

GUIDE TO RELEASE OF PATIENT INFORMATION TO THE MEDIA

*A guide for hospital public
relations professionals and
the news media, as specified
by California law and HIPAA*

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INTRODUCTION

Releasing information about the condition of hospital patients to the news media requires a careful balancing of patient privacy with the media's desire for information. Hospitals are required by law to safeguard the privacy and confidentiality of their patients' medical conditions. These responsibilities often place hospital public relations professionals in conflict with reporters, whose job it is to seek out relevant information about people who are in the news.

California law has protected patient privacy for decades by restricting the release of medical information.

*The federal Health Insurance Portability and Accountability Act (HIPAA) added federal protection to patient privacy rights. The HIPAA regulations specify the purposes for which patient information may and may not be released by hospitals and other health care providers without authorization from the patient. **These HIPAA privacy regulations strictly limit what patient information hospitals may share with the news media.***

The purpose of this guide is to help you understand what information can and cannot be released under the law. This guide is not intended to serve as a substitute for legal counsel and legal advice should be obtained when necessary.

RELEASE OF PATIENT INFORMATION TO THE NEWS MEDIA

GENERAL GUIDELINES

Under state and federal law, information about the condition and location of a patient may be released **only if the inquiry specifically contains the patient's name**. No information can be given out if a request does not include the patient's name.

If the patient has not requested that information be withheld, and the request for information contains the patient's name, hospitals generally may release the patient's condition and location within the hospital. However, hospitals must use discretion in releasing a patient's location; at no time may a hospital disclose a patient's location in a psychiatric or substance abuse unit.

PATIENT CONDITIONS

Hospitals may disclose a patient's condition in general terms that do not communicate specific medical information. In describing the patient's condition, hospital personnel are advised to limit their comments to the following definitions:

- **Undetermined.** Patient is awaiting physician assessment.
- **Good.** Vital signs are stable and within normal limits. Patient is conscious and comfortable. Indicators are excellent.
- **Fair.** Vital signs are stable and within normal limits. Patient is conscious, but may be uncomfortable. Indicators are favorable.
- **Serious.** Vital signs may be unstable and not within normal limits. Patient is acutely ill. Indicators are questionable.
- **Critical.** Vital signs are unstable and not within normal limits. Patient may be unconscious. Indicators are unfavorable.

These terms are the only appropriate descriptions of a patient's condition. The term "stable" is not an accurate description of a patient's condition and therefore should not be used.

Release of information regarding minors is different from that of adults. See "*Minors*," page 6.

NATURE OF INJURY OR CONDITION

Although California law has permitted hospitals to release a description of the nature of a patient's accident or injuries, this is not permissible under HIPPA without written authorization from the patient. Without authorization, the only information that may be disclosed to the news media is the one-word description of the patient's condition as defined on page 2.

DEATH OF A PATIENT

State and federal privacy protections continue to apply to a patient's medical information even after the patient's death. That is, no information may be released unless the inquiry contains the patient's name.

The death of a patient is considered to be a "patient condition" and may be disclosed using the one-word description "deceased." However, hospitals should exercise additional care with respect to disclosure of a patient's death, ensuring that all reasonable efforts have been made to notify the patient's next-of-kin prior to the patient's death being made public.

A patient's death is not routinely announced by the hospital. Consequently, hospitals should verify that there has been no objection to disclosure from the patient's family or other legal representative and that next-of-kin have been notified (or a reasonable attempt has been made) prior to the hospital making any announcement of a patient's death.

Additional information about a patient's death, including the date, time and cause of death, should not be released without written authorization from a legal representative of the deceased.

Although a hospital may report information about a patient's death to other agencies (e.g., coroner, law enforcement, etc.) — some of which may become public — this does not enlarge the scope of information that a hospital may release to the media.

LOCATION OF A PATIENT

HIPAA permits disclosure of information concerning the patient's location in the hospital to persons who inquire about the patient by name. However, release of such information is intended to facilitate visits by family and friends, as well as the delivery of gifts and flowers.

Caution should be exercised in disclosing this information over the telephone, even where such disclosure is believed to be proper, except as necessary to direct the inquiring party in general terms to the appropriate location within the hospital. Precise information (e.g., floor or room number) are best disclosed only on a face-to-face basis so that there is an opportunity to verify the individual's purpose or intended use of this information.

Although HIPAA does not expressly prohibit the disclosure of a patient's room location to the media, hospitals may wish to adopt policies prohibiting such disclosure without the patient's written authorization.

MEDIA ACCESS TO PATIENTS

Hospitals may deny the media access to a patient if it is determined that the presence of photographers or reporters would aggravate the patient's condition or interfere with hospital care.

Hospitals should develop policies and procedures that streamline requests for media interviews through their public relations departments or other designated hospital personnel. Because of the often time-sensitive nature of media requests, it is recommended that hospitals designate "back-up" spokespersons to respond to media inquiries in the event the facility's designated media representative is unavailable.

