

# JORDAN VALLEY EMS AUTHORITY POLICY

**POLICY #:** 103.4.18      **SUBJECT:** RELEASE OF PHI TO LAW ENFORCEMENT  
**CAAS STANDARD:** 103.4      **SCOPE:** ALL

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## **PURPOSE:**

To provide consistent guidelines for personnel of the Authority on when they may be permitted to disclose patient information to law enforcement. Under the federal privacy regulations, individually identifiable information about a patient's medical situation is often protected from disclosure to others unless the patient authorizes that disclosure or any of the following exceptions are satisfied.

## **POLICY:**

Authority employees responsible for disseminating PHI to law enforcement officials will follow this procedure.

## **PROCEDURE:**

Protected health information, or PHI, is defined as individually identifiable health information, created or received by us, that relates to the past, present, or future physical or mental health of a patient, the provision of health care to the patient, or payment for the provision of health care to the patient.

PHI can be in any form including paper, electronic (e-PHI), or verbal. Typical examples of sources where PHI may be contained include PCRs, billing forms, and verbal information about a patient exchanged with others.

There are six (6) specific situations where some or all of a patient's protected health information (PHI) may be disclosed to law enforcement personnel. These situations fall into three (3) general categories:

1. Disclosures required by law;
2. Disclosures permitted by law; and
3. Optional disclosures.

### **Procedure – 1. Disclosures Required by Law**

You are required by law to give a patient's PHI to law enforcement regardless of the patient's consent when law enforcement personnel present you with:

1. A subpoena, summons, or warrant ("SSW")
2. An administrative request/investigative demand (*see #3*)
3. A request for information pertaining to a limited number of injuries that you must disclose by law

Subpoena, Summons or Warrant. Confirm that the paper you receive is, in fact, a subpoena, summons or warrant and that it specifically identifies the PHI you are required to disclose.

A subpoena, summons or warrant is issued by a Court, judicial officer or grand jury. Be sure that the SSW has one of these designations as the issuer.

1. Patient care reports (PCRs). You may or may not be able to just turn over a copy of your PCR to law enforcement. If the SSW is valid, provide ONLY the PHI requested. You are legally required to disclose ONLY that information that is contained in the four corners of the paper you are given by law enforcement. You are not to disclose any other information not specifically requested.
2. If the SSW requests the entire PCR, or utilizes language such as "any and all records" pertaining to the patient, you must provide the entire PCR in response.
3. Do NOT disclose information based on a verbal request from law enforcement
4. Keep a copy of the SSW.

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Please note: This section addresses SSWs issued by a judicial officer or a grand jury and served by law enforcement, *not* served by private litigants.

Administrative Request/Investigative Demand. An administrative request/investigative demand is a request for PHI by a federal/state/local government agency authorized to make such requests.

If you receive an administrative request/investigative demand, you may ONLY give out a patient's PHI as long as the information requested is:

1. Relevant and material to law enforcement's inquiry,
2. Specific and limited in scope to the inquiry, and
3. Information (other than PHI) could not be used.

You should obtain assurances of the above three items from the agency making the investigative demand.

Burns, Firearm Injuries, Animal Bites, Abuse, Domestic Violence. EMS providers are required to report abuse to children and/or the elderly. State law governs these reporting requirements, and these types of disclosures of PHI are permitted where you are required to make such reports under state law. Contact the EMS Director for a list of those injuries that you must report under state law in the particular jurisdiction where you are employed.

## **Procedure – 2. Permitted Disclosures**

Here is a list of the approved situations where PHI may be disclosed, without the patient's authorization, consent or permission, when law enforcement requests PHI for the purpose of:

1. Identifying or locating a suspect, material witness or missing person;
2. Victim of a crime; and
3. Abuse, neglect and domestic violence.

Ask law enforcement the purpose of their request before disclosing PHI.

