

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
425 FIFTH AVENUE NORTH  
NASHVILLE, TENNESSEE 37243

October 7, 2004

Opinion No. 04-153

HIPAA

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**QUESTIONS**

1. If a physician in an office was examining a patient and the patient dropped from his pocket a crack pipe, could the physician call authorities to turn over the drug paraphernalia without being in violation of HIPAA?
2. If a patient in an emergency room was unconscious and the nurse was searching for documentation of identity and ran across a terrorist plot, could she notify authorities without violating HIPAA?
3. If a patient falsified information such as a Social Security number and/or other identifying information to an admitting nurse, could the nurse turn the information over to authorities without violating HIPAA?

**OPINIONS**

1. Yes. If the covered entity had a good faith belief that the crack pipe was evidence that a crime had occurred on the covered entity's premises, the physician could call authorities to turn over the drug paraphernalia without being in violation of HIPAA.
2. Yes. If the nurse concluded that the terrorist plot constituted a serious and imminent threat to the health or safety of the public, the nurse could notify law enforcement officials without violating HIPAA.
3. Yes. If the covered entity believed in good faith that the falsification of information constituted a crime which occurred on the covered entity's premises, the admitting nurse could turn the information over to authorities without violating HIPAA.

## ANALYSIS

1. The Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) prohibits covered entities from using or disclosing protected health information (“PHI”) except as permitted or required by the Privacy Rule. 45 C.F.R. § 164.502(a). Covered entities include health care providers “who transmit any health information in electronic form in connection with a transaction covered by this subchapter.”<sup>1</sup> 45 C.F.R. § 160.103. Health information includes:

any information, whether oral or recorded in any form or medium, . . . created or received by the health care provider, . . . [which] relates to the past, present or future physical or mental health or condition of . . . or the provision of health care to an individual.

*Id.* PHI is individually identifiable health information, including demographic information. *Id.*

The Privacy Rule permits covered entities to disclose an individual’s PHI to law enforcement officials pursuant to a valid authorization signed by the individual or the individual’s personal representative. 45 C.F.R. §§ 164.502(a)(1)(iv) and 164.508. Without the individual’s written authorization, a covered entity may only disclose the individual’s PHI to law enforcement officials to the extent that the use or disclosure is permitted or required by law and the use or disclosure complies with and is limited to the relevant requirements of that law. 45 C.F.R. § 164.502(a)(1)(vi).

Disclosures for law enforcement purposes are permitted to comply with state laws that require the reporting of wounds or physical injuries. 45 C.F.R. §164.512(f)(1)(i). The Privacy Rule also permits disclosures of PHI necessary to comply with a court order or court-ordered warrant, a subpoena or summons issued by a judicial officer, a grand jury subpoena, or an administrative request, including an administrative subpoena or investigative demand, from a law enforcement official. 45 C.F.R. § 164.512(f)(1)(ii)(A)-(C). Disclosures for law enforcement purposes are also permitted to respond to a law enforcement official’s request for PHI for purposes of identifying or locating a suspect, fugitive, material witness or missing person, although the types of PHI that may be provided are limited. 45 C.F.R. § 164.512(f)(2). A covered entity does not violate the Privacy Rule when a victim who is a member of the covered entity’s workforce discloses this limited PHI about a suspected perpetrator of a crime to law enforcement. 45 C.F.R. § 164.502(j)(2). A covered entity may also disclose this limited PHI when the covered entity has a good faith belief that the disclosure is necessary for law enforcement officials to identify or apprehend an individual who has admitted participation in a violent crime that the covered entity reasonably believes may have caused serious physical harm to a victim, provided that the admission was not made in the course of or based on the individual’s request for therapy, counseling, or treatment related to the propensity to commit the violent act. 45 C.F.R. § 164.512(j)(1)(ii)(A), (j)(2)-(3).

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<sup>1</sup>This opinion presumes that the subject physician and nurse(s) are either covered entities or employees or agents of a covered entity required to comply with HIPAA.

The Privacy Rule also permits the disclosure of PHI to law enforcement officials concerning a victim or suspected victim of a crime; child or adult abuse, neglect, or domestic violence; and decedents, under certain specified circumstances. 45 C.F.R. §§ 164.512(c), 164.512(f)(3) - (4), and 164.512(g)(1). A covered entity may also disclose to law enforcement officials PHI that the covered entity in good faith believes to be evidence of a crime that occurred on the covered entity's premises. 45 C.F.R. § 164.512(f)(5). Disclosure of PHI is also permitted in response to a request for PHI by a correctional institution or a law enforcement official having lawful custody of an inmate and to identify or apprehend an individual who appears to have escaped from lawful custody. 45 C.F.R. §§ 164.512(j)(1)(ii)(B) and 164.512(k)(5). A covered entity may also disclose PHI to a law enforcement official reasonably able to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public, and to federal officials authorized to conduct intelligence, counter-intelligence, and other national security activities under the National Security Act or to provide protective services to the President and others and conduct related investigations. 45 C.F.R. §§ 164.512(j)(1)(i) and 164.512(k)(2) - (3).

Tenn. Code Ann. § 39-17-425(a)(1) makes it "unlawful for any person to use, or to possess with intention to use, drug paraphernalia." Therefore, to the extent that a covered entity believed in good faith that the crack pipe in the patient's pocket constituted evidence of a crime which had occurred on the covered entity's premises, the physician could call authorities to turn over the drug paraphernalia without being in violation of HIPAA.

2. As noted above, a covered entity may disclose PHI to a law enforcement official reasonably able to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public. 45 C.F.R. § 164.512(j)(1)(i). If the terrorist plot constituted a serious and imminent threat to the health or safety of the public, the nurse could notify law enforcement officials without violating HIPAA.

3. As noted above, a covered entity may disclose to law enforcement officials PHI that the covered entity in good faith believes to be evidence of a crime that occurred on the covered entity's premises. 45 C.F.R. § 164.512(f)(5). Therefore, if the covered entity had a good faith belief that the falsification of information constituted a crime which occurred on the covered entity's premises, the admitting nurse could turn the information over to authorities without violating HIPAA.

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