Police Access to Patients and Patient Information

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Although health care providers and hospitals seek to maintain a good working relationship with police, health care providers owe certain duties to their patients, including the duty to maintain patient privacy and perhaps not allow access if it would adversely affect patient care. State and federal law impose restrictions on health care providers that affect police access to patients or patient information. The general rule is that police do not have any special right or privilege to access patients or patient information in the hospital. The Constitution generally protects against warrantless searches and seizures. Accordingly, as a general rule, health care providers should not disclose protected health information to police and should not allow the police to access the patient in the hospital unless: (1) the patient consents to the access or disclosure; (2) the police have a warrant or order allowing such access or disclosure; (3) a statute allows or requires the access or disclosure; or (4) the access or disclosure is required for security or safety reasons.

Disclosure of Information to Police.

HIPAA generally prevents health care providers from disclosing protected health information without the patient’s written authorization unless an exception applies. 45 C.F.R. § 164.502. HIPAA contains the following exceptions relevant to police:

1. Disclosures pursuant to an order, warrant or subpoena. HIPAA allows disclosures pursuant to an order, warrant or subpoena that is signed by a judge or judicial magistrate. 45 C.F.R. § 164.512(e)(1), (f)(1). The provider should make certain that the disclosure is limited to the scope of the subpoena, warrant or order. If the provider is concerned about the scope, he or she should try to negotiate the scope with the officer, the officer’s superior, or, if necessary, file a motion to quash or modify the order. However, the provider should not otherwise interfere with the lawful execution of an order or warrant; to do so constitutes obstruction of justice.

2. Disclosures required by law. HIPAA allows the provider to disclose information to the police if another law requires the disclosure. 45 C.F.R. § 164.512(a), (c). For example, Idaho law requires that health care providers disclose information concerning the following:

   a. Treatment of a victim of a crime. I.C. § 39-1390; see also 45 C.F.R. § 164.512(f)(1). Although Idaho law requires the disclosure, the statute does not include a penalty for failure to disclose the information.

   b. Treatment for an injury by a firearm. I.C. § 39-1390; see also 45 C.F.R. § 164.512(f)(1). Idaho law requires the disclosure, but the statute does not include a penalty for failure to disclose the information.

   c. Death resulting from suspicious circumstances. Idaho requires a hospital to report to law enforcement if it has custody of a body and it appears that death resulted from violence (whether homicidal, suicidal or accidental), or under suspicious circumstances. I.C. § 19-4301A. HIPAA also allows disclosure of a death that resulted from a crime. See 45 C.F.R. § 164.512(f)(4).

   d. Child abuse, abandonment or neglect. I.C. § 16-1619; see also 45 C.F.R. § 164.512(c). Reports must be made to law enforcement or DHW within 24 hours. Id.

   e. Abuse of vulnerable adults. I.C. § 39-5303; see also 45 C.F.R. § 164.512(c). Reports are generally made to DHW; however, health care providers must report to law enforcement if another law requires disclosure.
within 4 hours if there is reasonable cause to believe that abuse or sexual assault has resulted in death or serious physical injury jeopardizing the life, health or safety of the victim. *Id.* The adult’s medical records may not be disclosed absent proper consent or by judicial process. *Id.*; see also 45 C.F.R. § 164.512(c).

In making the foregoing disclosures, the health care provider should disclose only the information required by the applicable law.

3. **Disclosure to prevent serious harm.** HIPAA allows a disclosure to the police as necessary to prevent or lessen a serious and imminent threat to the health or safety of the patient or the public. 45 C.F.R. § 164.512(j)(1). This includes reporting information to enable the police to identify or catch a dangerous person. See *id.*

4. **Name, location, and general condition.** HIPAA allows (but does not require) a hospital to disclose a patient’s name, their location in the facility, and their general medical condition if: (1) the person requesting the information asks for the patient by name; and (2) the hospital notified the patient that it would disclose such information to persons who asked for the patient, and the patient did not object (*i.e.*, the patient is not a “do not publish”). See 45 C.F.R. § 164.510. Normally, the hospital provides such notice to the patient when the patient is admitted; however, that may not occur if the patient was admitted on an emergency basis, or was incompetent at the time.

5. **Limited information for identification purposes.** If the police request certain information for the purpose of identifying or locating a suspect, fugitive, witness, or missing person, HIPAA allows (but does not require) health care providers to disclose certain limited information, including: (1) name and address; (2) date and place of birth; (3) social security number; (4) ABO blood type and Rh factor; (5) type of injury; (6) date and time of treatment; (7) date and time of death; and (8) distinguishing physical characteristics (*e.g.*, height, weight, gender, race, hair or eye color, scars, tattoos, facial hair, etc.). See 45 C.F.R. § 164.512(f)(2).

6. **Limited information about victims of a crime.** If the police request information concerning a suspected victim of a crime, HIPAA allows (but does not require) health care providers to disclose information if: (1) the patient agrees to the disclosure; or (2) the provider is not able to obtain the patient’s consent because of incapacity or emergency circumstances, the police represent that the information is needed immediately, and the provider determines it is in the best interest of the patient to disclose the information. See 45 C.F.R. § 164.512(f)(3).

