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Advanced HIPAA Communications and University Relations

HIPAA
Health Insurance Portability and Accountability Act

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Do I have to take this training?

- ***By law, this training is mandatory for UCSF faculty, staff and volunteers who are involved in:***
  - Communications
  - Marketing
  - Media Relations
  - University Relations

- ***Some members of UCSF's workforce may be required to take additional HIPAA training courses.***

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Training Objectives

- ***The purpose of this training is to:***
  - Present a general overview of HIPAA and define important terms
  - Provide training on UCSF's specific HIPAA policies
  - Discuss scenarios that illustrate UCSF policies and procedures

- ***Following this training, you will be held responsible for compliance with HIPAA.***

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HIPAA is a federal law, and violating it may be a crime.

- ***The University of California, UCSF and UCSF's employees—including volunteers, who are considered an extension of the workforce—face civil and criminal liability.***
  - The University may be exposed to costly lawsuits, and its credibility and reputation will be challenged.
  - You may face penalties of up to $1,500,000 and 10 years in jail as well as disciplinary action, including termination.

- ***Now you know why general HIPAA training is required and why specialized training modules—such as this one—have been developed.***

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Enforcement of HIPAA as it relates to Communications and University Relations is likely to be complaint-driven.

- ***There are several ways to submit HIPAA complaints. They may be directed:***
  - To UCSF, in which case the Campus will determine what corrective action, if any, is needed
  - To the US Department of Health and Human Services (HHS), in which case UCSF may be investigated for HIPAA compliance
  - To an attorney, which could result in costly lawsuits and damage to UCSF's reputation

- ***Understanding the HIPAA regulations will help you avoid activities that are likely to trigger complaints.***

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HIPAA—the Health Insurance Portability and Accountability Act—requires UCSF to:

- ***Protect the privacy of patient information***
- ***Secure patient health information (physically and electronically)***
- ***Adhere to the "minimum necessary" standard for use and disclosure of patient health information***
- ***Specify patients' rights for access, use and disclosure of their health information***
- ***The Health Information Technology for Economic and Clinical Health (HITECH) Act and the HIPAA Final Omnibus Rule updated HIPAA:***
  - Clarified the definition of "marketing" uses and disclosures requiring patient authorization
  - Mandated breach notifications
  - Increased fine and penalties for privacy violations
  - Mandated that Business Associates are directly liable for compliance with HIPAA provisions

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The HIPAA Privacy Standards present some operational challenges, but they also:

- ***Reinforce what has always been central to our work—the need to protect patient information***
- ***Supplement California's already strict patient privacy laws***
  - A stricter or more protective rule preempts a less strict or less protective rule.

- ***We have a legal, moral and ethical responsibility to protect patient information as if it were our own.***

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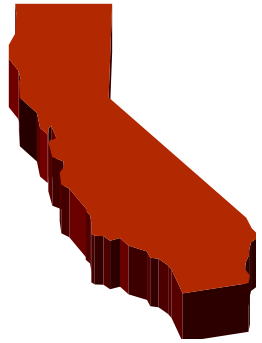
California Medical Information Privacy Laws



- Apply to individuals as well as institutions
- Unauthorized access includes the inappropriate review or viewing of patient medical information without a direct need for diagnosis, treatment or other lawful use
- Licensed facilities, like UCSF Medical Center, are required to report incidents of unauthorized access, use, or disclosure of PHI to the California Department of Public Health, and to the affected patient within ***5 business days*** after breach detection
- When you suspect or know of a breach you must report it to the Privacy Office **immediately**
  - Medical Center employees must also submit an Incident Report

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HIPAA and the University of California System

- ***UC is a Single Hybrid Health Care Component***
  - All 10 UC campuses, UC-managed national labs, etc.
- ***UC has multiple Covered Entities (CEs)***
  - Health Care Providers
  - Medical Centers, Medical Schools, Student Health Services, etc.
  - Self-Insured Health Plans
  - Entities within UC that provide business/financial services to CEs
- ***UC has common policies and procedures for all CEs***
  - Reduces cost of policy development and implementation
  - Enhances compliance throughout the UC system
  - Minimizes risk

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The Key to Compliance: Understand the definition of PHI—Protected Health Information—and when it may be used and disclosed.

