

## WHAT TO DO IF YOUR AUTHORIZATION FOR MEDICAL RECORDS VIOLATES HIPAA

DECEMBER, 2003

Here is the scenario: you are attempting to get medical records detailing an employee's or client's course of treatment from the local hospital, or perhaps your attorney or employer has asked permission to obtain your medical records from your family doctor to investigate a claim or consider you for employment. You have heard of HIPAA, but you don't know much about the law other than the fact that it deals with patient privacy rights. In order to obtain the information you need, you understand that a Release of Medical Records must be carefully crafted and contain all the "bells and whistles." You believe the document should provide, at the very least, a full name, address, social security number, date of birth and a few other unique identifiers. Next, you believe the authorization should be signed and dated . . . before a notary. This added verification proves an intention to authorize the release of medical records, and will certainly survive even the highest scrutiny of the hospital's record department. Or will it? Unfortunately, your request for medical records has been denied because it is a violation of HIPAA.

Without a clear understanding of the Health Insurance Portability and Accountability Act (HIPAA) and the Privacy Rule authorization requirements, HIPAA may appear merely as some new law that every hospital, emergency medical service, health insurance company or hometown physician seems to hang their hat on when they feel like ignoring a request for medical records. In reality, 45 C.F.R. §164.508 has not made the lives of medical record keepers easier, but has placed on them more stringent requirements in accepting authorizations, in releasing medical records and in acknowledging the rights of individuals who authorize another to access his/her personal information.

The Department of Health and Human Services made clear that whether an authorization is submitted to the covered entity by the individual or by another person on the individual's behalf, the covered entity maintaining protected health information may not use or disclose it pursuant to an authorization unless the authorization contains at least the following "core elements:"<sup>1</sup>

- A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.
- The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure.
- The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure.
- A description of each purpose of the requested use or disclosure. The statement "at the request of the individual" is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose.
- An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure.
- Signature of the individual and the date. If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual must also be provided.

In other words, the "bells and whistles" approach that you took may not be enough . . . or may not even be required. Moreover, an authorization also must contain statements adequate to place the individual on notice of all of the following:

- The individual's right to revoke the authorization in writing, explaining the exceptions to the right to revoke and a description of how the individual may revoke the authorization.
- The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization.
- The potential for information disclosed pur-

### in this issue

What to do if Your Authorization for Medical Records Violates HIPAA	1-2
Attorney Profile	2
Auto Accident Information Sheet	3
Office Locations	4

## WHAT TO DO IF YOUR AUTHORIZATION FOR MEDICAL RECORDS VIOLATES HIPAA (CONTINUED)

suant to the authorization to be subject to redisclosure by the recipient and no longer be protected by HIPAA.

Before HIPAA, these core elements and notice requirements were not necessarily found on authorization forms. As a result, health care providers continue to receive invalid authorizations and have become highly critical in this regard.

Simply stated, when preparing and submitting an authorization to obtain medical records, or if you are asked to sign an authorization, remember that (1) the records keeper, before releasing records, is required to verify that the authorization received complies, in every aspect, with the Privacy Rule; (2) an individual's right to control access to their personal health information far outweighs any right of access the recipient of the records may have been given; (3) just because an individual has authorized access to records does not mean that individuals can't revoke their authorization and deny further access; (4) most covered entities have spent time and money developing an "approved" authorization form. Ask for a copy of their authorization form

before attempting to submit your own; and (5) most covered entities are scared to death of violating HIPAA and will err on the side of caution even when it comes to discussing or releasing information to someone with an authorization. Moreover, HIPAA "does not require a covered entity to disclose information pursuant to an individual's authorization," so even an individual who wishes to release his own medical records to a third party may need to jump a hurdle or two.<sup>2</sup>

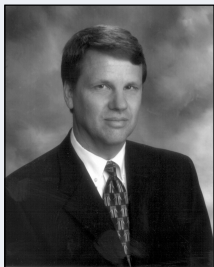
Exercise patience and keep these points in mind to avoid unnecessary delays and to increase your chances of obtaining the records you need in a timely fashion. If you have any questions regarding HIPAA, please contact Jana Berger at (734) 261-2400 or via E-mail at [jberger@cnda-law.com](mailto:jberger@cnda-law.com). She is available for private consultations and offers formal training.

<sup>1</sup> 45 C.F.R. §164.508(c)(1)

<sup>2</sup> *Federal Register*, Vol. 65, No. 250, Thursday, December 28, 2000 / Rules and Regulations 82517.

*Jana M. Berger*

## Attorney Profile



*Robert L. Blamer*

**P**ersonal injury defense continues to be one of our largest practice areas and therefore we naturally refer to it frequently within our newsletter. Several decades ago, however, we realized that in order to meet all our client's specific needs, implementing a plaintiff's practice, in addition to our defense practice, was essential. The plaintiff's practice was primarily created because even our defense clients, their families and/or friends from time-to-time need legal representation from a plaintiff's attorney.

