Law Enforcement Access to Patients and Patient Information

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Welcome & Program Overview

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**Law Enforcement Access to Patients and Patient Information**

Bonnie George, JD  
Sutter Health
**Scope for Today**

- **In Scope:** law enforcement approaching the hospital for information, access
- **Out of Scope:** mandatory reporting requirements i.e., abuse and injury reporting

**Situation**

- Police show up at ED requesting copy of lab results for a patient that had been seen in ED on previous night. They require these reports immediately. Explain patient was driver in MVA 24 hours after D/C. Passenger killed. ED records needed as part of investigation.
- They state failure to comply with the request is obstruction of justice and demand all staff provide copies of their driver’s licenses.
Polling Question

Is it likely that staff at your organization will comply with this request?

Tension: Culture vs. Legal Duty

**Culture/Gut**: Police are the “good guys”, authority figures; we get in trouble if we don’t do what they say; if we are a good citizens we comply with their direction.

VS.

**Legal Duty**: Runs to patient, NOT police. We are legally obligated to protect our patient’s confidentiality.
People Go with “Gut” When:

- **Stressed**: time limit; authority; afraid of being in trouble. Police can capitalize on this, often get info that would otherwise not be available to them
- **Unsure** of the correct answer
- **Have affinity** for one person vs. the other: will help the “good guy”

General Rule

Law enforcement agencies are not entitled to access to patient information EXCEPT in specifically defined circumstances:

- **CA Civil Code 56.10.** (a) No provider of health care, …shall disclose medical information regarding a patient…without first obtaining an authorization, except as provided in [other sections]
- **HIPAA - CFR § 164.502** Uses and disclosures of protected health information: general rules. (a) Standard. A covered entity may not use or disclose protected health information, except as permitted or required by [other sections]

*(CHA Consent Manual, Chapters 6, 16)*
General Rule: Authorization and Consent

- With the patient’s or legal representative’s authorization, information may be released to law enforcement.
- When law enforcement requests medical procedures or an evaluation of a patient, patient consent is REQUIRED (with some exceptions discussed later).

Re-enforce the General Rule

- For most staff the general rule should be taught and re-enforced.
- Tell staff: “Do not provide law enforcement with information or access to patient without going through supervisor; risk; privacy officer or compliance officer”
- Ensure a knowledgeable resource is immediately available.
- Some staff/depts need more detailed training.
Situation: Re-visited

- Police show up at ED requesting copy of lab results for a patient that had been seen in ED previous night. They require these reports immediately. Explain patient driver in MVA 24 hours after D/C. Passenger killed. ED records needed as part of investigation.
- They state failure to comply with the request is obstruction of justice and demand all staff provide copies of their driver’s licenses.

Without More: Do Not Release

Analysis:
- General rule: don’t release absent patient authorization.
- HIPAA allows fairly broad disclosure to law enforcement (45 CFR 164.512), so remember …
- CA law is generally more stringent in this area, disclosures to law enforcement will generally follow CA law.
Law Enforcement: California

- Civil Code 56.10 (b): A provider of health care, shall disclose medical information if the disclosure is compelled by …:
  (1) court order … (3-5) civil subpoenas
  (6) a search warrant

(CHA Consent Manual, Chapter 16)

Law Enforcement: California

- Penal Code 1543. (a) Records of the identity, diagnosis, prognosis, or treatment of any patient maintained by a health care facility … shall only be disclosed to law enforcement agencies pursuant to this section: (1) In accordance with the prior written consent of the patient; or (2) If authorized by an appropriate order of a court of competent jurisdiction in the county where the records are located …

(CHA Consent Manual, Chapter 16)
In This Situation Police Need:

One of the following:
- Patient consent/authorization
- A search warrant
- A court order
- What about a subpoena?
  - Not unless an authorizing court order has been obtained

What About the Obstruction of Justice Threat?

