




The HIPAA Battlefield

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The HIPAA Battlefield

Combat Strategies

BY
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Today's Treatment Plan

- HIPAA
- Strategies for working with health care professionals

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

- HIPAA NOT HIPPA
- 45 C.F.R. Section 164.512
- Meant to protect patients privacy

Purpose was not to prevent or obstruct legitimate law enforcement or prosecutorial investigatory activity

As long as the request is in compliance with “the law”, disclosure is authorized by any healthcare provider


45 C.F.R. Section 164.512 (A)(1)

Law-enforcement Exceptions

- 45 C.F.R. Sec. 164.512 (f)(1)-(6)
- Health care “may” disclose but are not mandated to unless by process or other court order.

Law-enforcement Exceptions

- Pursuant to process.
 - 45 C.F.R. Section 164.512(f)(1)




Pursuant to Process

- Warrant
- Court order
- Subpoena, Grand Jury Subpoena, Summons
- An administrative request or **authorized Investigative demand**

45 C.F.R 164.512(f)(1)(i)

As required by laws in the jurisdiction

(Rape, Domestic Violence, Gunshot Wounds, Dog Bites)



164.512(f)(2)

- Authorizes the disclosure of limited information, identifying and/or locating suspect, fugitive, material witness, missing person
 - Name, address, Soc. Sec. Number
 - Date and place of birth
 - Type of injury, Date and time of death
 - Distinguishing characteristics, blood type and rh
 - Date and time of treatment

164.512(f)(3)

- Information re ID and injuries of potential victims.

Victim Information

- Victim unable to consent to release because of incapacity or emergency circumstances

Victim Information

- Info needed to determine if a violation of law has been committed by someone other than the victim

Victim Information

- Immediate LE activity depends on the disclosure
- Disclosure is in the best interests of the victim

Victim Information


- Use this section if proof of serious injury or death of patient is required before a sample can be obtained

Alert LE re death Information

- 45 C.F.R. section 164.512 (f)(4)
- If Health Care entity has a suspicion that death resulted from criminal conduct
- Oral disclosure appears appropriate

Crime On Premises of Health Care Provider

- 45C.F.R. 164.512(f)(5)
- As long as the provider has a reasonable belief that the disclosure constitutes evidence of the commission of a crime on the hospital's premises



To Explain the Nature and Circumstances of a Crime

- 45 C.F.R. 164.512 (f)(6)
- May disclose the nature and circumstances of a crime

Nature and Circumstances of a Crime

- Reasonable belief
- The disclosure will alert LE to
- The nature and circumstances of a crime related to the hospital visit.

Nature and Circumstances of a Crime

- Includes:
- location of Crime and/or victim
- Identity, description and location of perpetrator

HIPAA Letter
164.512(f)(1)(ii)(C (1)-(3))

SENIOR DISTRICT ATTORNEY GENERAL COUNSEL
SANTA CRUZ COUNTY OFFICE

President of Health & Human Resources
RE:
In Re: [Name of Case]

Please find attached to this letter a subpoena duces tecum to provide copies of the medical records pertaining to your relative in the above captioned matter.

It may also be necessary to interview you and other staff members and to interview in detail if these records do not fully answer the questions in the subpoena or if the records are incomplete or otherwise do not comply with the subpoena.

This office is bound by the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the regulations promulgated thereunder. In the event of a conflict between the requirements of HIPAA and the requirements of the subpoena, the requirements of the subpoena shall prevail.

- The information requested is not subject to any of the exemptions provided in 45 CFR 164.512(e)(1) and (2).
- The information requested is not subject to any of the exemptions provided in 45 CFR 164.512(e)(3) and (4).
- The information requested is not subject to any of the exemptions provided in 45 CFR 164.512(e)(5) and (6).
- De-identified information will not be provided in response to this subpoena.

If you have any questions or need further information regarding this subpoena, please contact the undersigned at the phone number or email address provided below.

