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Release of PHI to Law Enforcement Officers

I. Description

This Policy explains under what circumstances patient information *may* be released (orally or in writing) to law enforcement officers. This Policy does not cover mandatory reporting obligations under state law, such as reports of certain types of wounds or illnesses, motor vehicle accidents, child or disabled adult abuse or neglect, or communicable diseases.

This Policy does not apply to disclosures of patient information related to communicable disease(s) or treatment for mental health or substance abuse. Consult the UNCHCS Legal Department before disclosing to law enforcement any patient information pertaining to communicable disease(s) or treatment for mental health or substance abuse.

II. Rationale

The University of North Carolina Health Care System (UNCHCS) and its affiliates recognize their obligation to safeguard Protected Health Information (PHI) against disclosure or use by unauthorized individuals. The Health Insurance Portability and Accountability Act of 1996 and its accompanying regulations (collectively, HIPAA) and North Carolina law have specific requirements regarding releases of PHI to outside law enforcement officers (LEOs'). This policy describes the requirements for the proper release of PHI to LEOs', and the proper documentation of such release.

The University of North Carolina Hospitals (UNCH) Police Department, through its protective services function, carries out this function for UNCH. Other UNCHCS affiliates carry out this function through their protective services personnel, and occasionally, through other departments. More specific procedures may be described in the departmental policies and procedures of the UNCH Police Department or affiliates' protective services or other departments responsible for carrying out the release of PHI to LEOs', under this Policy (collectively referred to herein as "Protective Services").

III. Policy

A. Who is an LEO?

An officer or employee of a federal, state or local agency (other than UNC Hospitals) that is empowered by law to do any of the following things qualifies as an LEO:

1. Investigate or conduct an official inquiry into a potential violation of law; or

2. Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

LEOs' include, but are not limited to, police officers, district attorneys, judges, representatives of certain agency departments such as social services and public health, and representatives of occupational licensing boards when they are engaged in the activities described above.

B. Verification of Identity; Referral to Protective Services or Health Information Management

1. UNCHCS affiliate personnel will refer LEOs' who present to the UNCHCS affiliate location for any reason, including requests for information, interviews, serving subpoenas or warrants, or investigations and arrests, to the affiliates Protective Services.
2. Protective Services should verify the identity of any individual presenting as an LEO by inspecting the LEO's photo identification card and badge, or by some other reliable means. Protective Services should then facilitate the remainder of the steps set forth in this policy.
3. When an LEO makes a request for information, in person or by telephone, UNCHCS affiliate personnel should not provide any information to the LEO unless and until the UNCHCS affiliate personnel have: (i) verified the LEO's identity by some reliable means; (ii) evaluated the purpose of the disclosure and confirmed that it is permissible as set forth below; and (iii) obtained documentation in the form of a patient authorization, court order, judge-issued subpoena, warrant, completed administrative request (see [Appendix B](#)), or completed PHI Disclosure Form (see [Appendix A](#)) to support the disclosure. (No such documentation is required to disclose information contained in the patient directory.)
4. Requests from LEOs' for copies of medical records will be referred to the applicable affiliates Health Information Management (HIM) Department or its equivalent for handling.
5. To the extent an LEO may wish to speak to the patient's care provider[s], and such communication is permissible, Protective Services and/or the UNCHCS Legal Department, as appropriate, should clearly communicate with the care team what disclosures, if any, are permissible.
6. UNCHCS affiliate personnel making reports to LEOs' as required by law should make those reports directly to the authorized LEO (per applicable policy) and not to Protective Services. See your affiliates policies and procedures on reporting certain wounds or illnesses, certain vehicle crashes, child or disabled adult abuse or neglect, or communicable diseases.

C. Disclosures of PHI to LEOs'

Whether UNCHCS affiliate personnel talk with an LEO or an HIM Department releases medical records to an LEO, UNCHCS affiliate personnel may disclose PHI to an LEO only under one of the following circumstances:

1. **Patient Authorization:** When the patient authorizes the disclosure by signing a HIPAA-compliant authorization, consistent with UNCHCS Policy, "[Uses and Disclosure of PHI Requiring Authorization](#)." All such written authorizations must be forwarded to the UNCHCS affiliates HIM Department, even if patient information is only released verbally.
2. **Patient Directory Information:** When the information is contained in the UNCHCS patient list

and the patient has not "opted out" under [UNCHCS Policy, "General Consent for Treatment."](#) These disclosures need not be documented.