- ***PHI:***
  - Information related to a patient's past, present or future physical and/or mental health or condition
  - In any format—written, spoken or electronic (including videos, photographs and x-rays)
  - Includes **at least one of the 18 personal identifiers** (see next slide)
- ***PHI includes health information about individuals who have been deceased for less than 50 years***

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What are the PHI Identifiers?

- ***The 18 identifiers defined by HIPAA are:***

  - ☑ Name
  - ☑ Postal address
  - ☑ All elements of dates except year
  - ☑ Telephone number
  - ☑ Fax number
  - ☑ Email address
  - ☑ URL address
  - ☑ IP address
  - ☑ Social security number
  - ☑ Account numbers
  - ☑ License numbers
  - ☑ Medical record number
  - ☑ Health plan beneficiary #
  - ☑ Device identifiers and their serial numbers
  - ☑ Vehicle identifiers and serial number
  - ☑ Biometric identifiers (finger and voice prints)
  - ☑ Full face photos and other comparable images
  - ☑ Any other unique identifying number, code, or characteristic

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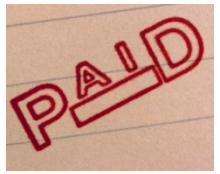
HIPAA tells us that PHI—Protected Health Information—may be used and disclosed for:

- ***Treatment***
  - Broadest permission
  - Ex: Patient's referring physician calls and asks for a copy of the patient's recent exam at UCSF



- ***Payment***
  - More restrictive permission
  - Ex: Patient's insurance company calls and requests a copy of the patient's medical record for a specific service date

- ***Operations***
  - Most restrictive permission
  - Ex: Communications, fundraising, marketing, media relations and public affairs
- ***Certain other uses and disclosures of PHI—such as those required by law—are permitted. But most others will require the patient's specific authorization.***

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HIPAA also tells us how much PHI can be used and disclosed.

- ***The Minimum Necessary Standard applies for all uses and disclosures except for treatment.***
  - Access only what you need to know
- ***Authorization is required for:***
  - Disclosures to the media
  - Uses and disclosures of PHI for marketing

- ***HIPAA permits Incidental Use and Disclosure as long as:***
  - The disclosure is incidental to other permitted uses and disclosures
  - Reasonable safeguards are in place to protect PHI that may be disclosed incidentally

- ***Never use and disclose PHI which you are not allowed to access in the first place.***

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HIPAA and Marketing
What do the HIPAA regulations say?

- ***HIPAA has a unique definition of Marketing. A communication is defined as Marketing when:***
  - It encourages a recipient of the communication to purchase or use a product or service, **except** for communications related to:
    - Treatment or healthcare operations where UCSF did **not** receive payment from a 3rd party in exchange for making that communication

- **If a communication (even if for treatment or healthcare operations) involves UCSF receiving payment from a 3rd party in exchange for making the communication:**
  - Patient authorization is required
  - The authorization must state that UCSF is receiving payment for the communication

Getting Down to Business Marketing

- ***The rules for marketing are clear and simple:***
  - UCSF cannot use or disclose PHI for purposes that meet the definition of marketing without an Authorization.
  - Although HIPAA allows the use of demographic information for fundraising purposes, it absolutely prohibits this use for marketing purposes.

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Health Care Communication
What do the regulations say?

