

ROLL CALL TRAINING
FROM NORTH CAROLINA'S 24/7 POLICE
ATTORNEY LAW FIRM

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TOPIC:

HIPAA

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DISCUSSION:

The federal Health Insurance Portability and Accountability Act (HIPAA) became effective April 14th. This sweeping legislation sets forth stringent requirements concerning confidentiality of medical records, and in that regard has created a fair amount of difficulty for law enforcement officers conducting investigations where medical issues may be involved.

Below are some common HIPAA scenarios that we prepared for our client agencies back in April. Perhaps these will be useful for First-Line Supervisors to share with officers in a Roll-Call training session.

SCENARIO #1:

Officer A goes to the emergency room at the County General Hospital. He is trying to determine the location and status of B, who he believes has been involved in a serious motor-vehicle accident. Based on eye-witness testimony at the scene Officer A believes B was DWI at the time of this accident, which resulted in serious injuries to a third person. These same eye-witnesses told A that B (also injured) was transported to County General. When A arrives at the hospital and inquires as to whether B is present, the hospital refuses to divulge whether B is present or not. The hospital security officer states this is "because HIPAA prevents us from doing so."

Question – Can the hospital reveal whether B is present?

Answer – Yes. 45 CFR 164.512(f)(2) allows a "covered entity" (the hospital in this case) to reveal protected health information in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person. Pursuant to that subsection, the hospital may reveal:

- (A) Name and address
- (B) Date and place of birth
- (C) Social Security Number
- (D) ABO blood type and rh factor

- (E) Type of injury
- (F) Date and time of treatment
- (G) Date and time of death, if applicable
- (H) Distinguishing physical characteristics

Thus, if B is present and receiving treatment, the hospital could reveal this fact, as the “date and time of treatment.”

SCENARIO #2:

Deputy C is working a prescription fraud case. She believes that suspect D has illegally received various controlled substances. D is willing to consent to the examination of his medical records.

Question – Under HIPAA, may D give valid consent to access to his medical records for the limited purposes of determining whether he has been involved in prescription fraud?

Answer – Yes (assuming that his consent is otherwise valid). 45 CFR 164.508(a) allows consensual access to protected medical information in some circumstances. However, the rules surrounding this consensual release of information are very complex. [NOTE: Clients of SR&S have been provided with a carefully drafted consent (release) form, prepared by us, and designed to be compliant with both HIPAA requirements and ADA “business necessity” provisions. If your agency does not have access to such a form, you may wish to confer with your city/county attorney or District Attorney.]

SCENARIO #3:

Same facts as #2 above, however, in this instance, D refuses consent. Deputy C has developed probable cause to examine the records.

Question – May Deputy C examine the records without D’s consent?

Answer – Yes (apparently). 45 CFR 164.512(f)(1) allows disclosure of protected health information for law enforcement purposes pursuant to process. That subsection specifically allows for the release of such information pursuant to a “court order, court-ordered warrant, or subpoena or summons issued by a judicial officer.” It appears that a standard criminal search warrant issued by a NC judicial official would be sufficient to meet this requirement. Given the complexity of this issue, officers are urged to consult their legal counsel or district attorney for assistance with the preparation of such a search warrant. [Clients of SR&S are of course welcomed to contact us 24/7 for assistance in this regard.]

[NOTE: References to “CFR” are to the “Code of Federal Regulation.” The CFR is a voluminous body of federal regulatory and administrative law, produced by the executive branch of the federal government as directed by the U.S. Congress.]