To safeguard patient privacy, it is recommended that a hospital spokesperson accompany media representatives at all times when they are in the hospital facility.

Under HIPAA, the following activities require **prior written authorization** from a patient:

- Issuing a detailed statement (e.g., anything beyond the one-word condition) regarding the nature of the patient's illness or injury, his or her treatment and prognosis
- Photographing or videotaping patients
- Interviewing patients

If the patient is a minor, permission for any of these activities must generally be obtained from a parent or legal guardian, unless the information concerns health care services that the minor can obtain without the consent of a parent or guardian. See "*Minors*," next page.

PUBLIC FIGURES AND CELEBRITIES

The standards for release of information and permissible disclosures are no different for public figures or celebrities than for other patients. However, given the likelihood of media interest, the hospital may wish to verify with the patient (or the patient's representative) whether there is objection to the disclosure of information to the media.

MINORS

HIPAA defers to state law with respect to the rights of parents to obtain access to or control the disclosure of information concerning their children. Under California law, when a parent or guardian has the authority to make medical decisions on behalf of a child, that parent or guardian also has the right to object to (or authorize) disclosure of medical information to the media.

In those cases where the minor has the legal authority to consent to a health care service, that minor also has the ability to object to (or authorize) the release of information regarding that health care service, regardless of whether a parent or guardian has given authorization.

It is possible that minors may receive some health care services for which they can legally consent and other treatments requiring the authorization of a parent or guardian. In these cases, the minor has the authority to object to (or authorize) the disclosure of some medical information, while the parent or guardian has this authority regarding the other services.

WHEN A PATIENT IS INCAPACITATED

When a patient lacks decision making capacity, but has previously designated a representative to make health care decisions on his or her behalf (e.g., an agent or surrogate appointed pursuant to an Advance Directive or a Durable Power of Attorney for Health Care), the designated individual also has the right to authorize (or object to) the release of the patient's information to the extent necessary for the agent to fulfill his or her duties as agent. Whether this authority includes authorizing a hospital or other health care provider to release medical information to the media depends on the facts and circumstances unique to each particular situation.

If a patient is incapacitated and there is no designated representative as described above, but a conservator has been appointed or family members are available, the hospital should consult with the conservator or closest available relative regarding release of information to the media.

If a patient is incapacitated and there is no designated representative, conservator, or family members available, a hospital may disclose some or all of the allowed information (location and condition upon specific inquiry, as described above) if such disclosure is consistent with a prior expressed preference of the patient or is considered to be in the best interest of the patient. However, hospitals should use discretion in making this decision, and the patient should be informed of the use or disclosure of information as soon as it is practical to do so.

WHEN THE PATIENT OR PATIENT'S FAMILY CONTACTS THE MEDIA

The laws regarding the release of patient information described above apply even when the patient or the patient's family contacts the media (for example, with a complaint about the health care facility). This makes it difficult, if not impossible, for the health care facility to defend itself in the press. The facility may attempt to obtain written authorization from the patient or the patient's legal representative to release information to the media to respond to the patient's (or family's) accusations. However, if authorization is denied, no information may be released. A health facility should contact its legal counsel regarding the advisability of informing the media that the facility has requested authorization from the patient to release information necessary for the facility to defend itself, but the patient has refused to grant such permission.

UNIDENTIFIED PATIENTS

Hospitals sometimes provide care to patients who cannot be identified through any means (e.g., personal identification, police or dental records, etc.). When these situations occur, hospitals sometimes provide a photo of the unidentified patient to the news media in order to help locate the patient's next-of-kin. Under HIPAA, a hospital may continue this practice — however, certain legal determinations must first be made.

- Before a hospital may provide the news media with any information about a “John Doe” patient, the hospital must first determine whether or not the patient is legally “present or otherwise available” and whether the patient has the capacity to make health care decisions.
- If a “John Doe” patient is determined to be both “present and otherwise available” and is not incapacitated, the hospital may release information only if the patient agrees or is provided a reasonable opportunity to object and does not do so.
- However, if the unidentified patient is incapacitated and is not “present and otherwise available,” the hospital may disclose only the minimum necessary information that is directly relevant to locating a patient's next-of-kin, if doing so is in the best interest of the patient. Under no circumstances, however, may a patient's mental health, developmental disability, HIV or substance abuse information be released.

WHEN PATIENT INFORMATION SHOULD NOT BE RELEASED TO THE MEDIA

A hospital's first and foremost duty is to its patients. This includes protecting patients' privacy and guaranteeing the confidentiality of their medical care. A patient's right to privacy surpasses the media's desire for information — even if some of the information can be considered a matter of public record. The following situations dictate that hospitals **not release patient information**.

PATIENTS WHO OPT OUT OF PROVIDING INFORMATION

The hospital has a responsibility to tell patients what information will be included in the hospital directory and to whom that information may be disclosed. This information is typically included in the hospital's Notice of Privacy Practices. The patient has the option to expressly state that he or she does not want information released, including confirmation of his or her presence in the facility.