3. **Required by Law:** When disclosure is required by law (federal, state or local), including wound reporting, certain motor vehicle crashes, child and disabled adult abuse or neglect, or when disclosure is specifically permitted under North Carolina law. (See your affiliates applicable policies and procedures for information on to whom these disclosures may be made.) Document these disclosures in the medical record and as otherwise described in applicable policies.
4. **Court Orders, Subpoenas, and Warrants:** When required in response to a court order (which can include a court-ordered warrant, judge-issued subpoena, or summons issued by a judicial officer), and when such disclosure is consistent with the requirements of the court order.

NOTE: A subpoena signed by an attorney is not a court order (but may be, in some circumstances, treated as an administrative request – see Section C.10 below).
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Contact the UNCHCS Legal Department for assistance.

5. **Identification and Location of a Person:** When the information is for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person and:
 - a. Only the following information is disclosed:
 - i. name and address
 - ii. date and place of birth
 - iii. ABO blood type and rh factor
 - iv. type of injury
 - v. date and time of treatment
 - vi. date and time of death, if applicable, and
 - vii. a description of the patient's distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, piercings, and tattoos.
 - b. No DNA information, dental records, typing, samples or analyses of body fluids or tissue are disclosed (except to the extent that such information falls within one of the categories of information listed in 5.a, above).
 - c. Provide a Social Security Number *only* if the LEO specifically requests and requires it.
 - d. Document these disclosures on the PHI Disclosure Form ([Appendix A](#)).
6. **Victim of a Crime:** When the patient is a victim or a suspected victim of a crime (except child abuse or neglect, or domestic violence – see below) **and**:
 - a. Agrees to the disclosure; or
 - b. Cannot agree to the disclosure because of incapacity or other emergency circumstance, provided that:
 - i. An LEO represents that the information is needed to determine whether a violation of law by a person other than the patient has occurred, and such information is not intended to be used against the patient;
 - ii. An LEO represents that immediate law enforcement activity that depends upon the

disclosure would be materially and adversely affected by waiting until the patient is able to agree to the disclosure; and

iii. The UNCHCS affiliate determines and documents that, in the exercise of professional judgment, it is in the best interests of the patient to disclose the information.

c. Exceptions:

i. *Victims of Child Abuse or Neglect*: PHI may only be disclosed:

1. If the victim's parent or legal guardian agrees to the disclosure;
2. To the appropriate local Department of Social Services, per your affiliates policy and procedures on reporting suspected child abuse or neglect, consistent with NCGS § 7B-301;
3. To local police or sheriff as outlined in your affiliates policy on mandatory reporting of certain types of wounds/injuries under NCGS § 90-21.20(c1); or
4. Pursuant to a proper Administrative Request (see Section C.10 below).

ii. *Victims of Domestic Violence*: PHI may only be disclosed if:

1. The victim (patient) agrees to the disclosure;
2. The victim has sustained an injury of the type that must be reported by law (and then, PHI may only be disclosed as required by the particular law - see your affiliates policy on mandatory reporting of certain types of wounds and injuries under NCGS § 90-21.20); or
3. Pursuant to a proper Administrative Request (see Section C.10 below).

Document these disclosures on the PHI Disclosure Form ([Appendix A](#)).

7. **Death from Criminal Conduct**: When a patient has died and a UNCHCS affiliate suspects that the death resulted from criminal conduct. Document these disclosures on the PHI Disclosure Form ([Appendix A](#)).
8. **Crime on Premises**: When there has been a crime committed on a UNCHCS affiliates premises and the PHI constitutes evidence of the crime, provided that only that information which is evidence of criminal conduct may be disclosed. Document these disclosures on the PHI Disclosure Form ([Appendix A](#)).
9. **Crime in Emergencies**: When providing emergency health care in response to a medical emergency that is not on a UNCHCS affiliates premises (such as in the capacity of a first responder), if disclosing the PHI appears necessary to alert law enforcement to:
 - a. The commission and nature of a crime;
 - b. The location of the crime or victim(s) of the crime; and
 - c. The identity, description, and location of the perpetrator of the crime.

