

# Crash, Boom, Bang



Prosecuting Attorneys Institute  
Traffic Safety Resource Prosecutor  
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### HIPAA



## DUI: The HIPAA Hurdle

By: Warren Diepraam, Prosecutor Fellow National Association of Prosecutor Coordinators

Imagine being called to the hospital after a DUI causing death. The investigating officer meets you at the hospital and informs you that the suspect is a habitual drunk driver with a history of fleeing from the police. Knowing that the suspect is a flight risk, you need to find evidence fast and turn to the hospital staff for assistance with the toxicological findings and medical records to support your suspicion that the suspect is impaired. From having worked these cases before, you realize that you will need to find the suspect's blood alcohol results, driving related admissions, and documentation relating to driver related injuries. The hospital staff in this hypothetical situation kindly respond by referring you to HIPAA and opining that they are not allowed to release private medical information.

Fortunately, a hospital, emergency room, or paramedic may provide relevant medical information to law enforcement personnel without the written authorization of the suspect or target facing a criminal investigation. Any of these groups may disclose medical information as required by law and the disclosure is limited to the relevant requirements of the law.

In response to concerns over privacy, health, and insurance related concerns, the Health Insurance Portability and Accountability Act, more commonly known by the acronym HIPAA, was enacted in 1996. A cursory reading of the statute reveals that its goals are meritorious and not intended to prohibit legitimate law enforcement inquiries into the commission of crimes. In general terms, HIPAA contains seven sections that cover anything from applicability and definitions, uses and disclosures of protected health information, to transmission requirements and compliance dates. However, the section that will be applicable, and the section covered by this article that many in the healthcare industry are unfamiliar with, is the section relating to uses and disclosures for which individual authorization or an opportunity to object are not required.

In the above case, the police and the prosecutor feel that there is a potential danger to the suspect and the public due to the intoxicated state of the individual and the risk associated with the subject's potential for flight. Additionally, they have a reasonable belief that significant evidence will be found that will establish probable cause requiring only the hospital's familiarity with HIPAA requirements.

The most common exception to non-disclosure is the law enforcement exception. This section lists six exceptions to non-disclosure. However, two exceptions to non-disclosure will most likely apply in the majority of these cases, namely those disclosures that are required pursuant to process / required by law in the jurisdiction or administrative requests. A hospital or other covered provider may reveal protected information to a law enforcement investigator pursuant to process or as otherwise required by law. The section does not distinguish between federal or state law; therefore the wording implies that disclosure should be covered under the act even when mandated only by state law.

Any prosecutor or police officer that regularly responds to the scene of this type of case should keep a standard court order and subpoena handy. In many jurisdictions, judges who are familiar with the objectives of law enforcement and the requirements of HIPAA are willing to sign a general court order backing up a subpoena for emergency use. Maintaining blank or general subpoenas, HIPAA letters, and court orders for emergencies such as the above factual pattern, should make it practical for a law enforcement agent to expediently obtain the needed information.

Editor's Note: Warren Diepraam is the Prosecutor Fellow for the National Association of Prosecutor Coordinators (NAPC). The Prosecutor Fellow functions as an active liaison between the NAPC, the National Highway Traffic Safety Administration, and vehicular crimes prosecutors around the nation in an effort to promote understanding, communication, cooperation, education, and collegiality between the above entities.



## Save the Date

Summer Prosecuting Attorneys Conference

June 24-26, 2009  
Wheeling, WV

Law Enforcement Officer Training

May 20, 2009  
Morgantown, WV

June 3, 2009  
Charleston, WV

July 15, 2009  
Lewisburg, WV



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