Law Enforcement

45 CFR Part 164, 42 CFR Part 2

by

Utah HIPAA Law Enforcement Task Force

Revised 7/14/2005

- This summary applies only to disclosures of *individually identifiable health information* held by *covered entities* (generally, health care providers) to *law enforcement officials*, as these terms are defined in HIPAA (45 CFR Part 164).
- However, the main part of this summary does **not** apply to disclosures of any patient information held by a federally assisted alcohol or drug abuse program (42 CFR Part 2). The **Appendix** at the end of this summary discusses disclosure of this information. These substance abuse programs may include facilities within a hospital.

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HIPAA: Permissible Disclosures to Police

- Treatment purposes. (42 CFR 164.506)
- To avert serious and imminent threat of harm. (42 CFR 164.512(j))
- Like other patients, may disclose if person is in facility and general condition if:
 - Police ask for patient by name, and
 - Person has not objected to having name in facility directory. (45 CFR 164.510)

HIPAA: Permissible Disclosures to Police

- To report child or adult abuse. (45 CFR 164.512(b)-(c))
- Disclosure required by law, e.g.,
 - Treatment of injuries from knife, gun, deadly weapon or criminal act. (UCA 26-23a-2)
 - Child abuse or neglect. (UCA 62A-4a-403)
 - Vulnerable adult abuse or neglect. (UCA 62A-3-305)
 - Therapist's patients communicates actual threat of violence to clearly identified individual. (UCA 78-14a-102)

HIPAA: Permissible Disclosures to Police

- Subpoena, order or warrant signed by judge.
- Grand jury subpoena.
- Administrative request, subpoena, summons or demand authorized by law if requester represents info is necessary for proceeding and de-identified info cannot be used.

(45 CFR 164.512(e)-(f))

- Subpoena not signed by judge if—
 - Obtain satisfactory written assurances patient was notified, or
 - Contact patient yourself to notify them of subpoena.

(45 CFR 164.512(e))

HIPAA: Permissible Disclosures to Police

- Report evidence of crime on the premises. (45 CFR 164.512(f)(5))
- Report death from criminal conduct. (45 CFR 164.512(f)(4))
- Respond to request from law enforcement to identify or locate suspect, fugitive, material witness or missing person, but limit disclosure to specific demographic info. (45 CFR 164.512(f)(2))
- Respond to request from law enforcement about victim of crime if
 - Victim agrees, or
 - Unable to obtain patient consent due to incapacity or emergency, officer represents info needed immediately and provider concludes it is in best interest of patient. (45 CFR 164.512(f)(3))

HIPAA: Permissible Disclosures to Police

- Info about inmate or person in custody if officer represents info necessary for treatment of patient, safety of others, or safety, security or good order of correctional facility. (45 CFR 164.512(k)(5))
- Hospital workforce member reports that he/she is a victim of crime, but info that may be disclosed is limited. (45 CFR 164.502(j)(2))
- Certain public health activities. (45 CFR 164.512(b))
- Health oversight activities. (45 CFR 164.512(d))
- Have patient's HIPAA compliant authorization to disclose info. (45 CFR 164.508)

http://attorneygeneral.utah.gov/wp-content/uploads/sites/9/2013/08/UtahAuthorizationToDiscloseHealthRecordsToALawEnforcementAgencyForm.pdf

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UTAH AUTHORIZATION TO DISCLOSE HEALTH RECORDS TO A LAW ENFORCEMENT AGENCY

(For Law Enforcement Use Only. Deliver in person, or if mailed/faxed, with cover letter on agency letterhead. Complete all sections.)

1. I authorize the health care provider(s) listed below to disclose protected health records of:

Name of Patient (print) _____ Date of Birth _____
Phone Number () _____ Soc. Sec.# (optional) _____
Address _____
City _____ State _____ Zip _____

2. Record(s) Requested from:

Record(s) Requested from:	Complete record(s) consisting of:	Between the dates of:
A. (i) (Physician/Facility Name and Location) 	A. (ii) (Check all that apply) <input type="checkbox"/> Inpatient record <input type="checkbox"/> Outpatient record <input type="checkbox"/> Emergency record <input type="checkbox"/> Ambulance/transport record <input type="checkbox"/> Other _____	A. (iii) _____ to _____
B. (i) (Physician/Facility Name and Location) 	B. (ii) (Check all that apply) <input type="checkbox"/> Inpatient record <input type="checkbox"/> Outpatient record <input type="checkbox"/> Emergency record <input type="checkbox"/> Ambulance/transport record <input type="checkbox"/> Other _____	B. (iii) _____ to _____

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Special Cases



Special Rules: Substance Use Disorders

- If you have records from a federally assisted substance use disorder program, you must generally object to disclosure unless law enforcement obtains specific—
 - Court order, and
 - Subpoena requiring production.

(42 CFR part 2)

- Check with privacy officer.

Reproductive Health Info

- If reproductive health info (“RPHI”) is sought, must obtain specific attestation that RPHI is not being sought to investigate or prosecute reproductive health care that was legal where provided.

(45 CFR 164.509)

Applying the Rules



Applying the Rules: General Rule

- If have concerns or questions about law enforcement demands:
 - Explain same to law enforcement;
 - Voice and document objections;
 - Ask for authority from law enforcement; and/or
 - Ask to speak to supervisor.
- **NEVER physically obstruct, misrepresent facts, or affirmatively hinder law enforcement efforts.**
- When in doubt, contact administrator, privacy officer, and/or your attorney.

Applying the Rules

- Verify authority and identify of officer.
 - Agency identification.
 - Proper jurisdiction.
- If receive order or warrant, review carefully and comply with specific limits in order or warrant.
 - Comply with strict requirements.
 - Don't disclose more than required.
- Document event and log disclosure in Accounting of Disclosure Log per 45 CFR 164.528.

Questions?



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