

Oregon  Association  
of Hospitals and Health Systems

# HIPAA AND LAW ENFORCEMENT

GUIDELINES FOR RELEASE OF  
PROTECTED HEALTH  
INFORMATION (PHI)  
in Oregon

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### HIPAA and Law Enforcement: Guidelines for Release of Protected Health Information

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### **HIPAA and Law Enforcement: Guidelines for Release of Protected Health Information**

## **Oregon Association of Hospitals and Health Systems**

### **INTRODUCTION**

A hospital's first obligation to all patients is caring for their medical needs. When a patient is also involved in a criminal investigation, either as a suspect, witness or victim, that obligation remains the priority. Law enforcement officials, however, also have an important job to do that often involves seeking access to patients, their medical information or other evidence held by the hospital. These guidelines are established to help hospitals (health care practitioners) and law enforcement officials understand the patient access and information a hospital may provide to law enforcement, and in what circumstances.

The HIPAA Privacy Regulations govern how hospitals use and disclose patient information. This guide acknowledges the shared responsibility among hospitals and law enforcement officials to protect the public and allow for the proper investigation of criminal conduct while disclosing patient information only in a manner that is consistent with state and federal law.

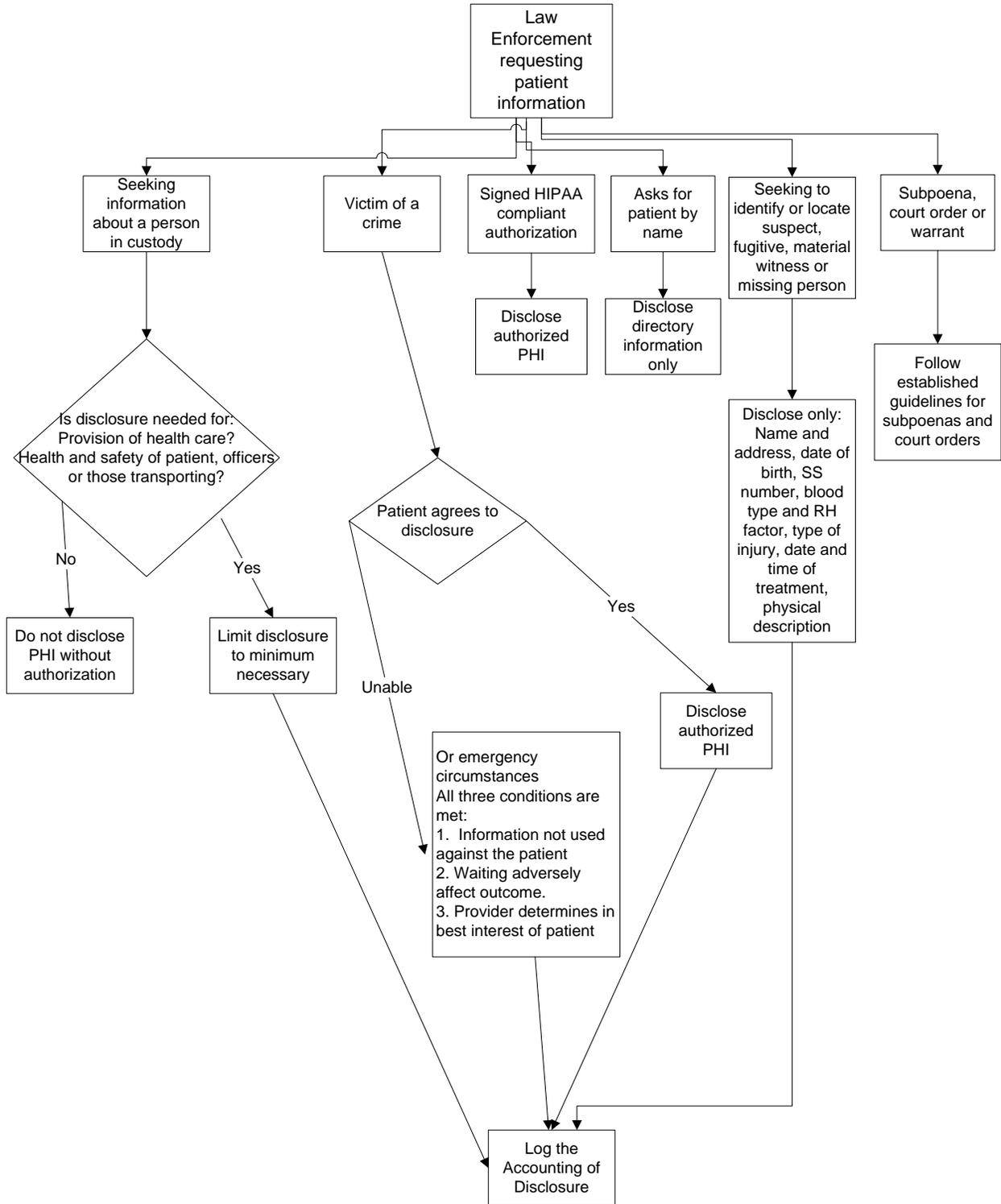
This document provides general guidance only and does not imply agreement on all points, does not create any legal obligations not otherwise existing at law, and is not legal advice. Hospitals may choose to implement different policies and procedures as necessary to meet their unique circumstances. Hospitals that do so should communicate these policies and procedures to their local law enforcement community. This document reflects state and federal laws existing as of January 2012, which may change from time to time.