EXCEPTION:	If a provider delivering emergency care off-site believes that the medical emergency is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, do not disclose PHI to an LEO pursuant to this section. Instead, consult the applicable policy on reporting abuse, neglect, or domestic violence. Document these disclosures on the PHI Disclosure Form (Appendix A).
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10. **Administrative Requests:** When requested via an administrative request that complies with federal law (see Appendix B), and when such disclosure is consistent with the components of the administrative request. An administrative request should only be used when the requested disclosure is not permitted by one of the categories described in C.1 through C.9 above.
11. For purposes of this policy, an administrative request is an administrative subpoena or summons, a civil or an authorized investigative demand, or other written request from an LEO that passes the three-part test listed below. It is appropriate to rely on statements in the administrative request to determine whether the three-part test is met:
 - a. *Relevance.* The information requested must be relevant and material to a legitimate law enforcement inquiry (one which the LEO's agency is authorized by law to investigate).
 - b. *Scope.* The information requested must be specific and limited in scope to that information necessary to the law enforcement purpose for which the information is requested.
 - c. *Necessity.* De-identified information could not reasonably be used.You may request that the LEO complete the UNCHCS form Administrative Request (attached as Appendix B).
You may use the administrative request itself as documentation of the disclosure and/or may include such documentation in the medical record. Consult the UNCHCS Legal Department for assistance as needed.
12. **Serious Threat to Health or Safety – Prevention:** When a UNCHCS affiliate believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and the disclosure is made to a person reasonably able to prevent or lessen the threat, including the target of the threat. Document these disclosures in the medical record.
13. **Inmates:** When the patient is a local, state, or federal inmate and the disclosure is being made to a LEO or correctional facility having legal custody of the patient, consistent with North Carolina laws pertaining to prisoners and UNCMC Policy, "[Prisoners/Forensics Patients](#)" or other policies applicable to the UNCHCS affiliate, provided that information may only be shared when necessary for:
 - a. The provision of health care to the inmate;
 - b. The health and safety of the inmate or other inmates;
 - c. The health and safety of the officers or employees or others at the inmate's correctional institution;
 - d. The health and safety of individuals responsible for transporting the inmate; or
 - e. The administration and maintenance of the safety, security, and good order of the inmate's correctional institution.

D. Disclose Only the Minimum Information Necessary

When disclosing PHI to LEOs', UNCHCS affiliates will only disclose the minimum PHI necessary for the purposes of the disclosure, consistent with state and federal law and UNCHCS Policy, "[Minimum Necessary](#)"

E. The HIM Department is the Only Department that May Release Copies of Medical Records

The UNCHCS affiliates HIM Department or its equivalent is the custodian of medical records and is the only department allowed to disclose medical records. When Protective Services and/or the UNCHCS Legal Department authorizes disclosure of records containing PHI to a LEO pursuant to this policy and consistent with all applicable laws, Protective Services and/or the UNCHCS Legal Department, as appropriate, should communicate with the UNCHCS affiliates HIM Department or its equivalent to coordinate the release of the records containing PHI.