INFORMATION THAT COULD EMBARRASS OR ENDANGER PATIENTS

It is a hospital's duty not to report any information that may embarrass a patient. Such information could include the room location of the patient (e.g., admission to an obstetrics unit following a miscarriage or admission to an isolation room for treatment of an infectious disease, etc.).

Additionally, a hospital should not report a patient's location within the hospital — or even confirm the patient's presence in the facility — if that information could potentially endanger the patient (e.g., the hospital has knowledge of a stalker or abusive partner, etc.).

OTHER APPLICABLE FEDERAL OR STATE LAWS

Federal and state laws specifically prohibit hospitals from releasing any information about patients who are being treated for alcohol or substance abuse or mental or developmental disabilities. This includes acknowledging, even in response to specific inquiries, that a patient is being treated in a facility if doing so would identify him or her as being the recipient of these services.

Hospitals that provide treatment for alcohol or substance abuse or for mental or developmental disabilities should develop specific policies and procedures to address the additional restrictions imposed on the disclosure of information related to such treatment.

MATTERS OF PUBLIC RECORD

Matters of public record refer to situations that are reportable by law to public authorities such as law enforcement agencies, the coroner or public health officer. Information that is included on police logs also is considered to be matters of public record (i.e., the transport of car accident victims to a hospital, etc.).

However, public record cases are no different from other cases with regard to the release of information. Thus, even though public record cases may result in increased media inquiries, hospitals must take the same precautions to protect patient privacy as in other situations, including complying with the legal requirement that information be released **only if the inquiry specifically contains the patient's name.**

For example, in the case of a car accident victim who is transported by the fire department or paramedics to a hospital, a reporter must have the car accident victim's name before the hospital can provide any patient information.

There are numerous state statutes that address reporting of incidents ranging from child abuse to gunshot wounds. The fact that a hospital has an obligation to report certain confidential information to a government agency does not make that information public and available to the news media.

Hospitals should refer media questions on matters of public record to the appropriate agencies (e.g., police, fire, coroner's office, etc.) The public entity will decide, based on the laws applicable to it, whether it can release any or all of the information it has received.

DISASTER SITUATIONS

Disaster situations require hospitals to operate in highly emotional and rapidly changing situations. The very real need to keep the public informed must be balanced with the privacy rights of patients and their families. In such highly charged situations, hospitals may release information that is beneficial to the public good, but extra care must be taken to protect information that can be linked to a specific patient.

Rules governing the release of patient information to the media do not change in disaster situations — a reporter must have a patient's name before any information can be released to the media.

WHEN FEASIBLE, NOTIFY NEXT-OF-KIN FIRST

While it is desirable to notify next-of-kin before releasing patient information, in disaster situations involving multiple casualties it may be necessary to share patient information with other hospitals and/or rescue/relief organizations prior to next-of-kin being contacted.

WHEN APPROPRIATE, RELEASE GENERAL PATIENT INFORMATION

Hospitals may tell the media the number of patients that have been brought to the facility by gender or age group (e.g., adults, teens, children, etc.) and the general cause of their treatment needs (an explosion, earthquake, etc.) as long as it is not identifiable to a specific patient.

COOPERATE WITH OTHER HOSPITALS OR DISASTER RELIEF AGENCIES

Hospitals may release patient information to other hospitals, health care facilities and disaster relief agencies in situations where multiple facilities are receiving patients from one disaster. Public relations representatives from different facilities are encouraged to cooperate and facilitate the exchange of information regarding patients' location and status.

Specifically, hospitals may disclose patient information (e.g., location, general condition or death) to a public or private organization that is state or federally recognized as assisting in disaster relief efforts for the purposes of notifying family members or others responsible for a patient's care.

A DESIGNATED HOSPITAL SPOKESPERSON SHOULD BE AVAILABLE AT ALL TIMES

Because of the rapidly changing nature of disasters and the critical role that hospitals play following a disaster, a hospital spokesperson should be available to the news media at all times. This access can be in person or via telephone or pager.

The spokesperson should have immediate access to hospital administrative and clinical personnel so that he or she can provide accurate, up-to-date information to the media.

A central media gathering location should be designated so that information can be released in a press conference format that does not compromise patient privacy or the health care facility's need for added security in a disaster situation.

In the case of mass casualties, the spokesperson may release basic patient information such as the aggregate number of victims, their sex and their general conditions. **However, individually identifiable patient information may not be released without the patient's authorization.**

The U.S. Department of Health and Human Services (DHHS) has issued a "Frequently Asked Questions" response regarding whether the HIPAA Privacy Rule is suspended during a national or public health disaster. The short answer is no. However, the Secretary of DHHS may issue a waiver following a disaster. In such a case, no sanctions or penalties will be assessed against a hospital for specified violations of HIPAA. For more information, go to www.hhs.gov/hipaafaq/providers/hipaa-1068.html.