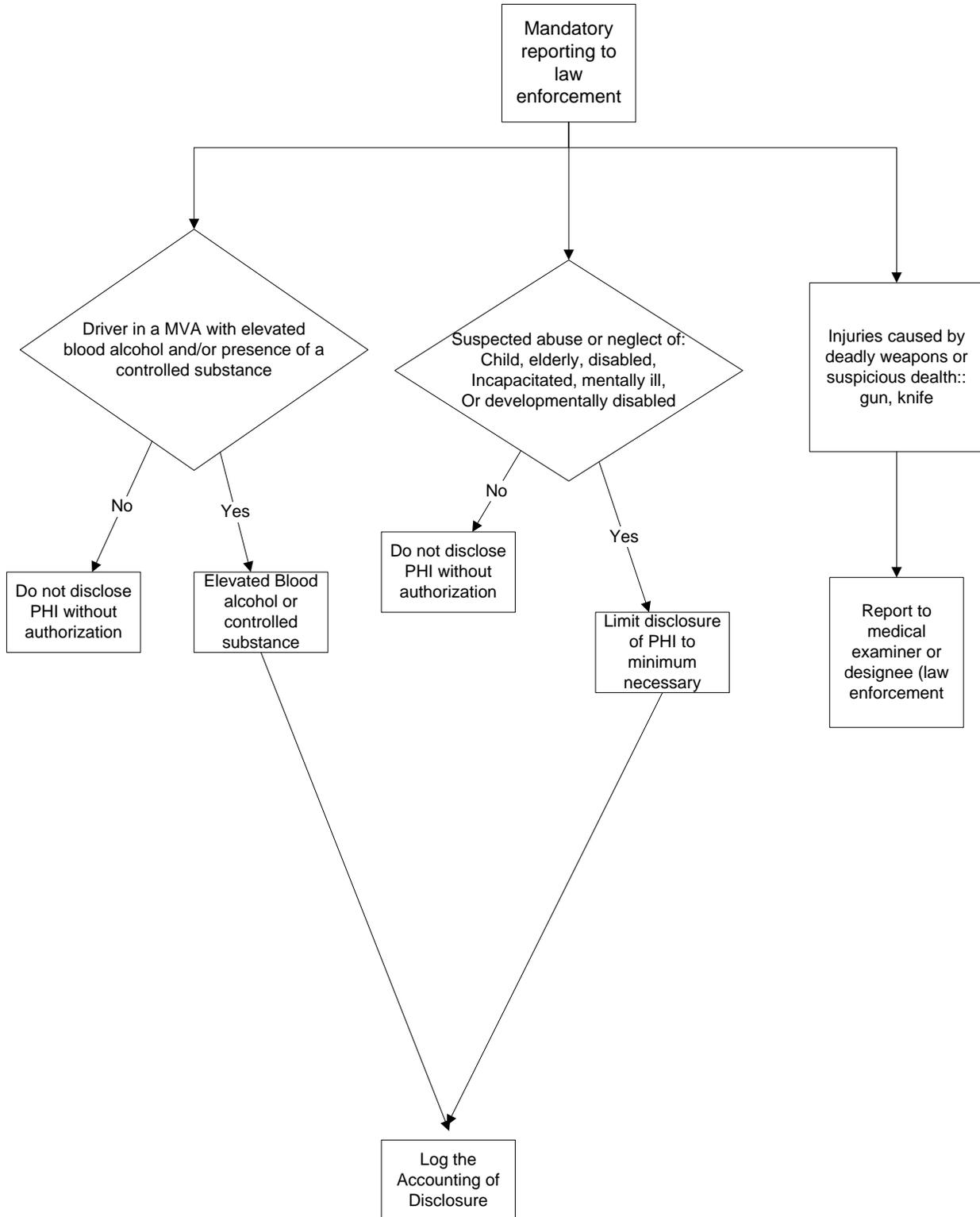
### **HIPAA Pathways: A Summary of Allowable Disclosures to Law Enforcement**

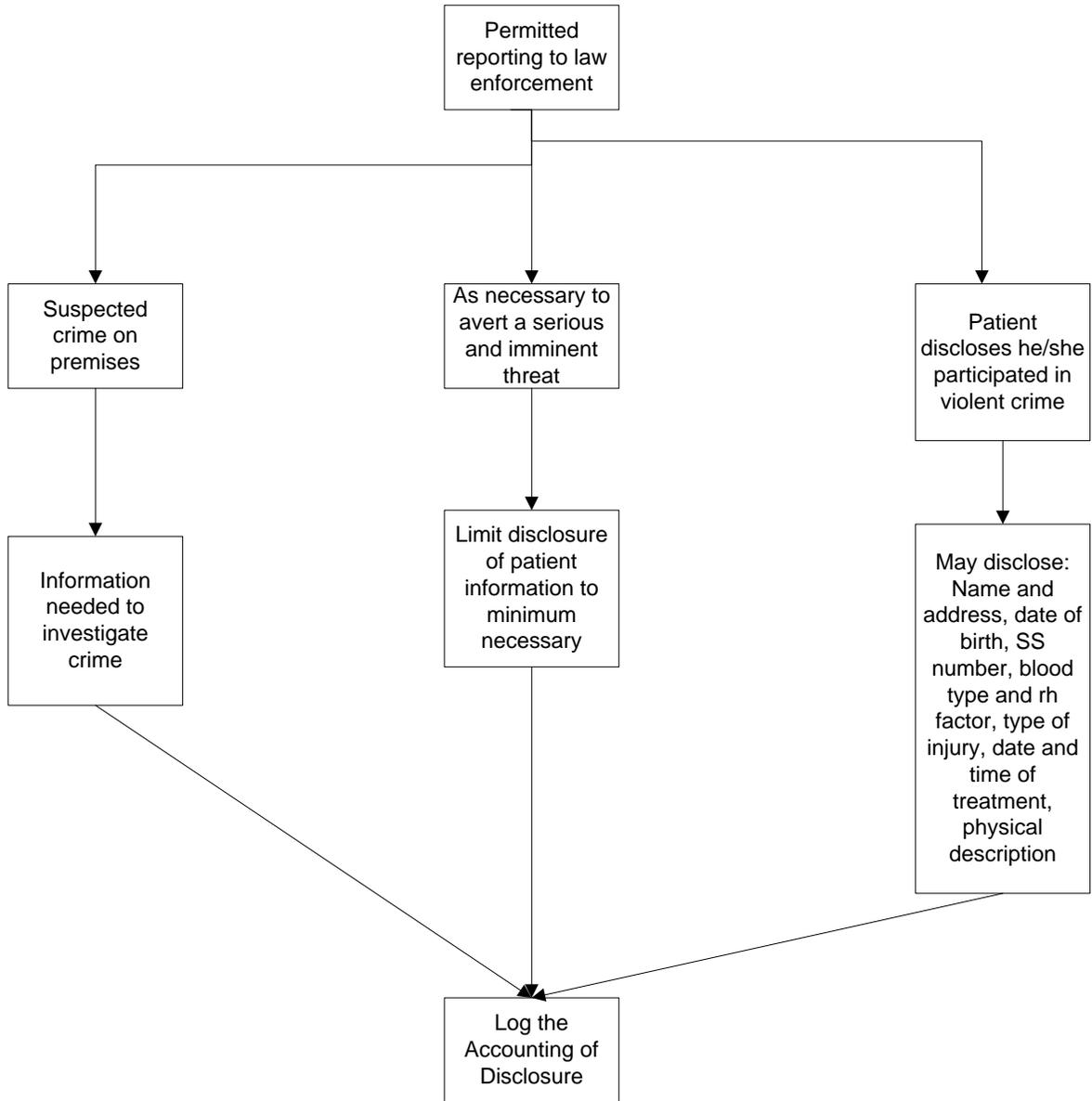
Subject to requirements that are discussed in this document, the HIPAA Privacy Regulations permit disclosure of protected health information to law enforcement in the following circumstances:

1. **On the request of Law Enforcement.** You may disclose patient information to law enforcement on the request of law enforcement in the following situations:
  - Law enforcement asks about the patient by name: disclosure is limited directory information (minimal condition and location information) and allowed only if the patient has not opted out of such disclosures.
  - Law Enforcement presents a court order, grand-jury subpoena, HIPAA-compliant subpoena, search warrant, summons or other legal process.
  - Law enforcement seeks to identify or locate a suspect, fugitive, material witness or missing person (only limited information may be disclosed). (See FAQ 1 g)
  - Law enforcement seeks information about a patient who has been a victim of a crime. (See FAQ 1 h)

- Law Enforcement presents a HIPAA-compliant authorization.
  - Law enforcement seeks information about a patient who is in law enforcement custody (patient under arrest or an inmate). (See FAQ 1 f)
2. **Mandatory Reporting to Law Enforcement.** You must disclose patient information to law enforcement in the following situations:
- Driver involved in an MVA with lab test results indicating blood alcohol level that meets or exceeds legal limit, or presence of a controlled substance.
  - Suspected child abuse and neglect, suspected abuse and neglect of the elderly.
  - Suspected abuse of mentally disabled persons.
  - Physical injury caused by a knife, gun, pistol or other deadly weapon.
  - Death believed to be the result of criminal conduct.
3. **Permitted Reporting to Law Enforcement.** You may initiate a disclosure to law enforcement in the following situations:
- To report criminal conduct occurring at the facility.
  - In emergency circumstances occurring off the premises of the hospital to report a crime, the location of the crime or victims, or the identity, description or location of the person who committed the crime.
  - As necessary to avert a serious and imminent threat to a person or the public.







## **Frequently Asked Questions Regarding Allowable Disclosures**

### **1. Disclosures allowed on the request of Law Enforcement.**

**a. May the hospital release patient health information in response to subpoena, court order, search warrant or grand jury subpoena?**

**Answer:** Yes. HIPAA does not change these requirements and hospitals should continue to follow their existing procedures. Remember, however, that law enforcement subpoenas seeking records or testimony for trial must be compliant with the Oregon Rule of Civil Procedure 55(H). This rule requires an affidavit or declaration indicating the appropriate notice was provided to the subject of the records or a Qualified Protective Order. See the Subpoena Checklist and Sample Affidavit in the Sample Forms section of this document. Grand jury subpoenas are not subject to these requirements.

**b. If a law enforcement officer presents a patient authorization to obtain the patient's records, must that authorization take a particular form?**

**Answer:** Yes. Authorization forms used by law enforcement must be HIPAA compliant. HIPAA compliant authorization forms are different than the releases law enforcement may have been using in the past. Note also that an authorization should not be combined with other forms, such as a consent to treat form. Direct law enforcement to your hospital's authorization form or the model authorization form contained in the Sample Forms section of this document.

**c. What may a hospital disclose if a law enforcement officer asks if a particular person has been admitted to the hospital?**

**Answer:** The hospital may confirm that the person is a patient if:

- The officer asks for the patient by name;
- The patient has had the opportunity to opt out of such disclosures and has not done so; or
- If the patient could not opt out due to incapacity, the hospital believes it is in the best interest of the patient to disclose to law enforcement that the patient has been admitted.

The hospital may disclose the patient's presence in the facility, general condition, and location.

**d. If law enforcement asks about a patient who was previously in the hospital but has been discharged or died, may the hospital acknowledge that the patient had been in the hospital?**

**Answer:** Yes. If the officer asks about the patient by name, the hospital may indicate that the patient was previously "treated and released," or died.

**e. Law enforcement wants to arrest a patient upon discharge. May the health care facility disclose actual or anticipated discharge date?**

**Answer:** Not unless disclosure is made to avert a serious and imminent threat to a person or the

public. For example, if law enforcement represents that a patient has a warrant for a violent crime, the facility may make those disclosures necessary to avert the threat.

f. If a patient is under arrest or in lawful custody during the hospitalization may the hospital disclose PHI to the law enforcement officer with custody of the patient?