Identifying or locating a suspect, material witness, or missing person. If law enforcement indicates that they need the PHI to identify or locate a suspect, material witness, or missing person, you may disclose only the PHI listed below:

1. Name
2. Address
3. Date of birth
4. Place of birth
5. Social Security Number
6. Blood type
7. Type of injury
8. Date of treatment
9. Time of treatment
10. Description of distinguishing physical characteristics (i.e. weight, hair color, eye color, gender, facial hair, scars and tattoos)

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Do NOT give law enforcement any PHI when the sole purpose of the request is to assist law enforcement with their investigation or to help build a case against a suspect unless an appropriate subpoena or warrant is presented. Law enforcement's request must conform to the procedures outlined in this policy.

Do NOT disclose for the purposes of identification or location any PHI related to the patient's:

1. DNA or DNA analysis
2. Dental records
3. Typing, samples or analysis of body fluids or tissue

## **Victims of crime.**

The law allows more latitude when disclosing information to law enforcement authorities when the information is about a victim of a crime. Victims of a crime may include motor accident victims because often a summary or misdemeanor offense is involved, such as when the accident is the result of the driver of another vehicle violating traffic laws. It is not our job to make the determination of whether the patient is an actual crime victim, and in many cases the determination that a patient is or may be a crime victim can be inferred from the circumstances and the presence of law enforcement at the scene.

First, the best approach is ask the patient (if the patient is conscious and alert) if it is acceptable to disclose the PHI to law enforcement. You may disclose PHI about a crime victim to law enforcement if the crime victim consents to the disclosure.

If your patient is temporarily unable to consent, ask law enforcement if they can wait until your patient is able to consent.

If law enforcement cannot wait until the patient is able to consent because to do so would compromise an immediate law enforcement need (i.e., to determine if a crime has occurred or to determine the location of victims who may need to be interviewed later), then you may disclose the patient's PHI.

Ask for and obtain law enforcement's assurance that the PHI you provide will not be used against the victim and that the information is needed immediately. While these assurances may be given verbally, document that you received them.

## **Abuse, neglect and domestic violence.**

You are permitted to disclose PHI about a patient whom you believe is a victim of abuse, neglect or domestic violence, where these disclosures are required by state law. You should contact your Supervisor or the designated privacy official for the law of your State regarding these types of disclosures.

If you think your patient is a victim of abuse, neglect or domestic violence, you may disclose PHI to a government authority, including Social Services and law enforcement.

Ask the patient for his/her consent. If the individual agrees to the disclosure of PHI, you may give this information to law enforcement.

If the patient does not consent or is unable to consent, you may disclose PHI to law enforcement as required by State law if:

1. You believe the disclosure is necessary to prevent serious harm to the patient or other potential victims, or

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2. The patient is unable to consent due to incapacity,
3. Law enforcement assures you the PHI will not be used against the victim, and
4. Law enforcement activities would be adversely affected without the PHI.

If you have disclosed PHI without the patient's consent or because the patient was unable to consent, the designated privacy official should contact the patient and alert them of the disclosure, unless you believe contacting the patient will only put the patient at greater risk.

## **Procedure – 3. Optional Disclosures**

Decedents. You may disclose PHI to law enforcement when you think your patient died as a result of a crime. Limit the PHI to basic facts about the victim and the circumstances of the death. You may disclose PHI to a coroner regardless of the cause of death.

Crime on Premises. You may disclose to law enforcement any PHI you in good faith believe constitutes evidence of a crime committed on your organization's premises. This includes the station house; headquarters; parking lot; the ambulance or engine, etc.

Reporting crime in an emergency. You may voluntarily offer PHI to law enforcement when you believe it is necessary to alert law enforcement to:

1. The commission of a crime
2. The nature of a crime
3. The location of the crime
4. The location of a crime victim
5. The identity, description, and location of the perpetrator of a crime

## **General Procedures**

On-scene communications must involve a common sense approach. Providing law enforcement with basic information about where you are taking a patient and the patient's general condition (critical, serious, minor, etc.) is normally permissible when the event is a motor vehicle accident or other situation where a crime may have occurred. Remember at all times that, if you see physical evidence of a potential crime (such as drug paraphernalia, strange white powder in a bag, etc.), this evidence normally should be reported and given to law enforcement officials if it is not proper to leave it in the location it was found.

Requests for patient information that do not occur at the scene of an incident, but come after the call is over, should be directed to your Supervisor or the Privacy Officer.

## **POLICY HISTORY:**

Implemented February 1, 2015  
Reviewed