

## **When Should a Local Health Department Disclose Protected Health Information to a Law Enforcement Official?**

### *Problems*

1. A domestic violence victim signs an authorization form permitting the LHD to disclose her records to an assistant district attorney (prosecutor). Should the LHD disclose the records?
  - *Note that the definition of “law enforcement official” in 45 CFR 164.501 includes “an officer or employee of any agency...who is empowered to prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.”*
  - *If the authorization form complies with HIPAA, the health LHD may disclose the records to the prosecutor. While the LHD is not required to do so, but it probably should in this situation.*
  
2. A patient shows up at the LHD for treatment of what appears to be a knife wound. Should the LHD disclose information about the patient’s injury to law enforcement?
  - *If a disclosure to law enforcement is required by state law, it is permitted under HIPAA.*
  - *G.S. 90-21.20 requires reports of every case of a wound or injury cause, or apparently caused, by a knife or sharp instrument if it appears to the physician or surgeon treating the case that a criminal act was involved. We would need to know a bit more information to decide whether to report this wound to law enforcement officials.*
  - *Reports should be made to the police in the city or town where the health department is located (or to the sheriff if in the unincorporated area of a county).*
  - *Reports under this law must include only the name of the person (if known), the age, sex, race, residence or present location (if known), and the character and extent of the injuries. If law enforcement officials request additional information, explain that a search warrant or court order is necessary.*
  
3. A defendant is charged with falsifying prescriptions for medications. The district attorney presents the LHD with a court order and demands copies of the defendant’s medical records. Should the LHD disclose the information? What if the LHD is presented with a search warrant? A subpoena?
  - *The LHD should disclose the information in response to a court order. The LHD should also disclose the information in response to a search warrant. In both cases, it would be prudent to enclose the records in an envelope and indicate that they are confidential.*
  - *If information protected by G.S. 130-143 is included in the record, the LHD should inform the district attorney about the law and explain that the law provides that the patient may request in camera review of the record.*

4. A law enforcement officer investigating a case of an abandoned newborn asks the LHD for a list of all prenatal patients who delivered or were due to deliver within 2 weeks of a particular date. The officer does not have a search warrant or court order for the information. Should the LHD disclose the information?
  - *No. The LHD should not disclose this information in the absence of a court order.*
  
5. A law enforcement officer is trying to locate a 15-year-old runaway. The officer provides the girl's name and a picture, and asks LHD staff to notify police if they see the girl or know her whereabouts. The officer does not have a search warrant or court order for this information. The LHD has seen the girl, knows when her next appointment is, and has an address for her that may or may not be current. Should the LHD give information to the officer?
  - *The LHD may provide some information to the law enforcement official in this situation. Under HIPAA, the LHD may disclose the girl's name, address, date and place of birth, social security number, ABO blood type, rh factor, type of injury, date and time of treatment, date and time of death and a description of distinguishing physical characteristics.*
  - *This situation raises a few questions*
    - *May the LHD provide "date and time of treatment" information prospectively (future appointments)?*
    - *What if the "request" comes through the news media? For example, a news bulletin asking people to contact the Durham County Police Department if they have information about the girl?*
  
6. Joe and Sarah are waiting to be seen at the LHD clinic. They both check in and sign the patient log. Joe steals Sarah's purse. May the LHD disclose Joe's name and address to a law enforcement official?
  - *Probably. HIPAA allows disclosure of information that constitutes evidence of a crime. One could argue that Joe's name and address are not technically "evidence" but they are critical pieces of information law enforcement officials will need in order to investigate the crime.*
  
7. George tells a nurse at his physician's office that he is going to "beat the \_\_\_ out of" his girlfriend for giving him syphilis. The nurse believes George's threat. May she notify law enforcement?
  - *Probably. HIPAA allows disclosures to law enforcement when the LHD believes that disclosure is necessary to prevent or lessen a serious and imminent threat.*
    - *There is some ambiguity in state law because G.S. 90-21.20B provides that disclosures to law enforcement officials are only allowed if authorized under 45 C.F.R. 164.512(f) and the "serious and imminent" threat provision is in 45 C.F.R. 164.512(j). On the other hand, G.S. 130A-12 allows health departments to make disclosures that are authorized by other law, including HIPAA. It is difficult to read these two state laws together and reach a clear legal conclusion.*

8. A jail detention officer brings an inmate, Beth, to the health department for prenatal care. The health department wants Beth to take a medication while she is in custody. May the health department nurse give the medication to the detention officer?
- *Probably. HIPAA allows disclosures to a law enforcement official having lawful custody of an inmate if it is necessary for provision of care to the inmate.*
    - *There is some ambiguity in state law because G.S. 90-21.20B provides that disclosures to law enforcement officials are only allowed if authorized under 45 C.F.R. 164.512(f) and the correctional/custodial provisions are in 45 C.F.R. 164.512(k)(5).*
    - *Despite this ambiguity, it is important that the medication make it back to the health care personnel at the jail.*
    - *In this custodial situation, the officer is unlikely to allow the patient to keep the medication therefore the LHD could think a bit creatively. The LHD could, for example, put the medication in a bag with the patient's name on it, hand it to the officer and ask the officer to deliver it to the health care personnel at the jail.*