- ***HIPAA defines many of the things generally considered "marketing" as Health Care Communication. Health Care Communication is defined as when the communication meets the following criteria:***
  - Occurs in a face-to-face encounter between the patient and health care provider; **or**
  - Involves a promotional gift of nominal value; **or**
  - Describes health-related products or services that UCSF provides; **or**
  - Provides information about the recipient's treatment or promotes health in general; ***AND***
  - **UCSF does not receive payment from a 3rd party for making the communication**

- ***If payment is exchanged for the communication, it is marketing and requires Authorization.***

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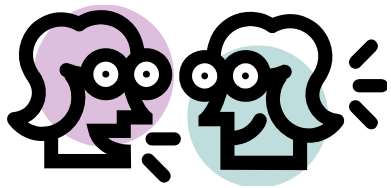
University Relations
What do the regulations say?

- ***UCOP has determined that University Relations is a part of Operations defined in the Regulations as "business management and general administrative activities of the Covered Entity." Specific activities include:***
  - Providing crisis communications expertise and serving as members of the crisis response team
  - Determining the newsworthiness of stories and other communications that support management and the Covered Entity's operations
  - Collaborating with a patient's health care provider team in order to protect the patient's privacy, such as with celebrity patients

Getting Down to Business University Relations



- ***In all circumstances only the minimum necessary information may be used or disclosed.***
  - Requests to physicians or other members of the health care provider team should seek the minimum necessary information to achieve the purpose.
  - Restrict information discussed internally with the physician or other members of the media or health care provider team for purposes of determining the newsworthiness of stories to gender, age, ethnicity, dates of service, city of residence, zip code, occupation and general descriptions of disease or diagnosis.

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Getting Down to Business University Relations

- ***In order to provide any PHI to an outside media organization, you must obtain the patient's Authorization using the approved UCSF Authorization form.***
- ***You do not need an Authorization to provide de-identified information. However, in order to appropriately de-identify the information, you must remove ALL of the following identifiers:***
  - Name, address (including city and zip code), full face photo or similar images, biometric identifiers (including finger prints)
  - Dates of treatment, date of birth
  - Telephone number, fax number, e-mail address, URL, IP address
  - Social Security number, medical record number, health plan ID number, account number, certificate/license number
  - Device and vehicle identifiers and serial numbers
  - Any other unique identifying number, code or characteristic

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HIPAA is very specific about how the Authorization is structured.

- ***The Authorization itself must contain very specific language, including but not limited to:***
  - What kind of PHI may be used and disclosed
  - Who can disclose the PHI
  - To whom the PHI will be disclosed
  - For what purpose the PHI will be disclosed
  - When the Authorization will expire

- ***Do not create your own Authorization forms—use only the approved UCSF Authorization forms.***
  - To access the forms, visit the "HIPAA Forms" section of http://hims.ucsfmedicalcenter.org/
- ***Note that HIPAA does not recognize verbal authorizations or "negative consent" authorizations.***

HIPAA is very specific about how the Authorization is obtained.

- ***For UCSF patients, the Authorization may be obtained:***
  - By the Health Care Provider, or
  - By a member of the Health Care Provider team, or
  - By a UCSF staff member ONLY if preceded by a conversation between the Health Care Provider and the patient. The Health Care Provider should inform the patient that a staff member will be discussing an Authorization for the purpose of providing his/her information to the media
- ***For non-UCSF patients, the Authorization may be obtained:***
  - By a UCSF staff member without prior dialog between the non-UCSF patient and his/her non-UCSF Health Care Provider

Understand when a Business Associate Agreement is required.

- ***Vendors or other third parties that use or disclose PHI for or on behalf of the Covered Entity must sign a Business Associate Agreement. Examples of Business Associates include:***
  - Consultants working for clinical departments or in any other setting where PHI may be used or disclosed
  - Professional photographers taking photos while on UCSF Medical Center premises

- ***Contact your Purchasing or Procurement Office for assistance with Business Associate Agreements.***

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Security of ePHI – Consider Recent Headlines

Ever evolving technology brings opportunities and efficiency – but only when managed properly. Consider these recent headlines:

October 2013 – An academic medical center notified **3,541 patients** that their ePHI was compromised after the theft of an **unencrypted** personal laptop

June 2013 – A healthcare organization notified **13,000 patients** that their ePHI was compromised after the **theft of an unencrypted laptop**

September 2012 – A healthcare organization agreed to pay the U.S. Department of Health and Human Services **$1.5 million** to settle HIPAA violations after the **theft of an unencrypted personal laptop, containing ePHI of ~3500 patients and research subjects**

How could these incidents have been avoided?

