



## AND THE LAW

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### DISCLOSURES OF PHI

Uses and disclosures of Protected Health Information (PHI) are allowed under the Health Insurance Portability and Accountability Act (HIPAA) as needed to perform transactions for treatment, payment, or healthcare operations (TPO). This is well known to pharmacists, but not always by patients.

Patients are aware of HIPAA and some of them think that HIPAA prohibits all use and disclosure of PHI. Patients have reported claims alleging that the pharmacists violated HIPAA by contacting the prescriber to clarify a prescription. Pharmacists know that they can disclose PHI to another treating health professional under TPO.

Pharmacists may be less aware of other uses and disclosures permitted under HIPAA that are not included under TPO. These can be found in the Code of Federal Regulations at 45 CFR 164.512.

These uses and disclosures are not absolute. Many have conditions that must be met prior to the use or disclosure being made. The length of this article won't allow a complete listing of all the conditions for each. The regulations may also restrict the parties

to whom the disclosure may be made. The first permitted use and disclosure is for public health activities. This allows disclosures to public health authorities, FDA and other persons in certain circumstances. One of these is an agency authorized to receive reports of child abuse or neglect. This connects to a second permitted disclosure about victims of abuse, neglect, or domestic violence. There is some overlap in these permitted uses, so caution is needed to make sure your situation fits into the parameters.

There are three related disclosures that involve law enforcement. The first allows disclosures to law enforcement officials about victims of crime or about criminal conduct. Disclosure is also permitted to avert serious threats to health or safety, either to a person or to the public. This could even include disclosing PHI that would help police identify or apprehend escapees. The third permitted use here is disclosures to a coroner or medical examiner to help identify a person or help determine the cause of death.

Regulations also permit disclosures for cadaveric organ, eye or tissue donations; or for research purposes. There are a number of specific conditions regarding disclosures for research purposes.

There are two exceptions involving the legal and regulatory system. The regulation provides for disclosures to a health oversight agency if the agency is performing their oversight activities. This would include audits, inspections, investigations or disciplinary actions. These are not audits conducted by third party payers. There is also an exception for court orders and subpoenas. There are conditions to be met for the subpoena exception to be valid, so use caution when responding to a subpoena.

The last two exceptions are in specialized areas. The first is for specialized government functions. These include uses and disclosures for military and veterans activities, national security activities, protective services for the President, correctional institutions or to the National Instant Criminal Background Check System. The last exception is the disclosure of PHI to workers compensation programs as required by law. Workers compensation is a statutorily-created system that regulates the care of injured workers.

The lesson for pharmacists is that there are many situations other than TPO where use or disclosure of PHI is permitted without the patient's authorization. All of the exceptions are subject to conditions and are not absolute. Also, the pharmacist should remember that they are only allowed to disclose the minimum amount of information necessary to fulfill the purpose of the disclosure. These

exceptions are not authorizations to disclose all PHI concerning an individual. When presented with a request for PHI, the pharmacist should investigate if the request is permissible under TPO or some other exception. If the request is permissible, the pharmacist should verify that all conditions have been met. The Department of Health and Human Services has a useful page on its website to help the pharmacist navigate rules and conditions. It can be found at: <http://www.hhs.gov/hipaa/for-professionals/faq>. As always, the pharmacist should reach out to their local attorney if they need assistance in navigating the HIPAA waters.

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