

# Federal Confidentiality Laws and Ethics for Drug Court Judges

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# Why Are There Confidentiality Rules?

- Valuable to deal with the stigma of addiction
- Designed to encourage substance abusers to obtain and remain in treatment
- To encourage substance abusers to be open and honest with treating professionals by protecting sensitive information.



# Goals of DTCs and Confidentiality Laws Are Compatible

Both Are Designed to Help  
Substance Abusers Overcome  
Alcohol and Other Drug Problems

# WHAT LAWS?

- 42 USC 290dd- “Confidentiality Law”
- 42 CFR, Part 2- “Part 2”
- HIPAA- Health Insurance Portability and Accountability Act- “Privacy Rule”

# 42 CFR Applicability

- Any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation or research which is directly or indirectly assisted by any department or agency of the United States.
- Courts are included in this definition.

# HIPAA Applicability

- Applies to “covered entities”- health plans, health care clearinghouses, billing services, community health information systems, and health care providers.
- Courts are not covered entities.

# Why care about HIPAA?

- All treatment providers are subject to HIPAA requirements, and these providers are the main stewards of the “Protected Health Information” (PHI) that courts want access to!
- Providers can only release PHI in accordance to HIPAA’s Privacy Rule.
- Privacy Rule (HIPAA) and Confidentiality Law (Part 2) generally parallel each other.


# What Information is protected?

- HIPAA- “PHI”- any individually identifiable health information; broadly defined to include any part of a medical record or payment history.
- Part 2- “Covered Information”- all records, written or not, relating to the identity, diagnosis, prognosis, or treatment of any patient in a substance abuse program.



# OOPS!

- “Hi, my name is Susan Jones and I’m the Drug Court Coordinator for Rowan County. I’m just checking on Beth Dixon’s job performance this week so that I can report back to the Drug Treatment Court team.”
- Judge to Detective- “It broke my heart to see Stephanie Smith’s name in the paper with a new felony trafficking charge. She worked so hard to graduate from Drug Court last year.”



No covered information can be disclosed unless by consent of a participant or as specifically authorized by Part 2.

# Why crucial to follow:

- Violation is a crime
- Fines can be big- up to \$5000
- Can lose all federal funding
- Can lose state licensing

# Let's get consent!

Valid consent from a participant allows the use of information in a manner that would otherwise violate the Confidentiality Law.

# Warnings

- Consent forms are limited- any disclosure beyond those limits are unlawful
- Consent does not authorize redisclosure unless specifically authorized
- Consent only waives requirements of Confidentiality Law- ethical duties still apply
- Disclosures are limited to the minimum information necessary to carry out the purpose of the disclosure.

# Valid Consent

Consent must be in writing and contain 9 elements:

- name of person or program permitted to make the disclosure
- name of person or program to which disclosure is to be made
- name of participant
- purpose of the disclosure
- how much and what kind of information is to be disclosed

# Valid Consent con't.

- participant's signature
- date of signing
- statement that consent is subject to revocation at any time (except Adult criminal DTC)
- date, event, or condition upon which consent will expire if not previously revoked. (DTC graduation)

# Consent from Minors

- Consent for disclosure can only be given by the minor, not the parent or guardian.
- This includes any disclosure of protected information to the parents or guardians of the minor patient.
- If parental consent is required for treatment of a minor, the minor must give consent to seek consent from the parent or guardian.



# Disclosures Without Consent

Mandatory Disclosure:

- Valid Court Order
- Child abuse reporting laws
- Cause of death

# Disclosures Without Consent

## Permissive Disclosures

- Communications within program
- Crimes on program premises or against program personnel
- Medical emergencies
- Disclosures to agencies that provide services to programs
- Auditors, researchers, evaluators
- Duty to Protect- Tarasoff v. U of CA

# Security for Records

## Written Records:

- Must be maintained in a secure room, locked file cabinet, safe, or other similar container when not in use.
- Each program must adopt written procedures for control of access to written records.
- Must be labeled “Confidential”

## Internet Records:

- Must be password protected, not available to the public.

# Memoranda of Understanding

A valuable tool for DTC teams

- used to foster understanding, trust and cooperation on use, access and sharing of information amongst team members
- enforces that discussions at team meetings are confidential
- cannot be used to authorize disclosures

# Confidentiality Agreements

Another valuable tool for DTC teams

-as discussions at team meetings are confidential  
any outsiders need to sign a confidentiality agreement  
AND must be within the scope of participant's  
consent.



# Ethics for Drug Court Judges

# Canon 1

A Judge Should Uphold the Integrity and  
Independence of the Judiciary

- final decision must remain with judge
- be mindful of ex-parte communication

# Canon 2

A Judge Should Avoid Impropriety in all the Judge's Activities

- impartial is not disengaged
- references not appropriate



# Canon 3

A Judge Should Perform the Duties of the Judge's Office Impartially and Diligently

- decorum in courtroom
- decorum outside courtroom
- use of non-public information
- ensure compliance with  
Confidentiality Law

# Canon 4

A Judge may Participate in Cultural or Historical Activities or Engage in Activities Concerning the Legal, Economic, Educational, or Governmental System, or the Administration of Justice.

- service on boards
- fundraising
- other solicitations