**Answer:** Yes. For the following purposes:

- The provision of health care to the patient;
- The health and safety of the patient, others in custody, officers, or persons transporting patient;
- Law enforcement activities on the premises of the correctional institution; or
- The safety, security, and good order of the correctional institution.

g. What information can the hospital give to law enforcement about suspects, material witnesses, fugitives, or missing persons?

**Answer:** The fact that a patient is a criminal suspect does not give law enforcement access to unlimited information about the patient. HIPAA does provide, however, for disclosure of specific information. Even if law enforcement does not have the patient name, if the officer 1) initiates the inquiry, 2) identifies the person as a suspect, material witness, fugitive or missing person; and 3) indicates that the purpose of the inquiry is only to identify or locate the person, the facility may disclose the following information:

- Name and address;
- Date and place of birth;
- Social security number;
- ABO blood type and RH factor;
- Type of injury;
- Date and time of treatment (does not include future discharge date and time);
- Date and time of death, if applicable; and
- A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars, and tattoos.

The Law Enforcement Request for Information form is useful in eliciting the required statements from law enforcement. See the Law Enforcement Request for Information form in the Sample Forms section of this document.

h. May the hospital disclose information about crime victims?

**Answer:** Yes. Protected Health information (PHI) may be disclosed to law enforcement officials in response to a law enforcement official's request, for such information about an individual who is or is suspected to be a victim of a crime, if:

- The patient agrees to the disclosure; or
- If the patient is unable to agree to disclosure because of incapacity or other emergency circumstances, and all three of the following conditions are met:
  - The law enforcement official represents that the information is needed to determine whether the violation has occurred and that the information is not intended to be used against the victim;
  - The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and
  - The patient's provider determines in the exercise of his or her professional judgment that the disclosure is in the best interests of the patient.

The Law Enforcement Request for Information form may be useful to elicit and document the necessary information. See the Law Enforcement Request for Information form in the Sample Forms section of this document.

i. What information may the hospital provide to law enforcement over the telephone?

**Answer:** Hospitals may provide the same information to law enforcement over the telephone that they may provide in person provided the hospital engages in appropriate verification that the caller is actually a law enforcement officer. This verification procedure may include such steps as establishing a telephone call-back list or requiring the officer to send a fax that includes appropriate identifying information and call-back telephone number.

**2. Mandatory Reports of Patient Information to Law Enforcement**

a. When must I disclose blood alcohol content (BAC) or the presence of a controlled substance in the patient's blood to law enforcement?

**Answer:** A hospital that provides medical care immediately after a motor vehicle accident to a person reasonably believed to be the operator of a motor vehicle involved in the accident is required to notify law enforcement of any blood test obtained in the course of treatment that shows the patient's blood alcohol level is at or above .08 or the presence of a controlled substance, (Schedule I-V). See ORS 676.260. The report must be done within 72 hours after becoming aware of the results of the blood test and must include the name of the person being treated, the blood alcohol level disclosed by the test or name and level of controlled substance, and the date and time of the administration of the test.

The report should be made to any law enforcement officer who is at the health facility and is acting in an official capacity in relation to the motor vehicle accident. If no law enforcement officer is present in an official capacity at the health care facility, the health care facility must notify a law enforcement agency in the county in which the accident occurred or an Oregon State Police dispatch center.

Remember that a report of blood alcohol content or presence of controlled substances to law enforcement must be included in an Accounting of Disclosures unless law enforcement asks for a suspension of the Accounting.

b. May the hospital continue to report child abuse, elder abuse and other abuse of vulnerable adults to law enforcement?

**Answer:** Yes. Hospitals must continue to abide by Oregon law and report this information consistent with existing procedures. The following is a summary of the applicable law:

*Child abuse:* Oregon law (ORS 419B.010) requires a health care facility to immediately make an oral report of any abuse of a child to the local Department of Human Services office or to a law enforcement agency within the county where the abuse is detected. The report should include the following, if possible:

- Names and address of the child and the parents of the child or other persons required for care of the child;
- Child's age;
- Nature and extent of the abuse (including any evidence of previous abuse);
- Explanation given for the abuse, and any other information, which the facility believes, might be helpful in establishing the cause of the abuse and identity of the perpetrator.

Under ORS 419B.050, upon notice by law enforcement or DHS that a child abuse investigation is being conducted, the facility must permit a law enforcement official to inspect and copy medical records, including but not limited to prenatal and birth records of the child involved in the investigation, without the authorization of the child or the parent or guardian of the child.

*Elder abuse:* Oregon law (ORS 124.060) requires a health care facility to immediately make an oral report of any abuse of a person 65 years of age or older to the local Department of Human Services office or to a law enforcement agency within the county where the abuse is detected. The report should include the following, if possible:

- Names and address of the elderly person and any persons responsible for the care of the elderly person;

- Nature and extent of the abuse (including any evidence of previous abuse);
- Explanation given for the abuse; and
- Any other information which you believe might be helpful in establishing the cause of the abuse and the identity of the perpetrator.

*Abuse of mentally ill or developmentally disabled:* Oregon law (ORS 430.765) requires the health care facility to immediately make an oral report of any abuse of a mentally ill or developmentally disabled person to the designee of the Department of Human Services or a law enforcement agency within the county where the abuse is detected. The report should include the following, if possible:

- Name, age and present location of the allegedly abused adult;
- Names and addresses of persons responsible for the adult's care;
- Nature and extent of the alleged abuse, including any evidence or previous abuse;
- Any information that led you to suspect that abuse had occurred, and any other information that you believe might be helpful in establishing the cause of the abuse and the identity of the perpetrator; and
- Date of the incident.

Note that Oregon law related to elder abuse and abuse of mentally ill or developmentally disabled does not allow the broad access to the medical record that is allowed in the child abuse statutes.