Thank you for your contribution to this matter.

Sincerely,
 Jason W. Crane
 Senior District Attorney General
 Santa Cruz County Office
 Government Center, 100 West San Antonio Street
 San Jose, CA 95128-1000
 Phone: (408) 298-1000
 Fax: (408) 298-1000

HIPPA Letter

- An “authorized investigative demand”

HIPAA Letter

- The information sought is relevant and material to a legitimate LE inquiry.

HIPAA Letter

- Can come from the DA (Best) or HIGH in your Staff and Command.

HIPAA Letter

- The request is limited and specific in scope...
- To the extent reasonably practicable...

HIPAA Letter

- In light of the purpose for which the information is sought.

HIPAA Letter

- Information without identifying the patient could not reasonably be used instead of the information sought.

HIPAA Letter

- This request appears to authorize the continuing cooperation of staff including oral communications regarding this request.

Who has had challenging interactions with Health Care Providers or Staff?

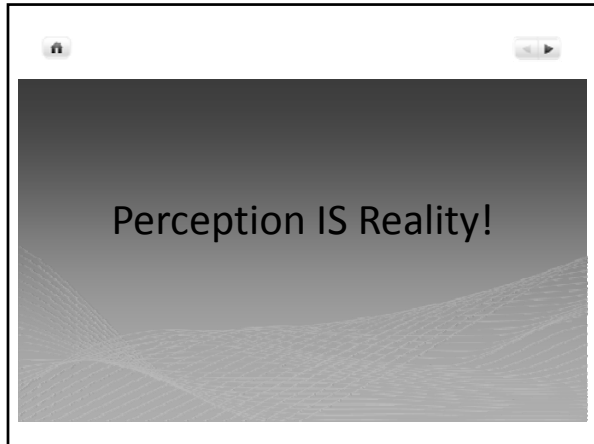


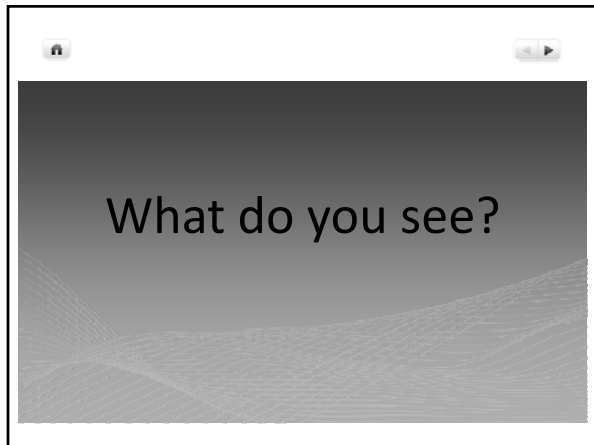
What Healthcare Providers see...

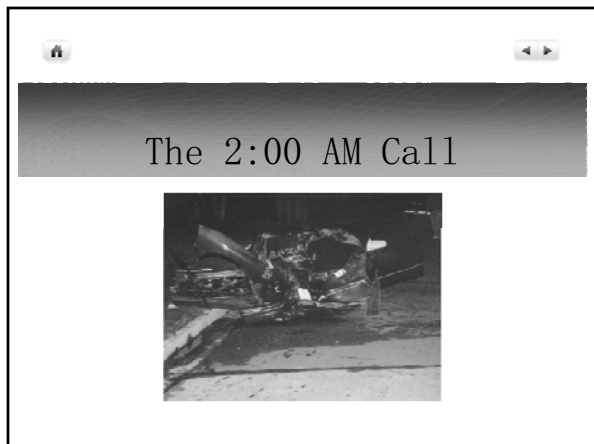


Myths

- They will be sued by the defendant if they testify against them.
- All lawyers want to sue them
- Prosecutors ARE all








Establish and Maintain a Relationship with HC Providers

- Physically go to the Health Care provider.