Not Valid (but scary!)
Staff need to:
- Remain calm
- Know who to call in your organization for immediate intervention
- Continue to be polite and respectful, explaining to officers that will cooperate once sure they have proper authorization
Situation: DUI

- Police bring patient to the ED. State she is under arrest for driving under the influence. Request a blood draw to determine the alcohol content of her blood. The patient does not object, but adamantly refuses to sign anything, including a statement that she consents to the blood draw.

Situation: DUI Polling Question

May staff withdraw the blood and provide results to police?
Implied Consent Law

- CA law deems anyone who drives a motor vehicle to have consented to testing of blood, breath or urine to determine ETOH or drug content (Vehicle Code 23612 and 13384)
- Get law enforcement request for the test in writing (CHA Consent Manual form 6-1)
- Staff may decline to do the test if subject is unconscious or refuses to consent
- Consider declining if patient forcibly resisting (CHA Consent Manual, Chapter 6)

Implied Consent

- CA law gives hospital and personnel involved in withdrawing the blood immunity from civil and criminal liability (Make sure patient is under arrest and you have the police request in writing)
- Be consistent. If hospital will decline simply for lack of consent it should be policy and police informed
**Situation: Victims of Sexual Assault**

- Police transport a victim to your hospital and request a forensic exam to discover and preserve evidence of sexual assault.
- Separate from treating the injuries of the assault.
- Patient MUST consent to the forensic exam.
- Complete CalEMA forms (Not OES anymore).
- Release the completed forms to the police, not the entire medical record.

*(CHA Consent Manual, Chapter 19)*

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**Designated Hospital: Sexual Assault**

- Each county has at least one hospital designated to do sexual assault exams. (Penal Code 13823.9(c))
- If your facility does not do them, have a protocol for immediate referral and you must notify law enforcement of your referral protocol (Health & Safety 1281).
Situation: “Just Want to Talk”

- Detective arrives on med-surg floor. States she is looking for Mr. Jones. Estranged daughter has reported him missing
- Nurse informs detective that Mr. Jones is an inpatient (It’s ok—Civil Code 56.16 and 45 CFR 164.510(a)) *(CHA Consent Manual, Chapter 16)*
- Detective requests time to talk to patient alone *(CHA Consent Manual, Chapter 6)*

“Just Want To Talk”: Analysis

- Detective at this point has no more right to access patient or patient room than any other stranger to the patient
- Follow your visitor policy
- Patient decides whether or not detective is allowed in
- If patient’s medical condition merits visitor restriction. This visitor, just like any other does not get in
LPS Patient: Police Requesting Access

- What if this same request was made to a designated mental health facility?
- Dramatically different analysis: Law enforcement does not even get the information that the individual is a patient (Welfare & Institutions 5328)

(CHA Consent Manual, Chapter 17)

Mental Health Patient: Police Access

- All information and records obtained in the course of providing services (under LPS Act) shall be confidential … Information and records shall be disclosed only in any of the following cases:
Mental Health Patient: Police Access

- Welfare & Institutions 5328(t) (1): To a law enforcement officer who personally lodges with a facility, … a warrant of arrest … showing that the person sought is wanted for a serious felony, … or a violent felony, … The information … released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility.

Mental Health Patient: Police Access

- This paragraph shall be implemented with minimum disruption to health facility operations and patients, … If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility.
Situation: “Give Us a Call”

- Police bring patient in. He needs medical treatment. They state as soon as he is “fixed –up” he will be arrested for multiple drug offenses
- Police are very clear that while he is in the hospital he is not in custody, they will not be staying and will not be paying the medical bill
- They get staff to “promise” to call them right before he is discharged. They will come and arrest him then

Polling Question

Can the hospital keep that promise?
“Give Us a Call”: Analysis

- Civil Code 56.16: unless there is a specific written request by the patient to the contrary, nothing in this part shall be construed to prevent a general acute care hospital, … upon an inquiry concerning a specific patient, from releasing at its discretion any of the following information: the patient's name, (HIPAA pre-empts some info previously allowed) … the general condition of the patient; and any information that is not medical information …
- 45 CFR 164.510(a) allows above  
  (CHA Consent Manual, Chapter 16)