*Domestic Violence:* Disclosure of domestic violence is not required or authorized by Oregon law. A facility may only disclose information to the extent the disclosure is required by law (e.g. domestic violence perpetrated with a deadly weapon or in the presence of a child) and the disclosure complies with and is limited to the requirements of the law, or to the extent the patient agrees to the disclosure.

c. May hospitals continue to report injuries caused by a deadly weapon, or suspicious death?

**Answer:** Yes. Hospitals must continue to report gunshot wounds, knife wounds or other injuries caused by a deadly weapon, and suspicious deaths to the appropriate medical examiner or the examiner's designee as required by state law. It is not uncommon for law enforcement to serve as the designee and learn of particular injuries or deaths in this manner. The following are examples of required reports to the medical examiner:

- Drug overdose that results in the death of an individual. (ORS 146.090(b), ORS 146.100)

- Apparent suicide or homicide occurring under suspicious or unknown circumstances. (ORS 146.090(a), ORS 146.100)
- Poisonings due to ingestion of or exposure to hazardous substances or chemicals resulting in the death of an individual. (ORS 146.090(b), ORS 146.100) (ORS 146.090(g), ORS 146.100)
- Injuries caused by deadly weapons. Physicians and registered nurses are required to report injuries that they suspect to have resulted from the use of a knife, gun, pistol or other deadly weapon inflicted by another, which are not suspected to be by accidental means to the medical examiner or designee. (ORS 146.750)
- Deaths related to disease, which might constitute a threat to the public health. (ORS 146.090(g), ORS 146.100)

d. A baby has been abandoned at the hospital. May the hospital contact the appropriate authorities?

**Answer:** Yes. Under Oregon law, when an infant is abandoned on the premises of a health care facility, the facility is deemed to have protective custody from the moment the infant was left at the facility. (ORS 419B.100, 419B.150). Oregon law (ORS 418.017(5)) requires the facility to notify and disclose all information that it has regarding an abandoned infant to the Department of Human Services no later than 24 hours after receiving the infant.

### **3. Permitted Reports of Patient Information to Law Enforcement**

a. If hospital personnel believe that a patient has engaged or intends to engage in conduct that presents a serious and imminent threat to a person or the public, may the hospital notify law enforcement and or the intended victim?

**Answer:** Yes, if hospital personnel reasonably believe the disclosure to law enforcement is necessary to prevent or lessen the threat. If law enforcement is not aware of the intended victim or potential crime, the hospital may disclose information to law enforcement on its own initiative if the disclosure is necessary to avert a serious and imminent threat to a person or the public. The hospital may also disclose to the intended target/victim.

b. Hospital personnel see a patient or visitor attempt to drive away from the hospital while intoxicated. May the hospital on its own initiative disclose that information to law enforcement?

**Answer:** Yes. The HIPAA Privacy Regulations allow a hospital to notify law enforcement of the patient's actions if notification is necessary to avert a serious and immediate threat to the health and safety of the public. Oregon law, ORS 676.300 allows a health care provider who is providing emergency medical care to a person in a health care facility and believes the person is under the influence of intoxicants and about to drive a motor vehicle on public roads, and appears to be a clear and present danger to society, to notify the law enforcement agency which has jurisdiction over the health care facility site. The notice shall consist of the name and physical description of the person being treated and the fact that the health care provider believes the person is intoxicated

and is about to drive a motor vehicle. Notifying law enforcement about similar actions by a visitor to the hospital is allowed because the disclosure does not involve protected health information (the visitor is not a patient).

Remember that reporting that a patient is attempting to drive while intoxicated must be included in an Accounting of Disclosures unless law enforcement asks for a suspension of the Accounting.

c. The hospital believes a patient has escaped from a correctional institution. May the hospital alert law enforcement?

**Answer:** Yes. HIPAA allows a hospital on its own initiative to disclose protected health information to law enforcement as necessary for law enforcement to identify or apprehend an individual who has escaped from a correctional institution or from lawful custody.

d. A patient is out of control and requires containment. May the hospital call law enforcement?

**Answer:** Yes. Call 911 if the person poses an immediate threat to health care facility patients or staff. If a patient is behaving in a way that would threaten the health and safety of others, a hospital may call law enforcement if it believes that doing so will prevent or lessen further harm to an individual or the public.

e. If a patient discloses to hospital personnel that he/she has participated in a violent crime that may have caused serious injury to someone, may the hospital notify law enforcement for the purpose of identifying or apprehending an individual?

**Answer:** In certain circumstances, yes. The hospital may disclose the information allowed regarding suspects discussed above in Section 1 g. However, a hospital may not disclose this information, if the patient made the disclosure during treatment intended to affect the propensity to commit the criminal conduct or during counseling or therapy or through a patient request to initiate such counseling or therapy.

f. When may emergency medical providers disclose patient information to law enforcement?

**Answer:** The HIPAA privacy regulations allow an emergency medical provider to disclose patient information to law enforcement if the disclosure appears necessary to alert law enforcement to the commission of a crime, the location of the crime, the victim of the crime, and the identity, location, and description of the perpetrator. Note, however, that this provision does not apply to emergency care provided on the premises of the hospital, so does not apply to hospital Emergency Department personnel. The most likely application of this provision will be to Emergency Medical Technicians providing care outside the hospital.

g. If a hospital believes a patient has committed a crime on its premises, may it notify law enforcement?

**Answer:** Yes, a hospital may disclose evidence of a crime occurring on the premises of the facility. If a person is disruptive and the hospital has asked the person to leave and they refuse, that likely qualifies as trespassing and the police may be called.

h. If a person attempts to obtain services using a false identity or presents fraudulent documents, may the police be notified?

**Answer:** Yes. This may constitute identity theft or theft of services and may be considered a crime on the premises of the hospital, therefore law enforcement may be contacted.

i. The hospital finds illegal drugs on the patient. May the hospital on its own initiative provide this information to law enforcement?

