

Disclosing Patient Information to Law Enforcement

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UNC

SCHOOL OF GOVERNMENT

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“Law enforcement official”

- HIPAA definition includes anyone empowered by government (federal, state, or local) to investigate or prosecute crimes
- Examples:
 - Local sworn officers: police, sheriff, deputies, correctional officers, etc.
 - Prosecutors: district attorney
 - State officers: highway patrol, SBI
 - Federal officers: ICE

Disclosing to LEO

- Allowed *only if* the particular disclosure to be made is allowed by *all* applicable confidentiality laws:
 - HIPAA
 - Any other applicable federal laws
 - State laws
- HIPAA *allows* a number of disclosures to LEOs but doesn't *require* any.
 - However, you can be compelled to disclose by other law or legal process

NC law requiring reports to LE

- A **physician or administrator of a health care facility** must report:
 - Certain injuries and illnesses that may have been caused by criminal acts
 - Recurrent illness or serious physical injury to a child under age 18, if the illness or injury appears to be due to nonaccidental trauma
- G.S. 90-21.20

Injuries/illnesses caused by crime

- What must be reported:
 - Gunshot wounds & other firearm-related injuries
 - Illnesses caused by poisoning
 - Wounds or injuries caused by knives/other sharp instruments, if treating physician thinks criminal act involved
 - Grave bodily harm or grave illness, when treating physician thinks the injury or illness was caused by a criminal act of violence
- This requirement applies to patients of all ages.

Additional reporting for children

- What must be reported:
 - Recurrent illness caused by nonaccidental trauma
 - Serious physical injury caused by nonaccidental trauma
- This reporting requirement applies only to children under age 18.
- Separate reports required for DSS and for law enforcement.

Example

- 14-year-old girl, prenatal patient, presents with black eye and deep bruises on her body. Nurse practitioner asks what happened. Girl says her mother beat her when she found out she was pregnant.

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- **Report to DSS and LE separately (see page 2, GS 90-21.20 reporting requirements).**

Search warrants for PHI

- Limit search to what is specified in warrant.
- Do not consent to LEO request to expand search beyond what is specified.
- If disclosure will identify a person who has or may have a reportable communicable disease, inform LEO that the subject of the information should get opportunity to request *in camera* review.

Please fill out the following form. You cannot save data typed into this form. Please print your completed form if you would like a copy for your records.

Highlig

<p><small>File No.</small></p> <p style="text-align: center;">SEARCH WARRANT</p> <p style="text-align: center;">IN THE MATTER OF</p> <p><small>Date Issued</small> _____ <small>Time Issued</small> _____ <input type="checkbox"/> AM <input type="checkbox"/> PM</p> <p><small>Name Of Applicant</small></p> <p><small>Name Of Additional Affiant</small></p> <p><small>Name Of Additional Affiant</small></p> <p style="text-align: center;">RETURN OF SERVICE</p> <p>I certify that this Search Warrant was received and executed as follows:</p> <p><small>Date Received</small> _____ <small>Time Received</small> _____ <input type="checkbox"/> AM <input type="checkbox"/> PM</p> <p><small>Date Executed</small> _____ <small>Time Executed</small> _____ <input type="checkbox"/> AM <input type="checkbox"/> PM</p> <p><input type="checkbox"/> I made a search of _____</p> <p>_____</p> <p>_____</p> <p>_____ as commanded.</p> <p><input type="checkbox"/> I seized the items listed on the attached inventory.</p> <p><input type="checkbox"/> I did not seize any items.</p> <p><input type="checkbox"/> This Warrant WAS NOT executed within forty-eight (48) hours of the date of issuance and I hereby return it not executed.</p> <p><small>Signature Of Officer Making Return</small></p> <p><small>Department Of Agency Of Officer</small> _____ <small>Incident Number</small> _____</p>	<p style="text-align: center;">STATE OF NORTH CAROLINA</p> <p style="text-align: right;">In The General Court Of Justice District/Superior Court Division</p> <p style="text-align: center;">_____ County</p> <p>To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:</p> <p>I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.</p> <p>You are commanded to search the premises, vehicle, person and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.</p> <p>You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.</p> <p>This Search Warrant is issued upon information furnished under oath by the person(s) shown.</p> <table style="width: 100%; border: none;"> <tr> <td style="border: none;"><small>Date</small> _____</td> <td style="border: none;"><small>Signature</small></td> <td style="border: none;"><input type="checkbox"/> <small>Deputy CSC</small></td> <td style="border: none;"><input type="checkbox"/> <small>Assistant CSC</small></td> <td style="border: none;"><input type="checkbox"/> <small>CSC</small></td> </tr> <tr> <td style="border: none;"></td> <td style="border: none;"></td> <td style="border: none;"><input type="checkbox"/> <small>Magistrate</small></td> <td style="border: none;"><input type="checkbox"/> <small>District Ct. 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Highlight