By ENCRYPTING the device.

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Do you use your personal device (e.g., laptop, iPhone, iPad, external hard drive) for UCSF business?

Hint: This includes checking your UCSF email from your personal device.

Even if you don't intentionally save PHI onto your device, your UCSF email files may download to your device without your knowledge.

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Power of Encryption

If you use your device for UCSF business, it *MUST BE ENCRYPTED!!*

- Encryption is the only federally recognized method for securing ePHI
- By having your device encrypted, you can rest assured that the information it contains is secure and inaccessible to others if the device is lost or stolen
- For assistance with encryption, contact the IT Service Desk at (415) 514-4100
- For guidance to install encryption on your personal device: https://it.ucsf.edu/how_do/encrypt-my-personal-laptopdesktop-installation-guidelines
- You may need to attest annually that all of your devices used for UCSF business are encrypted

Best Practice: Do not use your personal device to store UCSF data or access UCSF email unless absolutely necessary. And if necessary, the device must be encrypted.

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Taking PHI Offsite Involves Risk

- **Theft and loss of PHI is a high risk**
  - Your car is burglarized and the thief takes off with the PHI (*this happens very often, especially in San Francisco*)
  - Leaving PHI in a coffee shop, restaurant or public transportation
- **If your job requires you to work from home or transport PHI between sites, follow best practices:**
  - Access PHI remotely via Virtual Private Network (VPN)
  - Securely fax or email the PHI to yourself and securely access it to avoid carrying PHI
  - Ensure all devices used to access ePHI or UCSF email are encrypted (including your personal laptop, iPad, iPhone, etc.)
  - Never leave PHI unattended in your bag, briefcase or your car (even if it's locked in the trunk!)

- **This applies to all types of PHI – paper, films, photos, cameras, CDs, and ePHI stored on laptops**
- ***Treat PHI like it's an infant: You are responsible for securing and keeping it in your possession at ALL TIMES***

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One Last Time

- **H** *Helping UCSF comply with HIPAA is everyone's job.*
- **I** *If you're bending the rules, you may be breaking the law.*
- **P** *Protect PHI as if it were your own.*
- **A** *Always take the most conservative approach.*
- **A** *Ask for permission—with an Authorization—not for forgiveness.*
- ***Imagine that it's your PHI, and do the right thing!***

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Scenario 1

A reporter calls University Relations asking for the condition of a 43-year old man who was the victim of a car crash. He gives you the patient's name but has no other details. Can you disclose the patient's condition to the reporter?

A. *No*

B. *Yes*

Scenario 1 - Answer

The correct answer is B.

You may disclose the patient's condition in general terms (good, fair, serious, critical or undetermined) only after obtaining permission from the patient or the patient's designated representative.

Refer to the following for additional guidance:

- ***Medical Center Policy 1.03.07 "Press Code"***
- ***UCSF Media Coverage Guidelines: http://www.ucsf.edu/news/news-media-services/media-coverage-guidelines***

A.No

B.Yes

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Scenario 2

A national magazine reporter calls regarding a story on liver transplantations. She would like to interview a patient who has recently undergone a transplant to help illustrate the importance of organ donation. How can the media relations representative find an appropriate patient for the story?

A. ***Identify recent liver transplant patients at UCSF and contact them to see if they would be interested in being interviewed by the reporter.***

B. ***Discuss the concept for the story with a physician to determine if there is an individual who would make a good spokesperson for the institution's liver transplant program. If the patient agrees, the patient must sign an Authorization prior to UCSF releasing any PHI to the media.***

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Scenario 2 – Answer

The correct answer is B.

