

Stephen Shows, J.D.  
Sr. Risk Advisor  
ProAssurance



August 24, 2019

 **PROASSURANCE.**  
Treated Fairly

*In Confidence: Protecting Health Information*

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*Ethical Considerations*

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**Hippocratic Oath**

Whatever in connection with my professional practice, or not in connection with it, I see or hear in the life of men, which ought not be spoken of abroad, I will not divulge, as reckoning that all should be kept secret.

Source



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*American Medical Association Code of Medical Ethics*

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**Code of Medical Ethics Opinion 3.2.1**

- ◆ Patients need to trust their information will be protected
  - ▶ "to enable their physician to most effectively provide needed services"
- ◆ Physicians have ethical obligation to preserve confidential information gathered during patient care



Source 3

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*American Medical Association Code of Medical Ethics*

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**Code of Medical Ethics Opinion 3.2.1**

- ◆ Patients are entitled to decide whether and to whom their information is disclosed, but consent is not required in all situations



Source 4

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*American Medical Association Code of Medical Ethics*

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**Code of Medical Ethics Opinion 3.2.1**

- ◆ When disclosing, personal information:
  - ▶ Restrict to minimum necessary
  - ▶ Notify patients of disclosure when feasible



Source 5

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*American Medical Association Code of Medical Ethics*

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**Code of Medical Ethics Opinion 3.2.1**

- ▶ May disclose without patient consent when:
  - ▶ To other healthcare personnel for providing care or healthcare operations
  - ▶ To appropriate authorities when required by law
  - ▶ To other third parties to mitigate threat when in the physician's judgment reasonable probability that:
    - Patient will seriously harm self; or
    - Patient will inflict serious harm on an identifiable individual(s)

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*Civil Liability*

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*Common Law*

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- ▶ Common law is law established through court opinions
- ▶ Horn v. Patton, 287 So.2d 824 (1974):
  - ▶ Physician turned over patient medical records to patient employer without patient permission
  - ▶ Patient is fired because of information disclosed in medical records
  - ▶ Patient sues physician
  - ▶ Court establishes duty of confidentiality between patient and physician

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*Regulatory Considerations*

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*Health Insurance Portability and Accountability Act of 1996*


**Privacy Rule**

Balance permissible uses of information “while protecting the privacy of people who seek care and healing”

“designed to be flexible and comprehensive to cover the variety of uses and disclosures that need to be addressed”

<https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>

Source



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*Health Insurance Portability and Accountability Act of 1996*

**Protected Health Information (PHI)**

- The individual's past, present or future physical or mental health or condition,
- The provision of health care to the individual, or
- The past, present, or future payment for the provision of health care to the individual,
- And that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual.

<https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>



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**Health Insurance Portability and Accountability Act of 1996**

**Without the individual's authorization:**

- ◆ To the individual;
- ◆ Treatment, Payment, and Health Care Operations;
- ◆ Uses and Disclosures with Opportunity to Agree or Object;
- ◆ Incidental to an otherwise permissible disclosure;
- ◆ Public Interest and Benefit Activities;
- ◆ Limited Data Set for the purpose of research, public health, or health care operations



Source

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**Notifiable Diseases and Conditions**

**Section 22-11A-2**  
Persons responsible to report diseases; contents of report; confidential information; person making report immune from liability.

Each physician... shall be responsible to report cases or suspected cases of notifiable diseases and health conditions... **All medical and statistical information and reports required by this article shall be confidential and shall not be subject to the inspection, subpoena, or admission into evidence in any court, except proceedings brought under this article to compel the examination, testing, commitment or quarantine of any person or upon the written consent of the patient, or if the patient is a minor, his parent or legal guardian.** Any physician or other person making any report required by this article or participating in any judicial proceeding resulting therefrom shall, in so doing, be immune from any civil or criminal liability, that might otherwise be incurred or imposed. No provision of this section shall be interpreted to prevent the publication of statistical reports or other summaries provided that said reports or summaries do not identify individual persons.

*(Acts 1987, No. 87-574, p. 904, §2.)*

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**HIV/AIDS**

**Section 22-11A-54**  
**Confidentiality.**  
A health care or other testing facility shall maintain confidentiality regarding medical test results with respect to the HIV infection or a specific sickness or medical condition derived from such infection and shall disclose results only to those individuals designated by this article or otherwise as authorized by law.

*(Acts 1991, No. 91-120, p. 140, §2(e).)*

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**Mental Health Records**



**Section 34-26-2**

**Confidential relations between licensed psychologists, licensed psychiatrists, or licensed psychological technicians and their clients.**

For the purpose of this chapter, the confidential relations and communications between licensed psychologists, licensed psychiatrists, or licensed psychological technicians and their clients are placed upon the same basis as those provided by law between attorney and client, and nothing in this chapter shall be construed to require any such privileged communication to be disclosed.

*(Acts 1963, No. 535, p. 1147, §14; Acts 1979, No. 79-603, p. 1068, §1; Acts 1997, No. 97-387, p. 619, §3.)*

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**Treatment for Substance Abuse**



**42 USC §290dd-2**

Confidentiality of [alcohol and substance abuse treatment] records (2003)

- Generally apply to those offering substance abuse treatment and accepting federal aid
- Federal aid can be acceptance of Medicaid or Medicare patients
- Cannot say whether or not a particular patient is in a program without consent

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**Other Disclosures Required by Law**



**Mandatory abuse reporting**

**Law Enforcement**

- ▶ In response to warrant, criminal subpoena
- ▶ Identification of a fugitive, witness
- ▶ Victims of crime
- ▶ Death of criminal victim
- ▶ Crime on premises
- ▶ Reporting crime in emergencies

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***Other Disclosures Required by Law***



▶ **Health Oversight**

- ▶ Reporting information about medical devices to FDA
- ▶ Requests from licensing boards, such as Board of Medical Examiners
- ▶ Requests from state or federal agencies investigating issues related to government health care programs, i.e., Medicaid

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***In Litigation***



▶ If subpoena, need one of three things:

- Patient authorization
- Court order
- Notification to person whose information is requested (satisfactory assurance)

▶ If court order:

- If court order
- Signed by a judge
- Must be specific about disclosure allowed

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***Other general exceptions***



- ▶ Coroner or medical examiner
- ▶ Organ donation
- ▶ Research
- ▶ Serious threat to health or safety
- ▶ Government functions (military or correctional)
- ▶ Workers compensation

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