HIPAA Challenges in a Crisis

Intense public interest doesn’t trump HIPAA. No matter how intense the case is for the “public’s right to know,” HIPAA restrictions on Personal Health Information (PHI) remains intact. However, with an experienced trained spokesperson, you can speak generically but effectively.

Patients can talk but prevent you from responding. A patient can go to the media and say awful things about you and your organization on the record, but you will not be able to respond in detail unless a HIPAA form has been signed. Once again, a trained spokesperson can be effective speaking generically.

HIPAA allows minimal response in a mass casualty situation. You can report how many patients you received from a mass casualty situation (fire, explosion, accident, shooting). For example, you can say “We received three patients, ranging in condition from fair to critical,” because it does not associate the condition with any patient. Our HIPAA office advises when there are only two patients to stop giving conditions because there is a chance PHI can be inferred.

Instant patient information is generally not available. Once a patient is admitted, the patient must be given an opportunity to “opt out” of the “directory.” Being listed in the directory is limited to acknowledging a patient’s presence and providing a one word condition (critical, serious, fair, good). However, a patient brought to the hospital because of a newsworthy event (fire, accident, crime) is often not in a condition to make a judgment on whether to opt out. This usually means a least a day before the patient is listed in the directory. In order to respond to a reporter’s request, the reporter must give you a specific name of the patient. Then you can only acknowledge the patient and provide the one word condition. You cannot provide the information to a reporter’s inquiry about “the guy who fell off the building.” There must be a name with the request. Even with a name, if the patient has not had the opportunity to “opt out” of the directory, a reporters request must be answered by “I cannot confirm or deny the patient’s presence.”

You can go beyond HIPAA if it is in the patient’s interest. For the safety of patients and staff, we generally will not acknowledge a patient’s presence if the patient is a crime victim. In our view public disclosure of a crime victim is an invitation to the perpetrator to come over to the hospital and finish the job. We will often do the same for a perpetrator to prevent a revenge attack. In these cases, the patient is given an assumed name that is shared with as few people as possible.