

CARE OF THE PERSON IN THE CRIMINAL LEGAL SYSTEM

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CONTEXT:

• People in the custody of law enforcement deserve respectful & ethical care. Healthcare providers (HCPs) should be aware of their patients' rights to better advocate for them and to avoid violating laws themselves (e.g. HIPAA).

PRIVACY

• Regardless of criminal-legal status, law enforcement officers (LEO) are not privy to a patient's protected health information (PHI) except in rare circumstances. **Discussing PHI with a patient in the presence of LEO's may be a breach of that patient's privacy.**

• Healthcare providers (HCPs) are covered by HIPAA, and can only disclose PHI to the individual to whom the PHI belongs and to their choice of surrogates, with few exceptions that include:

Mandatory Situations: HCP **must** disclose (varies by state)

- conditions with mandatory reporting (e.g. GSW, burns)
- high risk communicable diseases (e.g. TB)
- victims of child/elder abuse, neglect, domestic violence, crime
- as required by a court order, warrant or subpoena (e.g. LEO presents a warrant for results of drug testing that was performed)

Permissible Situations: HCP **may** disclose

- to identify a missing person or witness/person involved in a crime
 - to alert LEOs of a death
 - when a crime or suspicion of a crime occurs on hospital or clinic premises (e.g. hospital staff assaulted by a patient)
 - when notifying LEO of a medical emergency not occurring on at the hospital or clinic (e.g. disclosing that a patient has reported injuring a person outside of the hospital)
- LEO cannot demand disclosure of PHI outside of these circumstances.

• To avoid violating privacy/confidentiality, HCPs should ask LEO to leave the room when communicating medical information or providing care (e.g. examination, procedure) **if the HCP feels safe to do so. LEO are not bound by HIPAA, so anything observed or overheard is not protected.**

• LEO **cannot limit disclosures** of PHI to the patient without a court order, warrant or subpoena unless directed by local or state law or facility policy. This includes discharge plan, treatment plan, & other elements of care schedule. (e.g. LEO cannot demand that the date of discharge be kept secret from the patient)

• Disclosing PHI to LEOs outside of mandatory or permissible situations may put HCPs at legal risk. **HCP should consider discussing any disclosure of PHI to LEOs with representatives of their organization to avoid legal exposure.**

DISCLAIMER: This document is intended only for educational purposes and does not constitute legal advice. Check relevant state laws & hospital policies. Consult www.scopesandshields.org for more information.

RESTRAINTS

- Restraints can cause injury, especially in people w/ critical illness.
- Federal law **prohibits** the use of non-medical restraints for women in active labor
- Restraints **can lead to harm and intimidate patients**. HCPs should demand removal of unnecessary non-medical restraints if they do not perceive a security or safety risk.



LAW ENFORCEMENT OFFICERS (LEO)



HEALTHCARE PROVIDER (HCP)



the PATIENT



VISITOR

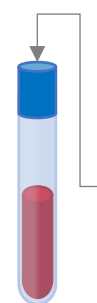


SURROGATE DECISION MAKERS

- Competent individuals can name their preferred surrogate decision makers.
- Unless explicitly permitted by local law, **LEO should not be participate in medical decision making for a criminal-legal involved patient who lacks capacity**
- Providers should not consent to LEO presence in a patient room if patient is not able to consent and there is no hospital policy, nor should they authorize LEOs to search patients or their belongings if asked.

TESTING

- HCP cannot obtain testing without patient consent, regardless of criminal legal status of the patient.
- A common exception: most states require consent for future blood alcohol testing to obtain a driver's license, therefore no further consent is required
- Other procedures performed without consent could constitute patient battery
- HCP **are not legally required** to carry out any medically unnecessary procedures or tests, including phlebotomy for blood alcohol testing, when requested by LEO.



VISITATION

- Visitors may withhold consent to search (unless this is a part of the hospital policy) but may have their possessions seized if they are in plain view of LEO or if LEO has reasonable suspicion to search
- Hospitals or units can choose to restrict access to only those who have had their belongings searched, but **these searches should be conducted by facility officials, not LEO**

COMPASSIONATE RELEASE

- **Providers can advocate for compassionate release** for individuals with **terminal diagnoses** or advance stage chronic conditions that cannot be reasonably managed in a jail/prison

BIAS

- Asking or searching about the specific crime that a patient is accused or convicted of, unless serving a specific medical purpose, **may bias care delivery and should be avoided**