F. Documentation and Accounting of the Disclosure

1. All disclosures to LEOs', except for disclosures pursuant to a written authorization from the patient or of information from the patient directory, should be documented and accounted for as set forth below and in Section C above.
2. Protective Services, or the person making a report under sections C.5 through C.10 above, should, when possible, require the LEO to complete the PHI Disclosure Form (Appendix A) or Administrative Request Form (Appendix B). If this is not possible (if, for example, the LEO is not present at the hospital), Protective Services or the person making the disclosure should complete the PHI Disclosure Form (for disclosures under C.5 – C.9) or Administrative Request (for disclosures under C.10), and indicate that the LEO was not able to complete the form, and the reason. If the LEO requests that the disclosure not be reported as an accounting of disclosure, the LEO or person completing the form should mark the box on the form designated "30 Day Hold." The completed form should be forwarded to the UNCHCS affiliates HIM Department or its equivalent for inclusion in the patient's record and for use in accounting for the disclosure, when appropriate.
3. The PHI Disclosure Form and Administrative Request Form do not replace a Protective Services incident report. An incident report should be completed by Protective Services when appropriate and forwarded to appropriate department(s) per the individual UNCHCS affiliates policies or procedures.
4. All disclosures should be accounted for pursuant to UNCHCS Policy, "[Right of Accounting of Disclosure](#)."

IV. Related Policies

UNCHCS Policy, "[Right of Accounting of Disclosure](#)."

UNCMC Policy, "[Prisoners/Forensics Patients](#)"

UNCHCS Policy, "[General Consent for Treatment](#)."

UNCHCS Policy, "[Uses and Disclosure of PHI Requiring Authorization](#)."

UNCHCS Policy, "[Minimum Necessary](#)"

V. APPENDIX A: PHI DISCLOSURE FORM

For disclosures pursuant to Sections C.5 through C.9 of this policy.

INSTRUCTIONS: Use this form to document a disclosure of PHI to an LEO upon his/her request, pursuant to Sections C.5 through C.9 of this policy. Whenever possible, have the LEO complete the form. The person making the disclosure to the LEO may complete the form if the LEO is unable to complete it.

Provide the minimum amount of PHI necessary to comply with the purpose of the request. Any requests for copies of written records must be made to the Health Information Management Department and will need to be accompanied by this form, an administrative request, a court order, or authorization by the patient or an authorized representative. Any requests to photograph or video a patient without the patient's consent must be referred to the Legal Department.

This form is not required for UNC Hospitals staff to provide PHI to UNC Hospitals Police.

NOTE: Completion of this form does not permit UNCHCS to disclose PHI relating to reportable communicable disease(s) or treatment for mental health or substance abuse. Consult the UNCHCS Legal Department before disclosing any PHI related to communicable disease(s) or treatment for mental health or substance abuse.

Contact the UNCHCS Legal Department with any questions about this form.

Please see the attached A: [Disclosure of Protected Health Information to Law Enforcement](#).

VI. APPENDIX B: ADMINISTRATIVE REQUEST

For disclosures pursuant to Section C.10 of this policy.

INSTRUCTIONS: Use this form when an LEO makes an administrative request for PHI but does not provide a written administrative request that meets the requirements set forth in Section C.10 of this policy. Whenever possible, have the LEO complete the form. The person making the disclosure to the LEO may complete the form if the LEO is unable to complete it.

Completion of this form will only permit an LEO to: 1) View the patient and 2) discuss certain of the patient's PHI with the patient's provider(s). Any requests for copies of written records must be made to the Health Information Management Department and will need to be accompanied by this form or another proper administrative request, a PHI disclosure form or comparable documentation of the permissible basis for the disclosure, a court order, or authorization by the patient or an authorized representative. Any requests to photograph or video a patient without consent must be referred to the Legal Department.

This form is not required for UNC Hospitals staff to provide PHI to UNC Hospitals Police.

NOTE: Completion of this form does not permit UNCHCS to disclose PHI relating to reportable communicable disease(s) or treatment for mental health or substance abuse. Consult the UNCHCS Legal Department before disclosing any PHI related to communicable disease(s) or treatment for mental health or substance abuse.

Please see the attached B: [Administrative Request for Protected Health Information for Law Enforcement Purpose](#).

Attachments:

[Appendix A-PHI Disclosure FormOfficers.docx](#)
[Appendix B-Administrative Request.docx](#)

Approval Signatures

Step Description	Approver	Date
Policy Stat Administrator	Patricia Ness: Nurse Educator	08/2018
	Jerylyn Williams: VP Chief Audit & Comp Officer	08/2018
	David Behinfar: HCS-Privacy Dir	08/2018

Applicability

UNC Medical Center

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