“Give Us A Call”: Consider

- Contact Police and let them know, despite staff promise, that you will not be able to pro-actively contact them when patient D/C planned
- You will not delay D/C to wait for their presence
- They may call daily to inquire about presence of the patient and expected discharge
- Patient can request that we not provide any info to them and we must comply
Inmates or In-Custody

- Police are present and keeping patient in custody during medical treatment
- Taking financial responsibility for care
- Disclosure of info not specifically addressed in CA law
- HIPAA-45 CFR 164.512(k)(5)(i) allows disclosure to law enforcement

Inmates/In Custody Analysis

- CA Civil Code 56.10 (c) (1) allows disclosure to other health care professionals and providers for purposes of treatment and diagnosis
- Conveying medical information to the health professionals at the institution is allowed
- Conveying information to the “guard” should be limited to information necessary for him/her to safely do job and keep pt/others safe
**Q:** Can a hospital or clinic call law enforcement when it suspects, or knows, a patient is using false identification?

**A:** Yes. However, only minimal information should be disclosed to law enforcement and it should not include medical information.

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**Reporting ID Theft: Analysis**

- HIPAA permits, does not mandate, disclosure of PHI to law enforcement if PHI believed to be evidence of a crime that occurred on the premises (45 C.F.R. 164.512 (f)(5))
- CA law, prohibits disclosing medical information without patient authorization. Medical information means “any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient’s medical history, mental or physical condition, or treatment” (Civil Code 56.05 (g))

*(CHA Consent Manual, Chapter 16)*
**Reporting ID Theft—FAQ**

**Q:** What CAN I report to law enforcement without disclosing *medical information*?

**A:** Once the decision has been made to report to law enforcement care must be taken to avoid disclosing medical information. You can disclose names, addresses and the date of the encounter. You should NOT provide information about what service area the patient was seen in. NEVER disclose treatment or diagnosis information.

**Script for Reporting ID Theft**

- “An individual came to our facility/clinic and presented what we believe to be false identification. The individual claims to be _____________. Based on our records and past experiences with this individual, we believe his/her actual identity is ___________. We are calling to report this as we believe this person may be involved in some type of identity theft.”

- “We are happy to cooperate with any resulting investigation, but please be advised that under state and federal law, we are prohibited from disclosing patients’ medical information without a valid subpoena, search warrant or court order.”
**Reporting ID Theft—FAQ**

Q: Should we deny services or treatment to someone we suspect is perpetrating identity theft?

A: No. Remember your role is as a health care provider and not as an arm of law enforcement. No matter how confident you are that the person is using someone else’s identity your focus should be as a care provider. You may explain to patients why it is important that the correct ID be included in the medical record (e.g., for his/her safety, to ensure the correct quality care, billing).

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**Breach Notification**

- If someone makes a mistake and discloses information to law enforcement in violation of law, notify:
  - Patient: Health & Safety 1280.15; 45 CFR 164.404
  - CDPH: Health & Safety 1280.15
  - Office of Civil Rights in annual report: 45 CFR 164.408
- Must be included in Accounting of Disclosures 45 CFR 164.528

*(CHA California Health Information Privacy Manual, Chapter 12)*
Open Communication with Law Enforcement

- Maintaining a good relationship with law enforcement is important
- Address issues promptly; preferably in a face-to-face meeting
- LISTEN and share the perspective of health care provider
- You can agree to disagree and still set ground rules for professional interactions

Thank You

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Questions

Online questions:
Type your question in the Q & A box, hit enter

Phone questions:
To ask a question hit 14
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- California Hospital Compliance Manual  
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- California Health Information Privacy Manual  
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- **Center for Post-Acute Care Annual Conference**  
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- **Hospital Compliance Seminar**  
  *February, 2012, Sacramento, Southern California*

- **Rural Health Care Symposium**  
  *February 28 – March 3, 2012, Sacramento*
Evaluation

Thank you for participating in today’s seminar. An online evaluation will be sent to you shortly.

For questions regarding issues in today’s program, contact Pamela Lane, (916) 552-7578 or plane@calhospital.org.

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