Robert Blamer, Jonas Sniokaitis and James Acho are part of our plaintiff's personal injury group. They are all extremely knowledgeable on the law and can help with any plaintiff's personal injury matter that may arise. The group can be reached in our Livonia office at (734) 261-2400.

Mr. Blamer heads the group and brings with him over 23 years of experience handling personal injury matters. He is a member of the American Bar Association, State Bar of Michigan, Livonia Bar Association, American Trial Lawyers Association, Michigan Trial Lawyers Association and is rated A.V. by Martindale-Hubbell for preeminent legal ability. Mr. Blamer received his Juris Doctorate degree from Wayne State University (1980) and his Bachelor of Science degree in English/Math from Central Michigan University (1977). He can be reached by calling (734) 261-2400 or via E-mail at [rblamer@cnda-law.com](mailto:rblamer@cnda-law.com).

Winter is here, and an increase in automobile accidents often happens during the winter months. Mr. Blamer has created a useful Auto Accident Information Sheet (page 3) that contains important information you should be aware of should you ever become involved in an auto accident. Tear it out and keep it in your glove box for easy reference.

**IMPORTANT INFORMATION: KEEP IN YOUR CAR'S GLOVE BOX.**

**AUTO ACCIDENT INFORMATION SHEET**

**At the Accident:**

- Try to remain calm and thoughtful. If you or anyone in your car is injured, stay in the car unless there is danger of fire or another accident.
- Use your cell phone to get help from the police and medical personnel.
- Try not to move any vehicles until police arrive- unless it creates a greater danger of injury.
- Avoid making statements about responsibility to other drivers, witnesses, the police or insurance representatives without talking to your own insurance representative. Assist the police with their official report. Confirm that you and passengers wore seat belts.
- Use the following form to obtain accident information.

	VEHICLE 1	VEHICLE 2
Date and Time _____		
Driver's name and phone number		
Driver's address		
Driver's license number		
Vehicle tag numbers		
Vehicle makes and models		
Vehicle 17-digit ID numbers		
Insurance companies		
Insurance policy numbers		
Witness names and phone numbers		
Witness addresses		
Statements made by witnesses or other drivers		

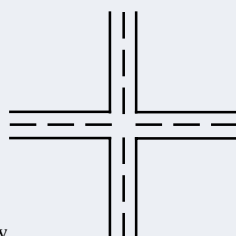
**Accident scene notes**

Fill in the accident scene diagram below.

- Accident location \_\_\_\_\_
- Road conditions \_\_\_\_\_
- Traffic conditions \_\_\_\_\_
- Weather conditions \_\_\_\_\_
- Your speed before accident \_\_\_\_\_
- Other driver's speed before accident \_\_\_\_\_
- Did your car skid? How many feet? \_\_\_\_\_
- Did other car skid? How many feet? \_\_\_\_\_
- Impact location on your car \_\_\_\_\_
- Impact location on other car \_\_\_\_\_
- Anything else relevant \_\_\_\_\_

- If you or passengers receive injuries, insist on being transported to a hospital in an ambulance. In all instances, obtain medical treatment immediately. Tell medical personnel about everything you feel may be physically wrong.
- Report the accident to your insurance agent immediately. Do not speak to the other driver's insurance representatives.
- If there are serious medical injuries or property damage, seek counsel of a lawyer as soon as you can. Make an appointment and report all injuries to your family doctor within a day or two. Also, write a daily injury condition journal. Comply with your doctor's instructions for faster recovery.
- Retain copies of all medical bills and related accident expenses, such as towing and repair, as well as costs for travel, parking, etc.
- Document any income loss associated with the accident.

**ACCIDENT  
 SCENE  
 DIAGRAM**



Indicate North with an arrow

CUMMINGS, McCLOREY, DAVIS & ACHO  
OFFICE LOCATIONS

**MICHIGAN**

**Livonia**

33900 Schoolcraft  
Livonia, MI 48150  
Telephone: 734.261.2400  
Facsimile: 734.261.4510

**Birmingham**

401 S. Old Woodward Ave.  
Suite 450  
Birmingham, MI 48009  
Telephone: 248.203.9004  
Facsimile: 248.203.9011

**Grand Rapids**

2851 Charlevoix Drive, S.E.  
Suite 327  
Grand Rapids, MI 49546  
Telephone: 616.975.7470  
Facsimile: 616.975.7471

**Marquette**

307 South Front Street  
Marquette, MI 49855  
Telephone: 906.228.8263

**Roseville**

25509 Kelly Road Suite C  
Roseville, MI 48066  
Telephone: 586.775.5200  
Facsimile: 586.777.6896

**Traverse City**

3939 M-72 East  
Williamsburg, MI 49690  
Telephone: 231.938.2888  
Facsimile: 231.938.2988

**ARIZONA**

**Phoenix**

1850 North Central  
Suite 1450  
Phoenix, AZ 85004  
Telephone: 602.207.2829  
Facsimile: 602.207.6943

**CALIFORNIA**

**Riverside**

3801 University Avenue  
Suite 700  
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issues of ONLAW?**

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**Our Vision**  
*To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.*

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