

Handling HIPAA Horrors - How to Handle the Hot-shots, Half-wits, and Hamartias in a Huge Hospital

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Handling HIPAA Horrors - How to Handle the Hot-shots, Half-wits, and Hamartias in a Huge Hospital

On this day in history:

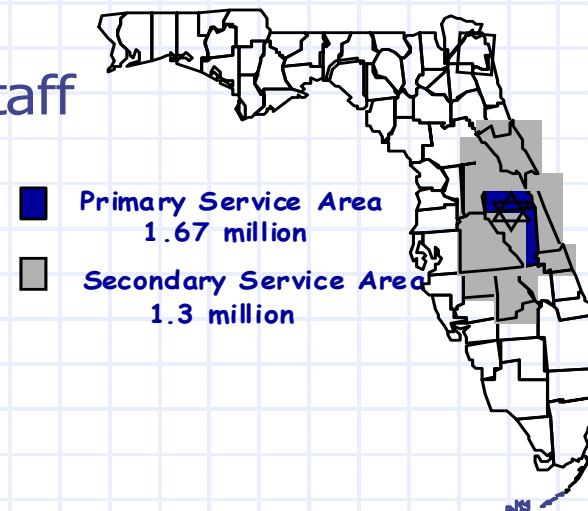
- **1930** 1st appearance of the comic strip "Blondie"
- **1952** Ernest Hemingway's "Old Man & the Sea" published
- **1966** Star Trek premiered on NBC

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Florida Hospital

- Parent Company- Adventist Health System
 - 34 hospitals nationwide
- 7-campus facility in Orlando MSA
 - 13,000+ employees
 - 1,900 physicians on staff
 - 1,800 beds



- **1 Privacy Officer**

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- More than 4,000 residents move into Central Florida every month.
- In the past three years, FH has seen a 35 % increase in inpatient volumes.
- By 2008, 18.5 percent of Florida's population will be 65 years of age or older.
- According to the American Hospital Association, FH treats more inpatients than any other hospital in the country.
- According to the U.S. Census bureau and Solucient (a health care research company), over the next 10 years, Central Florida will see a 30% increase in population

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Current Building Expansion on

all 7 campuses

- 630 beds
- 4000 Employees

Expected completion date August, 2008

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On this day in history:

August, 2008 - Cathy's Retirement

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Considerations:

- Federal Privacy Law - HIPAA
- Federal Guidance - Preamble, Letters
- DHHS FAQ's - www.hhs.gov
- State Law - Privacy Laws - Preemption
- Corporate or Hospital Policies
- Other State and Federal Laws

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Considerations:

Minimum Necessary Standard
164.502(b)

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Scenario #1

A patient's identity is unknown. Can the patient's picture be published in order to identify the patient?

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Considerations:

- Federal Law - HIPAA
- 164.512(f)(2) - To law enforcement
- 164.510(b) - Notify family or caregiver
- 164.502(1) - For treatment

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Scenario #2

A subpoena calls for a copy of the patient's "records". Should we provide ALL records, including ALL charts held by different departments?

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Considerations:

- Federal law - Minimum necessary standard
- 164.512(e) -
- Court order vs subpoena
- Valid subpoena
- Answer subpoena with a request to specify which medical information - dates of visits, etc.

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Scenario #3

A hospital sells “bad debt” to a company, and the company tries to collect the money for themselves, can we share the patient info with the company? Isn't the COMPANY trying to get “payment”, NOT the hospital? Does the hospital need a BAA with the company?

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Considerations:

- Federal Law - HIPAA 164.501
Definitions - “Payment”
- “The activities in paragraph (1) of this definition...include, BUT ARE NOT LIMITED TO”

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Scenario #4 – If a hospital is participating in a live broadcast of a surgical procedure, and it is being broadcast all over the country for teaching purposes by a company, do we need the patient's permission, even if the patient will not be identified? Do we need a BAA? They're not doing it on the hospital's behalf, but rather the hospital is allowing them to tape the procedure. What kind of agreement do we need with the company, if any? How can we be sure the company will not show the tape after the original broadcast?

