

HIPAA SCENARIOS

1. A middle-aged male patient is treated surgically by you for a cutaneous malignancy. He is divorced. The patient's mother, who is also your patient, is his personal representative. During one of the mother's visits she asks you questions about her son. Presuming that the son has signed the HIPAA form for his mother you disclose medical information on her son. The mother turns out not to be listed on the son's HIPAA release form. Soon afterwards the male patient contacts you outraged that you have discussed any of his medical issues with his mother. Later he shows up in a suit requesting his entire medical record, discontinues care and lets your office know he will be filing a report with the Office of Civil Rights. The patient's attorney contacts you by mail requesting a settlement. Did you do anything wrong??

Fortunately, the Federal governments understands that in some cases release of a patient's medical information to family members and relatives can be required. One specific individual is the patient's personal representative. Unless, the patient has specified in writing that they do not want the personal representative notified, you are within your rights to disclose information without penalty. (<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/personal-representatives/index.html>)

2. A nurse that works in your office sees a local politician in your office. She obtains a photo of you & the politician & immediately posts it to her public Facebook account. The nurse posts "Look who came in for an appointment with Dr. Face." Within an hour the spouse of the politician calls hysterically. This is followed a few hours later by a call from the politician's attorney. Are you responsible for the nurse's actions??

Yes, since there was no permitted use or disclosure of the PHI and the politician did not separately provide authorization, this would constitute a violation under 45 CFR 164.506 et seq. Since the nurse is acting within the scope of her employment, the employer can be held vicariously liable. The politician can file a complaint with the Office of Civil Rights, with the government having the ability to pursue an investigation or other enforcement action against the practice. Additionally, the practice may consider steps to mitigate the situation, including asking the nurse to delete her post. The practice may need to also discipline the nurse for her actions, which are presumably in violation of the practice's privacy policies.

3. A patient calls with significant pain following breast reduction surgery. She tells you the right breast has swollen up and now is twice as big as the left. She wants to send you some pictures. Do you allow her to send you the photos?

The HIPAA Security Rule requires covered entities to ensure the confidentiality, integrity and availability of maintained or transmitted electronic PHI by imposing administrative, physical and technical safeguards, among other organizational requirements (45 CFR 164.306 et seq). There are inherent risks associated with using a mobile device to transmit or receive PHI. That said, with appropriate safeguards in place, mobile device usage may be HIPAA-compliant.

In implementing the technical safeguards under the Security Rule, mobile devices should be properly password-protected/authenticated, be encrypted, include a firewall, maintain security updates and be connected via a secure network connection, among other technical requirements. This applies to both email and text functionalities. Unless the doctor in this scenario has implemented the appropriate safeguards on his/her mobile device, they should refrain from this method of communication with patients. It is not advisable to send photos via unsecured text messages or emails, and a secured (encrypted) platform for sharing messages or images is preferable. If your patient is in an emergency, have her call 911 or visit the emergency room.

4. Three days post-surgery, a patient complains of redness and pain near the area she was operated on. She does not have anyone to drive her to your office at the moment, so sends you the pictures via email and text to get your medical opinion. ... what do you do if someone sends you unsolicited photos via non-secure email or text?

You should look at the photos, print them out to include them as part of the patient medical record, and delete them from your phone/email. Remember that deleted texts and emails may still be saved in the cloud or in the device's trash bin, so you need to ensure that the message has been deleted in all locations. Further, if you use a wireless printer, you may need to empty the tray to remove the digital copy from the printer's memory. Emphasize to the patient that this method of communication is unacceptable in your practice and advise to always use encryption when sharing photos.

DISCLAIMER: Members should seek the advice of legal counsel in determining their specific obligations under HIPAA as well as any other federal, state or local privacy laws that may apply to their practice.