**Answer:** Yes. A person found with illegal drugs on the premises of the hospital is committing a crime on the premises of the hospital. As such, the facility may contact law enforcement.

j. May the hospital disclose patient information for national security activities?

**Answer:** Yes. A health care facility may disclose protected health information to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. 401). The hospital may also disclose protected health information to authorized federal officials for the provision of protective services to the President or other persons authorized by 18 U.S.C. 3056 or to foreign heads of state or other persons authorized by 22 U.S.C. 209(a)(3) or for the conduct of investigations authorized by 18 U.S.C. 871 and 879. The HIPAA privacy regulations do not define who qualifies as an authorized federal official. Typically, however, this will be FBI, Secret Service or representatives of the U.S. Attorney's office.

## **Additional Issues Regarding Disclosures of Patient Information to Law Enforcement**

### **4. Law Enforcement Access to the Patient/Hospital**

a. May law enforcement officers be present in the hospital to provide security for the patient or to prevent the patient from fleeing?

**Answer:** Yes. Law enforcement may be present in the hospital as necessary for security of patients and hospital staff and to prevent flight. Remember, however, that the hospital must take all appropriate steps to limit disclosure of protected health information to law enforcement acting in this capacity. For example, it may not always be necessary for the officer to be in the patient's room; remaining immediately outside may be sufficient.

b. If a law enforcement officer asks to go to the patient's room to talk to or question the patient, must the hospital allow the officer to go to the room?

**Answer:** Not necessarily. Hospitals generally should not allow law enforcement access to the patient without the patient's permission. Hospitals should cooperate fully, however, in seeking the necessary patient permission.

c. Law enforcement comes to the hospital to serve a restraining order or to arrest a patient. May the hospital allow the officer to go to the patient's room without patient permission?

**Answer:** Generally, if the officer has a court ordered warrant, restraining order or other order of the court, hospitals should allow the officer to serve the order if the patient's medical condition allows.

d. May a law enforcement officer accompany a patient into the Emergency Department while the patient is being treated?

**Answer:** Yes, provided that the purpose of law enforcement accompanying the patient is for a legitimate law enforcement activity (i.e. requesting a blood draw or other specimen, viewing and gathering evidence from a patient) as an extension of a criminal investigation related to the patient. The hospital should take reasonable steps to limit disclosure of protected health information as much as possible. Law enforcement should not be allowed to wander through the emergency department or be exposed to or gain access to other patients' protected health information.

## **5. Disclosure of Patient Property to Law Enforcement**

a. The hospital has patient clothing, weapons or other possible evidence of a crime that law enforcement needs for its investigation. May the hospital provide it?

**Answer:** Yes. If the evidence is labeled with the patient's PHI the hospital may only provide it to law enforcement pursuant to a search warrant, court order, or patient authorization. Evidence which has not been labeled may be turned over to law enforcement upon request.

b. May the hospital provide fingernail scrapings, bullets, or other physical evidence taken from the patient?

**Answer:** Yes. If the evidence is labeled with the patient's PHI the hospital may only provide it to law enforcement pursuant to a search warrant, court order, or patient authorization. Evidence which has not been labeled may be turned over to law enforcement upon request.

## **6. Disclosure of Specimens and Test Results**

a. When must I disclose blood alcohol content (BAC) or the presence of a controlled substance in the patient's blood to law enforcement?

**Answer:** A hospital that provides medical care immediately after a motor vehicle accident to a person reasonably believed to be the operator of a motor vehicle involved in the accident is required to notify law enforcement of any blood test obtained in the course of treatment that shows the patient's blood alcohol level is at or above .08 or the presence of a controlled substance, (Schedule I-V). See ORS 676.260. The report must be done within 72 hours after becoming aware of the results of the blood test and must include the name of the person being treated, the blood alcohol level disclosed by the test or name and level of controlled substance, and the date and time of the administration of the test.

The report should be made to any law enforcement officer who is at the health facility and is acting in an official capacity in relation to the motor vehicle accident. If no law enforcement officer is present in an official capacity at the health care facility, the health care facility must notify a law enforcement agency in the county in which the accident occurred or an Oregon State Police dispatch center.

Remember that a report of blood alcohol content or presence of controlled substances to law enforcement must be included in an accounting of disclosures unless law enforcement asks for a suspension of the accounting.

b. A law enforcement official asks that hospital staff perform a blood draw on a patient and disclose the result. May the hospital do so?

**Answer:** Yes. Under the law of Implied Consent, the blood draw may be performed at the request of law enforcement on an unconscious patient who is brought to the emergency department immediately following a motor vehicle accident in which the patient is believed to have been the driver. If the patient is conscious, the patient's consent to perform the draw is required or the draw may be performed pursuant to legal process, such as a court order or court ordered warrant. Hospitals should adhere to existing practices regarding obtaining patient consent for a blood draw. In either case, if a draw is done, the result of testing performed on the blood draw is protected health information and may be disclosed only pursuant to patient authorization, subpoena, court order or court ordered warrant. The only exception is where the patient is believed to be the driver of a vehicle involved in a motor vehicle accident and the BAC test shows the patient's blood alcohol level is above .08 or the presence of a controlled substance.

c. A law enforcement official requests that the hospital provide a blood/urine sample to the official for testing at an outside lab. May the hospital do so?

**Answer:** Yes. A hospital may provide a sample of blood or urine to law enforcement without patient authorization or legal process if:

- The sample is not accompanied by information identifying the patient, (i.e., an unlabeled sample), and
- The purpose is for other than identification and location purposes.

The rationale is that the specimen alone is not protected health information. It becomes protected health information when identifiable to a patient. Some hospitals may consider allowing the law enforcement officer to witness the draw as a way for law enforcement to identify the draw for evidence purposes. Remember that specimens identified to the patient may be disclosed pursuant to patient authorization, subpoena, court order or court ordered warrant. Hospitals may have adopted policies regarding this practice and hospital personnel should follow any such policies.

d. May the hospital provide results to law enforcement of blood tests performed on a patient to determine emergency responders' potential exposure to HIV, hepatitis?