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Scenario #4 – If a hospital is participating in a live broadcast of a surgical procedure, and it is being broadcast all over the country for teaching purposes by a company, do we need the patient's permission, even if the patient will not be identified?

Considerations:

- Courtesy to patient
- Risk of identification - staff accidentally says name

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Scenario #4

Do we need a BAA? They're not doing it on the hospital's behalf, but rather the hospital is allowing them to tape the procedure.

Considerations:

- Federal law - HIPAA 160.103 - Definitions
Business Associate
- Crew will be exposed to a lot of patient info

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Scenario #4

What kind of agreement do we need with the company, if any? How can we be sure the company will not show the tape after the original broadcast?

Considerations:

- Basic business agreement with clause concerning specific re-broadcasting language

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Scenario #5

If a procedure is recorded BY a hospital FOR a physician, and the physician takes it to his office for the patient's file, is it the hospital's data, or the physician's? Should the hospital keep a copy? Can the hospital record more than one patient on the same medium? If one doctor wants to review his own patient's info, can he view it even though there are other patients' info on the tape?

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Scenario #5

If a procedure is recorded BY a hospital FOR a physician, and the physician takes it to his office for the patient's file, is it the hospital's data, or the physician's?

Considerations:

- Federal law - HIPAA - None
- Mixed opinions -
 - Our staff, our equipment, therefore our data
 - Hospital acting on behalf of the physician

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Scenario #5

Should the hospital keep a copy? Can the hospital record more than one patient on the same medium?

Considerations:

- Federal law - HIPAA - None
- Hospital policy - Document everything
- Best practice - Different patient on different medium

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Scenario #5

If one doctor wants to review his own patient's info, can he view it even though there are other patients' info on the medium?

Considerations:

- Federal law - HIPAA - Minimum Necessary
- HIPAA Security Rule - No specifics re: technology
- Hospital Policy - Confidentiality
- Medical Staff By-laws - Confidentiality - Problem?

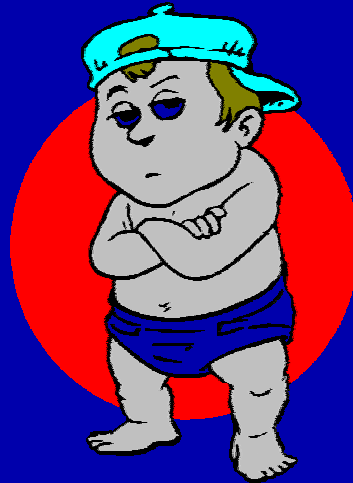
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Scenario #6

A minor is in the hospital. The hospital collection department calls the patient's room and talks to the grandfather about the bill. The grandfather pays the bill. The mother says that the collection department has violated HIPAA by speaking with the grandfather about it and demands the money back. Is this a privacy violation?

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Adult-Diaper Analysis



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IT DEPENDS

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Considerations:

- Federal Law - HIPAA - 164.501
Definitions - “Payment”
- Federal Guidance
- DHHS FAQ’s
- State Law - Could be more restrictive

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Considerations:

- Hospital policy - Only speak to guarantor? Over 18 always the guarantor? How do you ID individuals? - Staff training/scripting
- Sensitivity - Staff training/scripting

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Scenario #7

A patient of a hospital Behavioral Health department, who is also an employee of the same hospital, tells a Behavioral Health employee that he stole drugs while at work. Can the person to whom he revealed this information tell the human resources department of the hospital? Can this be reported to anyone else? The patient is not a licensed health care professional.

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Considerations:

- Federal Law - HIPAA
- Treatment
- Crime on the premises?
- Endangerment to the community?
- State laws - Preemption?
- Other State and Federal Laws - DEA?

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Scenario #8

A hospital wants to use kiosks for patient registration. Can the hospital put out their Notice of Privacy Practices at the kiosks for the patients to take? Can the patient acknowledge that he received the Notice electronically at the kiosk?