- Communicate
- Coordinate
- Collaborate



Coordinate a meeting prior to a critical event occurring

Who should you invite?

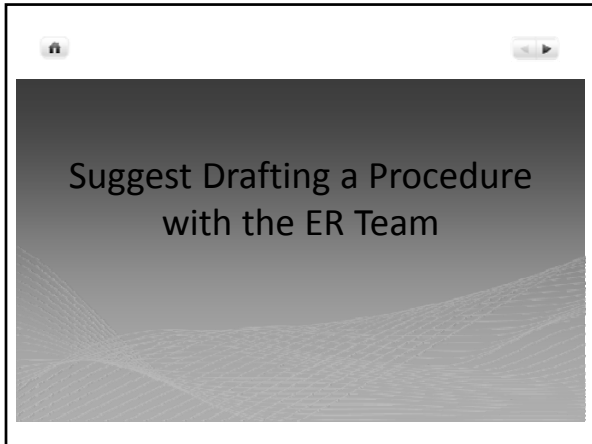
Your Team

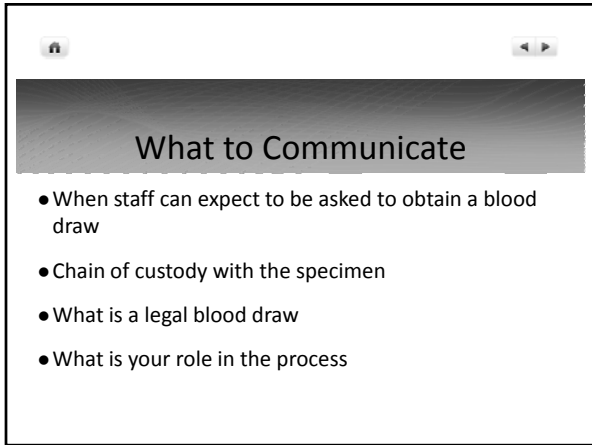
- ELECTED District Atty's affected
- Chief's of Police affected
- Sheriffs affected
- Highway Patrol Command Staff

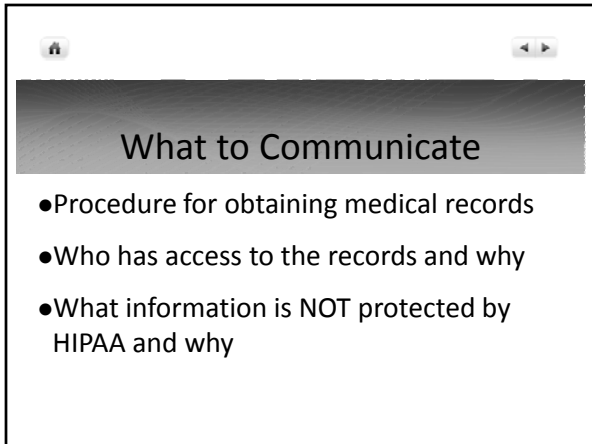
Hospital Team

- ER Nurse Director
- ER Nurse Manager
- Lab Director
- Hospital Gen Counsel or Risk Manager
- ER Physician or VP of Medical Services

Collaborate








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Dispelling Myths

- Will not be involved in restraining the suspect
- They are helping to save lives
- They probably will not be required to testify


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Immunity...what's that?



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Meet with them on a regular basis




What Can I Do For You?

- Staff education and in-service
- Can include non-traffic topics such as child-abuse and neglect and the realities of testifying in court


Establish and Maintain a Relationship with HC Providers

- ASK: what can I do for YOU?
- LE welfare checks....with treats



Establish and Maintain a Relationship with HC Providers

- Observations in the ER.
- Ride alongs with EMS.
- Request to be part of their patient safety committee.



Remember

- Communicate (Speak the same language)
- Coordinate
- Compromise
- AND the fourth C

Compromise!!

You may not get everything you want



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Tennessee District Attorney's General Conference
