



DEPARTMENT OF THE ARMY  
U.S. ARMY EUROPE REGIONAL MEDICAL COMMAND  
OFFICE OF THE COMMAND JUDGE ADVOCATE  
APO AE 09042

REPLY TO  
ATTENTION OF:

11 March 2011

**INFORMATION PAPER**

**RELEASE OF PROTECTED HEALTH INFORMATION (PHI) TO**  
**U.S. LAW ENFORCEMENT PERSONNEL**

1. The controlling directives are DOD 6025.18-R, "DoD Health Information Privacy Regulation" (Jan 03), and AR 40-66, "Medical Record Administration and Health Care Documentation" (20 Jul 04)(Rapid Action Revision 4 Jan 10). 6025.18-R is DoD's HIPAA Regulation. See its Paragraph C7.6, "Standard: Disclosures for Law Enforcement Purposes". In AR 40-66, see Chapter 2, "Confidentiality of PHI", including Paragraphs 2-4, "Disclosure without consent of the patient", and 2-5, "Processing requests for PHI,....".

2. Army MTFs are "covered entities" for HIPAA purposes. DoD 6025.18-R, C7.6 says, "A covered entity may disclose (PHI) for a law enforcement purpose to a law enforcement official if the conditions in paragraphs C7.6.1 through C7.6.6. are met, as applicable." Paragraph C7.6.1. says:

"...A covered entity may disclose (PHI):

...

C7.6.1.2. In compliance with and as limited by the relevant requirements of:

...

C7.6.1.2.3. ...an authorized investigative demand,...if:

C7.6.1.2.3.1. The information sought is relevant and material to a legitimate law enforcement inquiry;

C7.6.1.2.3.2. The request is in writing, specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought;...."

3. Attached is a copy of Paragraph C7.6.3, "Permitted Disclosure: Victims of a Crime". Note especially "incapacity or other emergency circumstance" in Subparagraph C7.6.3.2. All of its Subparagraphs' requirements must be met for C7.6.3.2. to apply. Under C7.6.3.2, including C7.6.3.2.3, the health care provider responsible for the patient's care must make certain professional judgments.

4. AR 40-66, Paragraph 2-4, says:

*"a. Requests from personnel within the Department of Defense (DOD).*

(1) PHI may be disclosed to officers and employees of the DOD who have an official need for access in the performance of their duties; patient consent is not required.

(2) The MTF/DTF may, subject to specific terms and conditions addressed in DOD 6025.18-R, chapter 7, use or disclose PHI in the following situations without the individual's authorization or opportunity to object:

...

(c) About victims of abuse or neglect.

...

(f) For law enforcement purposes."

5. AR 40-66, Paragraph 2-5, says:

“a. The MTF commander is responsible for the management and oversight of this program. The patient administrator, as the representative of the MTF commander, is responsible for the processing of requests for patient PHI....

b. All requests for patient PHI must be submitted in writing using DA Form 5006;.... In some situations (for example, cases of emergency, rape, assault, child abuse, or death), the need for information may be extremely urgent. In such cases, a verbal request for disclosure of medical information or medical records may be submitted and acted on. The requester will be informed that the verbal request must be supplemented by the submission of a written request according to law and regulation, at the first available opportunity.

...  
e. MTF commanders or patient administrators will determine the legitimacy of the request for patient PHI. MTF commanders or patient administrators are encouraged to seek the advice and assistance of their servicing judge advocate in determining the legitimacy of a request for disclosure and in authorizing release of PHI.

f. Only that specific PHI required to satisfy the terms of a request will be authorized for disclosure....”

6. DA Form 5006, “Authorization for Disclosure of Information”, requires the patient’s signature, as does DD Form 2870, “Authorization for Disclosure of Medical or Dental Information”. I consider DD Form 2870 to be acceptable in place of DA Form 5006. In the absence of patient consent and signature, the requester should use DA Form 4254, “Request for Private Medical Information”. In my experience Army law enforcement personnel usually use DA Form 4254. Its Blocks 4, “Reason for Request”, and 5, “Private Medical Information Sought”, should include as much detail as possible. I find that sometimes such forms sent to me for review are too vague, because they lack sufficient detail in Block 4 or Block 5 or both.

7. The release authority for PHI is the Chief, PAD, or her/his authorized representative, not the health care provider responsible for the patient’s care. That authority does not change with the hour of the day or the day of the week. In a non-duty hours case, especially an emergency or other situation described in AR 40-66, Paragraph 2-5b, the health care provider should contact the appropriate PAD person concern release of PHI.

8. Law Enforcement personnel can usually obtain whatever PHI they legitimately need to perform their duties. DoD 6025.18-R and AR 40-66 describe the procedures for obtaining that information. If the patient consents, which should be documented in writing on a DA Form 5006 or DD Form 2870, Law Enforcement can have whatever the patient says they can have.

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