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Considerations:

Federal Law - HIPAA 164.520

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Scenario #9

A hospital foundation gives a grant to a company to provide healthcare “guidance” to uninsured patients. Example: An uninsured patient comes to the ED with diabetes - a disease that requires follow-up visits to a doctor and diet management. The patient is referred to a clinic run by the county government. The grant money is to be used for someone to follow that patient and help them to keep appointments, take their medicine, etc. Can the company who has the grant look through a list of patients from the hospital ED to identify these patients?

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Considerations:

- Federal Law - HIPAA
- Fundraising law?
- BAA?
- Patient Authorization?

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On this day in history:

- **1921** 1st Miss America crowned
(Margaret Gorman of
Washington DC)
- **1900** 6,000 killed when a hurricane &
tidal wave destroys Galveston,
Texas, most deadly in US history

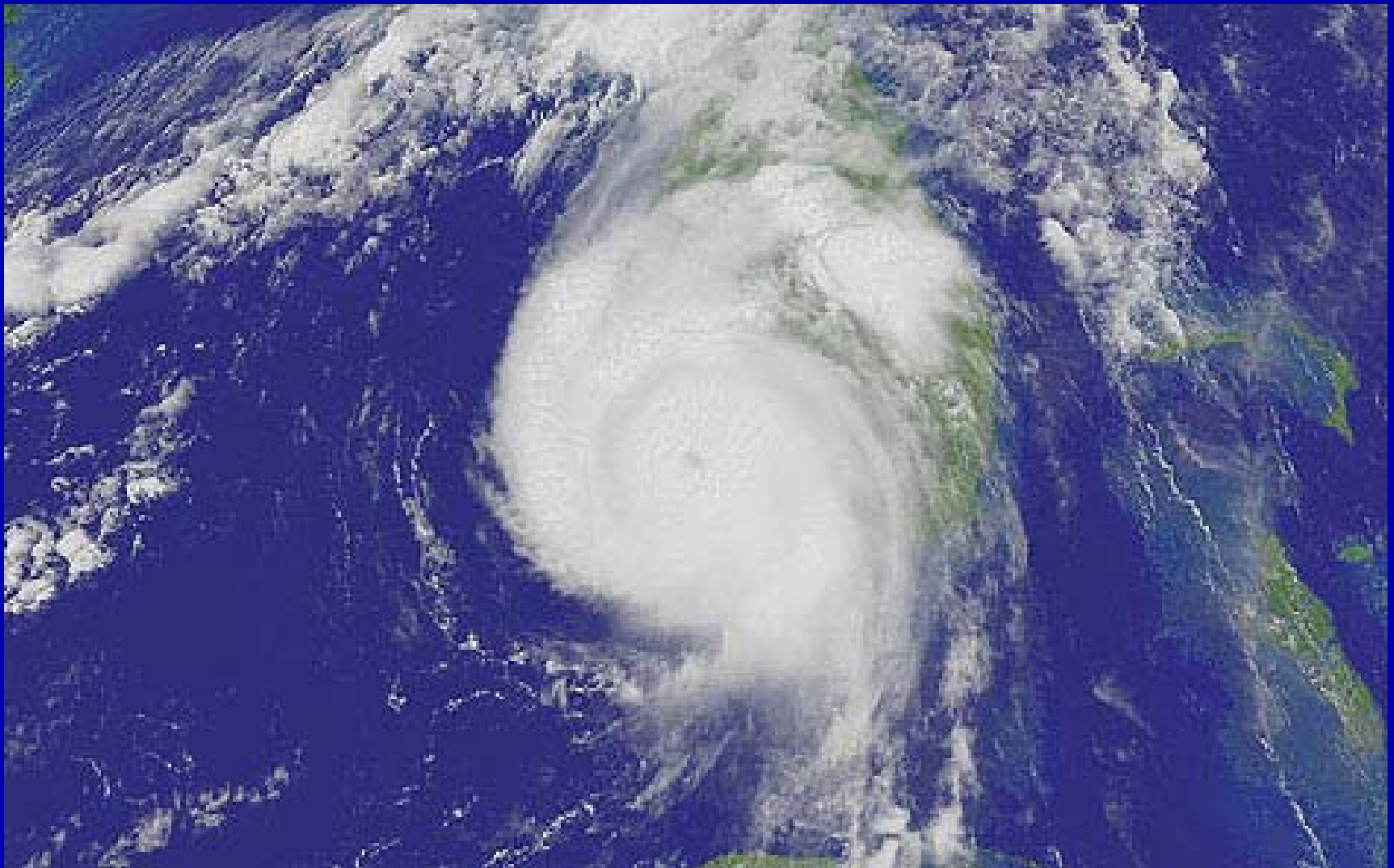
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Scenario #10