**Answer:** Yes. The hepatitis results may be disclosed pursuant to the hospital's protocol. HIV testing requires patient consent or a court order.

## **7. Patient Authorizations.**

a. May hospital personnel verbally disclose PHI to an attorney, including a District Attorney in connection with a case prior to trial?

**Answer:** Verbal disclosures to an attorney, including a District Attorney are only permitted if authorized by the patient /personal representative. If authorization is sought and the patient is a child, the facility must generally obtain the authorization from a parent or legal guardian. Remember that if the facility has reason to believe the parent is not acting in the best interests of the child, the facility must look elsewhere for a personal representative to authorize a disclosure. In some cases, that personal representative may be the Department of Human Services, if it has taken legal custody of the child.

c. May a District Attorney (DA) receive medical information about abuse victims or other crime victims?

**Answer:** Only as members of the Multidisciplinary Team (MDT) investigating alleged child abuse. While in some states, the DA is considered part of law enforcement. However in Oregon, the DA is not considered law enforcement.

## **8. Disclosure of Specially Protected Records**

a. Law enforcement has submitted a subpoena requesting the patient's medical records and the records contain HIV information. May the hospital disclose the entire record?

**Answer:** The HIPAA privacy regulations did not change Oregon's laws or other federal laws protecting certain medical records. Drug and alcohol records of a treatment facility or that relate to a referral for drug/alcohol treatment, HIV positive test results or diagnosis, genetic testing records, certain mental health records may be disclosed only with patient authorization specifically allowing such disclosure, or pursuant to a court order or court ordered warrant. Subpoenas are not generally sufficient to allow for disclosures of specially protected records. Hospitals should follow existing policies and procedures when releasing these records to law enforcement.

## **9. Accounting for Disclosures**

a. When must the hospital tell the patient that the hospital has given the patient's health information to law enforcement?

**Answer:** The HIPAA Privacy Regulations require a hospital to give an Accounting of certain disclosures, including disclosures to law enforcement made without patient authorization, upon the request of the patient. The regulations allow law enforcement to request a suspension of this Accounting for a time period specified by law enforcement if they provide a written statement that an Accounting would be reasonably likely to impede the agency's activities and specifying the time for which such a suspension is required. If this statement is made orally, the hospital must:

- Document the statement, including the identity of the person or agency making the request;

- Temporarily suspend the individual’s right to an Accounting of Disclosures subject to the statement; and
- Limit the temporary suspension to no longer than 30 days from the oral statement unless a written statement is provided during that time.

**Glossary:** For purposes of this Guide:

“**HIPAA privacy regulations**” means the privacy regulations implementing the Health Insurance Portability and Accountability Act, codified at 45 CFR 164.103, et. seq.

“**Individually identifiable health information**” is a subset of all health information collected from an individual that is:

- Created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- Relates to the past, present or future physical or mental health condition of an individual, provision of health care to an individual or payment for the provision of health care to an individual; and
- Identifies the individual or could be used to identify the individual.

“**Law enforcement official**” means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, investigator of the Criminal Justice Division of the Department of Justice or investigator of a district attorney’s office and such other persons as may be designated by law. In Oregon a District Attorney is not considered law enforcement. See ORS 161.015.

“**Protected health information**” is individually identifiable health information that is transmitted or maintained by any electronic media or medium, or transmitted or maintained in any other form or medium.

“**Lawful custody**” a law enforcement officials' act of holding an accused or convicted person in criminal proceedings, beginning with the arrest of that person.

“**Identity theft**” When a person knowingly transfers or uses, without legal authority, a means of identification of another person with the intent to commit, or to aid and abet, any unlawful activity that constitutes a violation under any applicable federal, state or local law. This includes attempts to assume the identity of another person through fraudulent means or false pretenses to obtain or attempt to obtain medical services or goods, or to make false claims for medical services or goods.

“**Multidisciplinary Team**” is a county investigative/assessment team for child abuse. Pursuant to ORS 418.747, (1), the team shall include, but not be limited to, law enforcement personnel, child

protective services workers, district attorneys, school officials, health department staff and personnel from the courts.

“**Serious and Imminent Threat**” is described as being "*instant, overwhelming, and leaving no choice of means, and no moment for deliberation*".

### SAMPLE FORMS

*The following forms are provided for sample purposes only and may be updated from time to time.*

- Subpoena Checklist
- Authorization to Use and Disclose PHI to Law Enforcement
- HIPAA Compliant Authorization Checklist
- Law Enforcement Request Form
- Mandatory Reporting of Blood Alcohol or Controlled Substance

**Subpoena Checklist:** Requirements for a valid Oregon Subpoena seeking records for a civil or criminal trial include:

1. The subpoena is accompanied by a witness fee and mileage payment.
2. The subpoena states the name of the court and the title of the action.
3. A subpoena is issued by any of the following: an attorney of record in the case, a judge, a justice, a court clerk in the county, state or jurisdiction which the action is pending or by any other officer empowered by the laws of the United States to take testimony or administer oaths.
4. The subpoena is addressed to someone; for example, the physician or the physician or hospital “records custodian.” If the physician is called upon to appear and testify without an option of sending the records, then that person must obey the subpoena. If the subpoena states the records custodian must appear, then the practice or hospital may designate whomever they want to make the appearance.
5. If the subpoena calls for the production and disclosure of something, likely it will be PHI. Most often, the subpoena calls for the practice to release, “any and all information in your possession concerning the patient...” and then goes on to list: “including but not limited to (a number of specific items).” Carefully review the request and then examine the PHI to determine if it contains specially protected information. It will take a court order or patient authorization for release of this information.
6. The subpoena contains satisfactory assurances of notice. This satisfactory assurance likely will take the form of an attorney affidavit or declaration accompanied by supporting documentation demonstrating:
  - a. That the party has made a good faith attempt to provide written notice of the requested disclosure to the individual or their attorney more than 14 days before the subpoena was served. If the individual is not represented and the individual’s location was not known, then the notice was sent to the last known address of the individual; and
  - b. That the notice included in the proposed subpoena described the litigation or proceeding and described the PHI being requested; and
  - c. That the time for the individual to raise an objection has lapsed and either no objection to the request or disclosure of PHI was raised, or any objections were resolved and the information sought by the subpoena is consistent with that resolution. **OR** The party obtained a qualified protective order that meets the requirements of 45 CFR § 164.512(e)(v) and ORCP 55H(1)(b) and a copy of the order is attached; and

