# Disclosing Patient Information to Law Enforcement

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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 <u>physician or administrator of a health</u> <u>care facility</u> 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.



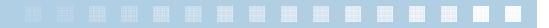
#### Additional reporting for children

- 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.



 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.





- 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.
- 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.



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		(and) and, if useful describe person(s) (Give name(s) and, if useful describe person(s))	In addition to the affidavit included above additional affidavits, attached, made by		
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		(and) in the following vehicle(s) (Describe vehicle(s))	This testimony has been (check appropriate box) tape recorded and I have filed each with NOTE: If more space is needed for any sectio	h the clerk.	
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### 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.



"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



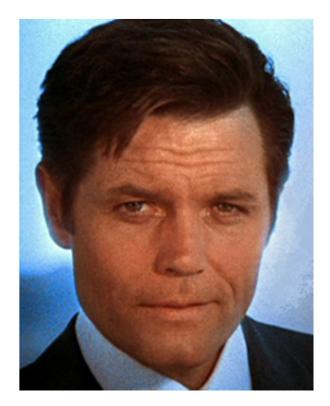
## Suspect, fugitive, etc.

#### • 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



 "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



- 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)





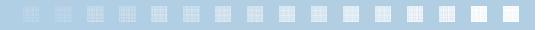
- PA accidentally leaves prescription pad in examining room with me. When PA returns, the prescription pad and I have both disappeared.
- Has there been a crime on premises?
- What PHI might constitute evidence of the crime?



#### 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
- <u>Do not turn over records or answer</u> <u>questions if all you have is a subpoena.</u>



#### 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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