The discussion of PHI must be limited to the minimum necessary in order to make the decision and only to those persons who need to know for the decision to be made.

Once it has been decided that the patient might be a good spokesperson, the physician should make the initial contact.

If the patient agrees, the physician or media relations representative must obtain an Authorization for release of any PHI to the news media.

A. *Identify the recent liver transplant patients at UCSF and contact them to see if they would be interested in being interviewed by the reporter.*

B. Discuss the concept for the story with a physician to determine if there is an individual who would make a good spokesperson for the institution's liver transplant program. If the patient agrees, the patient must sign an Authorization prior to UCSF releasing any PHI to the media.

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Scenario 3

A member of the UCSF staff overhears the name of a well known television personality when it is called out in a patient waiting room. She shares the information with her family at dinner that evening. Is this a violation of HIPAA?

A.No

B.Yes

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Scenario 3 – Answer

The correct answer is B.

Although HIPAA tolerates Incidental Use and Disclosure, such as when a name is overheard in a patient waiting room, it does not permit a staff member to discuss that information in any context or setting not directly related to his/her work.

A. No

B. Yes

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Scenario 4

UCSF recently purchased new state-of-the-art medical equipment. The equipment manufacturer wants UCSF to make a communication to its patients regarding this recent acquisition, and is willing to pay UCSF in exchange for making that communication. Under what circumstances is UCSF permitted to make the communication?

A. UCSF is free to make the communication to any of its patients, as it is related to a service provided by UCSF.

B. Because UCSF is receiving payment for the communication, UCSF must obtain Authorization from each patient before making the communication. The Authorization must state that UCSF received compensation from the equipment manufacturer in exchange for the communication.

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Scenario 4 – Answer

The correct answer is B.

If UCSF receives payment from a 3rd party in exchange for making a communication that encourages the purchase or use of a product or service, then patient authorization is required and the authorization must state that UCSF is receiving payment for the communication.

A. *UCSF is free to make the communication to any of its patients, as it is related to a service provided by UCSF.*

B. Because UCSF is receiving payment for the communication, UCSF must obtain an Authorization from each patient before making the communication. The Authorization must state that UCSF received compensation from the equipment manufacturer in exchange for the communication.

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Scenario 5

You are upset after a frustrating conversation with a patient and their family. You want to share this experience and your thoughts and feelings with your family and friends on Facebook. What must you consider before doing this?

A. ***Posting this on Facebook is OK, as long as you do not identify the patient by name, or identify the hospital, and you are limiting the recipients to your friends and family***

B. ***You cannot post anything on Facebook that could possibly lead to identification of the patient***

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Scenario 5 – Answer

The correct answer is B.

- ***Do not share on social media any patient information acquired through your work at UCSF***
- ***Facebook is considered public domain, and anything you post there is considered public information***
- ***Posting PHI without prior authorization is a violation of the patient's privacy and confidentiality***
- ***Your Facebook profile may identify your place of work and occupation. When linked with your posting, the additional details may identify the patient.***
- ***Refer to UCSF's Social Media Best Practices: http://www.ucsf.edu/about/social-media-overview/social-media-best-practices***

A. Posting this on Facebook is OK, as long as you do not identify the patient by name, or identify the hospital, and you are limiting the recipients to your friends and family

B. You cannot post anything on Facebook that could possibly lead to identification of the patient

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HIPAA Help

- **If you're confused about HIPAA, ask for help!**
- **Start with your supervisor or manager**
- **You may also contact:**

UCSF Privacy Office

415/353-2750

http://hipaa.ucsf.edu/

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Completing this Course

When you close this window, you will be asked if you have completed this course.

By clicking yes, you indicate that you have reviewed these materials and agree to comply with the provisions of “Advanced HIPAA Communications and University Relations”.