NATURAL DISASTERS!

Charley - August 13, 2004

Category 4 at landfall • 27 dead, \$14 billion damage



Hurricane Charley Arrives in Orlando, FL



Hurricane Frances - September 5, 2004

Category 2 at landfall • 7 dead, \$4-10 billion damage



Ivan – September 16, 2004

Category 3 at landfall • 25 dead, \$2-10 billion damage



Jeanne- September 25, 2004

Category 3 at landfall • 6 dead, \$4-8 billion damage



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Considerations:

- Patients from other hospitals, nursing homes
- Disaster lists for release of information to media
- Media release policies/authorizations
- Physical Security - people “camped” everywhere in facility
- Incidental disclosures
- Computer access security
- Preparation - Policies

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Scenario #11

An employee of a hospital obtains medical information of a family member (patient) from the hospital computer system. She gives the info to another relative who is involved in litigation with the family member (patient). When confronted, the employee admits the wrongdoing. Should the employee be fired? Are we required to notify the government about the violation and/or firing?

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Considerations:

- Federal Law - HIPAA 164.530(e)(1)
- Hospital policy
- Other State or Federal Laws
- Intent

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Scenario #12

A hospital has a contract with an employer to perform annual physicals for their employees. An employee refuses to sign the authorization form for the hospital to release his medical information to the employer. The hospital notifies the employer that the patient refused to sign the authorization. Is this a HIPAA violation?

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Considerations:

- Federal Law - HIPAA 164.512(b)(1)(v)
- State Law - Worker's Comp Laws

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Scenario #15

A sheriff presents a warrant for the arrest of a patient. Can we give the date of discharge to the sheriff? Can we give any other information on this patient to the sheriff?

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Considerations:

- Federal Law - HIPAA 164.512(f)
- State Law

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Scenario #17

A law enforcement officer is voluntarily admitted to a hospital subject to the Baker Act. As the patient is leaving, appropriately discharged, a hospital employee who is unaware of the patient's admission status tries to stop the patient. The patient ignores the employee and leaves the hospital premises. The hospital employee, in good faith, contacts the local law enforcement agency to report the "walk away". The local law enforcement agency also happens to be the patient's employer. Has a HIPAA violation occurred?

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Considerations:

- Federal Law - HIPAA
- State Law
- Hospital policy - Follow procedure precisely and document

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Scenario #14

One of our employees incorrectly faxed a lot of patient names, SSN's, and diagnoses to the wrong number. The hospital tried to retrieve the info from the individual who received the fax. The person who got the fax gave it to the media instead. A reporter ran the story on TV. Can it get any worse? You bet. The FBI calls and wants to inquire about a possible criminal investigation. They want to speak to the employee alone. They also want to speak to the employee's supervisor alone. Recommendations?

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Considerations:

- Federal Law - HIPAA
- FBI - Actual Investigation vs “Inquiry”
- Corporate policy - Counsel for employee
- Cooperation with inquiry
- Cooperation with reporting of violations?

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On this day in history:

1974 President Gerald Ford pardons
former President Richard Nixon
of all federal crimes

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Questions?