

Confidential Medical Information and Law Enforcement

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The Plan

- Brief overview of applicable law
- Case studies addressing situations often faced by health departments

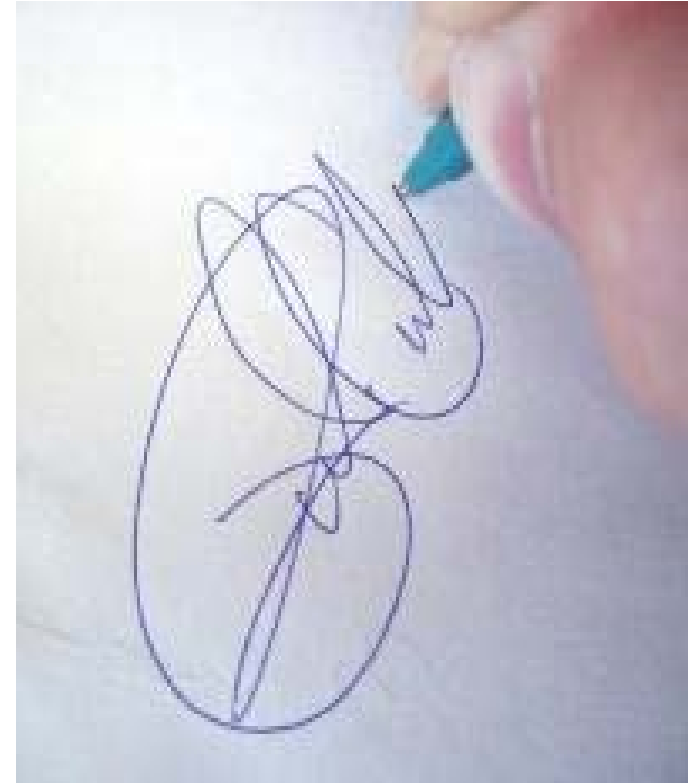


Legal Landscape

- HIPAA is the baseline
 - Allows disclosures to law enforcement officials (LEOs) in a variety of situations
- State law
 - GS 130A-12: Harmonizes state law with HIPAA for health department disclosures
 - GS 130A-143: More stringent state law protects information about a person who has or may have a reportable communicable disease

Patient Authorization

- 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?



Patient Authorization

- Disclosure permitted, not required
- HIPAA and state law allow disclosure pursuant to an authorization
 - HIPAA compliant authorization form
 - If record includes information about a person who has or may have a reportable communicable disease, form should so indicate

Required by Law

- 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?

Required by Law



- G.S. 90-21.20 requires reports to law enforcement
 - Gunshot wounds, powder burns, knife wounds, poisoning if it appears that criminal act involved
 - Wound, injury, or illness if
 - Grave bodily harm or grave illness *and*
 - Appears that resulted from criminal act of violence

Required by Law

- New reporting requirement
 - Cases involving recurrent illness or serious physical injury to child (<18) if appears to be result of non-accidental trauma
 - Reports
 - If inside municipality, to the police
 - If outside municipality, to the sheriff
 - Child abuse and neglect reporting to DSS still required

Required by Law

- Reports must include only the person's
 - Name
 - Age, sex, race
 - Residence or present location
 - Character and extent of injuries
- If officer requests more info, explain that a search warrant or court order is required

Court Order

- 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 it is a search warrant?

Court Order



- Court order and search warrant
 - Disclosure required
 - If records identify a person who has or may have a reportable communicable disease, should explain to law enforcement official that GS 130A-143 still applies and the person in the record has the right to request *in camera* review

Missing Person

- LEO is trying to locate a 15-year-old runaway. He 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?

Missing Person

- Disclosure permitted, not required
- May disclose name, address, date and place of birth, SSN, blood type, rh factor, type of injury, date and time of treatment, date and time of death, and a description of distinguishing characteristics

Crime on Premises

- 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?

Crime on Premises

- Disclosure may be permitted, not required
- Under HIPAA and state law, may disclose information that constitutes evidence of a crime
 - What is a crime?

Threat to Health or Safety



- George tells a nurse at the health department 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?

Threat to Health or Safety

- Disclosure probably permitted, not required
 - HIPAA allows disclosure when necessary to prevent or lessen a serious and imminent threat to health or safety (45 C.F.R. 164.512(j))
 - 130A-12 allows LHD to disclose when HIPAA allows
 - But... revised GS 90-21.20B allows health care providers to disclose to LEOs *only* when one specific provision of HIPAA allows it (45 C.F.R. 164.512(f))

Corrections

- 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?



Corrections

- Disclosure probably permitted, not required
- HIPAA allows disclosure to a law enforcement official having lawful custody of an inmate if it is necessary for provision of care to the inmate (45 C.F.R. 164.512(k)(5))
 - But ... GS 90-21.20B problem
- Creative solutions?

Questions?

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