

Individual Paper – Case Study #1
Class: 407
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I found this to be a very interesting case study and our team had some great discussions around it. In my *new and improved* understanding of HIPAA and its terminology, I realized just how much I didn't know. In this case study, my team and I discussed the several questions posted and what our different thought processes were as it related to The HIPAA Privacy Rule:

1. **How should staff respond to the grandmother?** There are several different ways to this could be handled:
 - a. Assuming that John Smith is incapacitated, according to the HIPAA Privacy Rule, if an individual is incapacitated, a covered entity (in this case the hospital and its employees) may share PHI with a family member in their professional judgment, IF it is determined to be in the best interests of the individual. However, in releasing the PHI, only the “minimum necessary” should be disclosed to the grandmother in order to accomplish the intended purpose of the disclosure. This simply means that no more or less of the patient's protected health information should be released to an individual that is required to address the request of individual seeking the information.
 - b. Since John is over the age of 18 and assuming that he is alert and coherent, his permission is required in order to release his PHI. His permission may

be obtained by asking him outright if his PHI can be shared (in this case with his grandmother).

- c. Assuming that John's wife is acting on his behalf as his "personal representative", the staff member could have contacted her to request her permission to release the PHI to the grandmother.

2. What should be given to the police officer? According to the HIPAA Privacy Rule, unless the police officer provides a court order, court-ordered warrant or subpoena, then the patient's PHI should not be disclosed. There are certain circumstances where this information can be released but do not apply to this case study. However if John's accident at the factory was due to proven drug use and he dies, then under the HIPAA privacy rule, the covered entity may disclose the patient's PHI.

3. How should you respond to BCBS? Because BCBS is a health plan it is considered a covered entity, under the HIPAA Privacy Rule, they have the right to request use of and receive PHI for John Smith in order to process his insurance claim. However, according to the HIPAA Privacy Rule, if John's health plan (BCBS) has less than 50 participants and it is administered solely by the employer that established and maintains the plan, then the health plan is not considered a covered entity and a BA agreement would be required. In this case, the medical records department may be called upon to produce this agreement and confirm and or verify that the person/representative of the health plan is covered under the BA agreement before any PHI can be disclosed.

4. Did staff respond appropriately to the wife? Absolutely not! The nurse not only gave out inappropriate information, she also gave too much information that could potentially expose the hospital to legal social and ethical issues:

- a. Legal issue** – The nurse gave the wife an “internal” hospital memo. An “internal” memo or document is meant for internal purposes only (meant for staff addressed in the memo). Because the nurse gave the memo to the wife, it opened the hospital up for liability exposing them to potential legal action by the wife. She could bring legal action against the hospital using the memo as proof of the hospital’s problem with post-op bacterial infections and how it has affected her husband’s health.
- b. Social issue** – The hospital’s issue of the post-op bacterial infection and the increasing trend not only directly affects John Smith, and his wife but also any other new patients that may be admitted to the hospital. If this information is leaked to the public, it could harm the hospital’s reputation and cause a decrease in patient admissions as well as recruitment of new physicians.
- c. Ethical issue** – The ethical issue here is the nurse releasing an internal memo to the wife of the patient. She was wrong to do this knowing that there was information contained in the memo which showed an increasing problem in the hospital. Her follow-up comment to the wife stating that “...this kind of post-op infection still happens all the time here, so we just treat them the best we can” gave the wife no indication that anything is being done to resolve the problem.

5. How should the CEO respond to the wife? There are several steps the CEO should take:

- a.** He should first consult with their legal department to determine what actions, if any, are necessary to help mitigate any potential liability of the hospital. He should also have the legal department immediately draw up a letter apologizing to the wife and request to meet with her in person to discuss the matter.
- b.** He should meet with the informaticist consultant to discuss the following:
 - i.** What exactly was discussed with the wife during their meeting?
 - ii.** Was the study that was given to the wife de-identified data? If not, what HIPAA patient identifiers were used?
 - iii.** Was any more information provided to the wife that disclosed any PHI for any other patients?
 - iv.** Provide the CEO an updated and recent study of the trend of post-op bacterial infections immediately.
- c.** He should also meet with the head of the billing department to determine if they cancel the medical billing for this patient, how much the revenue loss will negatively impact the hospital. Depending on the answer, they would need to make a decision on the least amount of impact on the hospital: the revenue loss or the negative impact this could potentially have on the hospital's reputation.
- d.** He should contact the human resources department to discuss what the appropriate disciplinary actions are for the nurse and how to prevent this

type of behavior for the future. Also discuss the next steps on re-educating all the staff on how to handle these types of issues as well as schedule a review class of how the HIPAA privacy rule applies to hospital, its staff and its importance.

e. After meeting with all departments, he (along with a representative from HR and legal department) should sit down with the wife and her representative (assuming she will have one or a few) and inform her/them of the following:

- i. Explain the reason for the study and what the latest trend is.
- ii. Inform her as to what is being done to address the problem.
- iii. Explain what is being done to re-educate the hospital staff of appropriate disclosure of internal hospital issues and how to handle this information responsibly with patients and their family members/representatives.
- iv. Discuss/negotiate the medical billing issue and try to discourage her from going to the media if at all possible.

6. Is there a BA Agreement involved here? There is a BA Agreement in place with the informaticist consultant.

7. Are there any other business, legal, ethical or social issues?

Yes, there is a legal/ethical issue wherein the neighbor downloaded and printed 510 medical records *including* that of John Smith. This exposes the hospital to security issues with their medical records system. Because the amount of medical records printed was

over 500, (according to the HIPAA Notification Brief Formal (put out by the OCR) the hospital must:

“~Notify each affected individual of breach of unsecured protected health information.

~Notice to media if more than 500 people affected.

~ Notice to Secretary of breach through OCR website.

~Notifications to be provided without unreasonable delay (but no later than 60 days) of discovery of breach”

This means that that CEO must also inform John and his wife of the security breach since his medical record was also accessed and printed by an unauthorized individual.