7. **Reporting a crime on the premises.** HIPAA allows health care providers to disclose relevant information as necessary to report a crime on the premises of the provider, *e.g.*, at the hospital. See 45 C.F.R. § 164.512(f)(5).

8. **Persons in custody.** HIPAA allows a health care provider to disclose information about an inmate or person in police custody if the police represent that the information is necessary for the provision of health care to the person in custody; the health and safety of other inmates; or the health and safety of officers or employees of a correctional institution. See 45 C.F.R. § 164.512(k)(5).

**Police Access to Patients.**

Absent a court order or warrant allowing access, the police generally do not have a right to access patients, and the health care provider or hospital generally should not allow the police unrestricted access to the patient or to areas where treatment is being provided. Police access may interfere with patient care by, among other things, causing distress or anxiety to the patient or health care providers. In addition, HIPAA requires that providers put in place appropriate safeguards to protect against unauthorized disclosure of confidential information. See 45 C.F.R. § 164.530. Allowing unrestricted access may result in improper disclosures. Accordingly, it is appropriate to do the following:

1. Health care providers should notify the police that, due to HIPAA and patient care concerns, police (like other members of the public) are generally not given unrestricted access to patient care areas.

2. If the police request access to a patient, the health care provider should first ask the patient if the patient consents to police access. If the patient agrees and it does not interfere with the patient’s care, the police should be allowed access. If the patient refuses, the health care provider should explain same to the police and explain that the police will need to obtain a warrant or court order, or identify some other statutory provision that allows them access.

3. If the police insist on accessing the patient despite the health care provider’s objections, the health care provider should not physically interfere with the police. Instead, the provider should document the situation (including the officer’s name, the provider’s discussions with the patient and police, and the officer’s response), and raise appropriate objections with the officer’s supervisor.

**Police Requests for Tests.**

Competent patients (including persons in custody of the police) generally have the right to consent to or refuse their own health care, including tests. *See* I.C. 39-4502. Accordingly, tests generally should not be performed, and test results should not be disclosed to the police, without the patient’s consent. In the case of minors or incompetent patients, the health care provider must generally obtain the consent of the minor’s guardian, parent, or other appropriate relative. *See* I.C. § 39-4503. Idaho does allow treatment or testing without the patient’s consent in the following cases:
1. **Court order or warrant.** Under some circumstances, a court may order that an individual undergo certain tests or procedures to obtain evidence (e.g., blood samples, urine samples, saliva samples, etc.). See, e.g., I.C. § 19-625. The health care provider should comply with any court order unless doing so would jeopardize the patient, the provider, or others.

2. **DUI testing.** Although persons with drivers licenses are deemed to have consented to evidentiary testing (e.g., blood tests, urine tests, etc.), a person may generally refuse to undergo such testing. I.C. § 18-8002(1), (4). Nevertheless, a police officer may order authorized providers to assist with limited testing if the officer has reasonable cause to suspect certain crimes, including aggravated DUI or vehicular manslaughter. I.C. § 18-8002(6)(b). Blood tests must be conducted by a physician, qualified medical technologist, RN, phlebotomist, or other properly trained individual. I.C. § 18-8003. If a provider is ordered to assist, they should document the order and obtain the officer’s signature confirming the order. The provider may refuse if the draw would endanger the provider or the patient. See I.C. § 18-8002(6)(e).

3. **Testing of persons charged with certain offenses.** Idaho law appears to allow health care providers to test persons who may have committed sex offenses, drug violations, prostitution, or another crime in which body fluid has likely been transmitted to another for venereal diseases and for hepatitis C. See I.C. § 39-604(4). The test should only be performed at the direction of an authorized official.

4. **Examination of inmates.** Health care providers may examine or test inmates for venereal disease, HIV and hepatitis. See I.C. § 39-604(1)-(3). The testing should be done at the direction of law enforcement or the correctional institution.

**Police Requests for Contact.**

Police sometimes request that the hospital or health care providers contact them when patients arrive with certain conditions, e.g., evidence of drug use or injuries consistent with the commission of a crime. Unless the disclosure would fit within one of the exceptions cited above, the provider should explain to the police that state and federal laws prohibit such disclosures. If the characteristics concern a specific suspect, then the provider could probably call the police; however, the provider generally should not call the police anytime someone shows up with injuries suggesting that they had committed (as opposed to being the victim of) a crime. Police will sometimes ask that officers be notified when a patient is ready for discharge. Again, unless the disclosure would fit within one of the exceptions cited above, the provider should explain to the officer that the provider may not make such a disclosure.

**Conclusion**

Although providers can and should cooperate with police as appropriate, providers should always remember that they are not agents of the police, and that they owe separate duties to their patients. Accordingly, unless the disclosure or access is allowed as set forth above, providers should not disclose information to the police or allow the police access. If the police officer demands access anyway, the provider should not physically interfere, but should assert appropriate objections and document the circumstances.