APPLICATION FOR SEARCH WARRANT

I, _____
(insert name and address; or if law enforcement officer, name, rank and agency)

being duly sworn, request that the Court issue a warrant to search the person, place, vehicle, and other items described in this application and to find and seize the property and person described in this application. There is probable cause to believe that *(Describe property to be seized or if search warrant is to be used for searching a place to serve an arrest warrant or other process, name person to be arrested)*

constitutes evidence of a crime and the identity of a person participating in a crime, *(Name crime)*

and is located *(Check appropriate boxes) and fill in specified information)*

in the following premises *(Give address and, if useful, describe premises)*

(and)

on the following person(s) *(Give name(s) and, if useful, describe person(s))*

(and)

in the following vehicle(s) *(Describe vehicle(s))*

(and)

(Name and/or describe other places or items to be searched, if applicable)

The applicant swears to the following facts to establish probable cause for the issuance of a search warrant:

SWORN AND SUBSCRIBED TO BEFORE ME

Date

Date

Signature of Applicant

Signature

Magistrate Dep. CSC Asst. CSC Clerk of Superior Court Judge

In addition to the affidavit included above, this application is supported by additional affidavits, attached, made by _____

In addition to the affidavit included above, this application is supported by sworn testimony, given by _____

This testimony has been *(check appropriate box)* reduced to writing

tape recorded and I have filed each with the clerk.

NOTE: *If more space is needed for any section, continue the statement on an attached sheet of paper with a notation saying "see attachment." Date the continuation and include on it the signatures of applicant and issuing official.*

Court orders for PHI

- Generally must disclose.
- Limit disclosure to information specified in order.
- If disclosure will identify a person who has or may have a reportable communicable disease, inform LEO that the subject of the information should get opportunity to request *in camera* review.

Example

- “I hereby order the Tar Heel County Health Department to provide the following information about patients seen in the prenatal clinic at any time between October 1, 2011 and October 31, 2011: name, address, race, ethnicity, date of birth, and telephone number or contact information.”



Disclosures to LE that are allowed (but not required)

- Written authorization
- Suspect, fugitive, material witness, or missing person
- Crime victim
- Notification of death
- Crime on premises
- Crime related to emergencies off-premises
- Communicable disease information

Other allowed disclosures to LE

- Written authorization
- **Suspect, fugitive, material witness, or missing person**
- **Crime victim**
- Notification of death
- **Crime on premises**
- Crime related to emergencies off-premises
- Communicable disease information

Suspect, fugitive, etc.

- LEO must:
 - Request the information (i.e., LEO comes to you)
 - Tell you that the purpose of the request is to identify or locate a suspect, fugitive, material witness, or missing person
- LHD:
 - Must verify LEO's identity before disclosing
 - May disclose the limited info listed in handout
 - May tell officer if it doesn't have info
 - Document the request and any disclosure of PHI

Example

- “I’m looking for a missing girl. 17 years of age, her parents think she may be pregnant. Have you seen her?”



Crime victim

- Disclosure must be about a crime victim
- LEO must request the information
- Victim (or personal representative) usually must agree to the disclosure
 - If victim incapacitated or other emergency circumstances, don't need agreement but other conditions must be met (see handout)
- Don't rely on this provision if another provision applies

Example

- Officer seeking information about a rape victim
- **Victim must agree to disclosure**
- **If victim can't agree because of incapacity or emergency, meet all conditions on page 4 of handout**



Crime on premises

- If a crime is committed on premises, LHD may disclose PHI it believes in good faith constitutes evidence of the crime
- LHD may initiate disclosure (don't have to wait for LEO to request)

Example

- PA accidentally leaves prescription pad in examining room with me. When PA returns, the prescription pad and I have both disappeared.
- **Has there been a crime on premises?**
- **What PHI might constitute evidence of the crime?**

Other disclosures

- Last page of handout lists disclosures that HIPAA allows but that state law may not.
- **Talk to lawyer before making one of these disclosures.**

SUBPOENAS

Subpoenas

- What it is: order directing a person to appear at a designated place and time to:
 - Give testimony, and/or
 - Produce documents
- **Do not turn over records or answer questions if all you have is a subpoena.**

HIPAA

- Subpoena requirements:
 - Written notice to the individual who is the subject of the PHI, or
 - Qualified protective order issued by court.
- Alternatives that satisfy HIPAA
 - HIPAA-compliant written authorization
 - Court order

NC law

- If information is privileged, need either:
 - Permission of person who is subject of the information, or
 - An order to disclose from a judge
- Also, if information identifies a person who has or may have a reportable communicable disease, person entitled to opportunity to request *in camera* review.

How to satisfy HIPAA & NC law

- Two methods will cover both:
 - HIPAA-compliant authorization
 - Order to disclose from a judge
- If local courts permit mail-in procedure for subpoenas for documents, okay per state law but still need to satisfy HIPAA:
 - Notice to individual, or
 - Qualified protective order

Other options?

- Ask attorney to file motion to quash
- Ask attorney to file motion to modify
- Ask attorney to contact the attorney who issued the subpoena and negotiate excusal or modification

Practice tips

- Never release confidential information on the basis of a subpoena alone.
- Inform attorney who issued the subpoena about constraints on disclosure.
- Know what to say if information requested identifies a person who has or may have a reportable communicable disease.

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