- d. That upon request, the party will allow the individual or their attorney to inspect a copy of the records received pursuant to the subpoena.

## **AFFIDAVIT IN SUPPORT OF SUBPOENA FOR INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION**

STATE OF OREGON            )

County of \_\_\_\_\_ )

I, \_\_\_\_\_, being first duly sworn, do hereby depose and state that:

1. I am one of the attorneys in the law firm/office (“Firm”) representing \_\_\_\_\_, and I make this affidavit in support of the attached subpoena for records that include individually identifiable health information (“IHI”) of \_\_\_\_\_ (“Patient”).
2. I submit this affidavit on the basis [ ] Notice to Patient or [ ] Qualified Protective Order.

a) A good faith attempt was made by the Firm to provide written notice to Patient. On \_\_\_\_\_, 2004, which date was more than 14 days prior to the issuance of this subpoena, the Firm sent written notice of the requested disclosure to the Patient or, if represented, to the Patient’s attorney. If the Patient was not represented and the Patient’s location was unknown, the Firm sent the notice to the last known address of Patient.

b) The notice included the proposed subpoena, described the litigation or proceeding and described the IHI being requested. Copies of the written notice and proposed subpoena are attached hereto.

c) The time for the Patient to raise an objection elapsed and no objection to the

d) The Firm obtained a qualified protective order for all the IHI of the Patient that meets the requirements of 45 CFR §164.512(e)(v) and ORCP 55H(1)b). A copy of the qualified protective order is attached.

3. I certify that, upon request, I will promptly permit Patient or his/her representative to inspect and copy the records received pursuant to this subpoena.

\_\_\_\_\_

SIGNED AND SWORN before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON

My Commission Expires: \_\_\_\_\_



## Authorization to Disclose Protected Health Information To Law Enforcement

Patient Name:

Med Rec #:

Date of Birth:

Today's Date:

Or attach patient Label

The information used or disclosed pursuant to this authorization may be subject to redisclosure and may no longer be protected under federal law.

Refusal to sign this authorization will not affect the patient's ability to obtain health care services or reimbursement for services unless authorization is required to bill the patient's insurance company.

To disclose protected health information to the following law enforcement agency and officer:

Officer Name:	Badge #:	Jurisdiction:
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Purpose of release (required): \_\_\_\_\_

If such information exists, I authorize the disclosure of  the emergency treatment record or  the following specified documents, dates of service, and/or information about the following injury / illness / disease:

Release of the following labeled specimen(s) to law enforcement **(initial all that apply)**

<input type="checkbox"/> Blood	<input type="checkbox"/> Clothing
<input type="checkbox"/> Urine	<input type="checkbox"/> Other _____

The following items **must be initialed** to be included in the use and/or disclosure of medical information:

<input type="checkbox"/> HIV-positive test results and HIV diagnosis	<input type="checkbox"/> Mental health information and/or records (OR only)
<input type="checkbox"/> Genetic testing information and/or records (OR only)	<input type="checkbox"/> Other sexually transmitted diseases (WA only)
<input type="checkbox"/> Drug/alcohol diagnosis, treatment or referral information. Per Federal regulations, describe how much and what kind of information is to be disclosed:	

Federal or state law may restrict redisclosure of HIV-positive test results and HIV diagnosis, other sexually transmitted disease information, specially protected mental health information, genetic testing information, and drug/alcohol diagnosis treatment or referral information.

The person or entity I am authorizing to use and/or disclose the information may receive compensation for doing so.

The only circumstance when refusal to sign means the patient will not receive health care services is if the health care services are solely for the purpose of providing health information to someone else, and the authorization is necessary to make that disclosure. My refusal to sign this authorization will not adversely affect my enrollment in a health plan or eligibility for health benefits unless the authorized information is necessary to determine if I am eligible to enroll in the health plan.

I may revoke this authorization in writing at any time, except to the extent that action has been taken in reliance upon this authorization. If I revoke my authorization, the information described above may no longer be used or disclosed for the purpose described in this authorization. Unless revoked earlier, this authorization will expire on the earlier of 1 year from the date of signing or on \_\_\_\_\_.

\_\_\_\_\_  
Signature of Patient or Patient's Legal Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name (If other than the patient, proof of authority is required.)

\_\_\_\_\_  
Relationship to Patient





## Oregon Elevated Blood Alcohol and Controlled Substance Reporting To Law Enforcement Form

Label after Law  
Enforcement  
Notification

A hospital that provides medical care immediately after a motor vehicle accident to a person reasonably believed to be the operator of a motor vehicle involved in the accident is required to notify law enforcement of any blood test obtained in the course of treatment that shows the patient's blood alcohol level is at or above .08 or the presence of a controlled substance, (Schedule I-V) See ORS 676.260. You are required to complete the form below and notify the appropriate law enforcement agency within **72 hours** after becoming aware of the results of the blood test.

### Legacy Health Facility

<input type="checkbox"/> Emanuel Medical Center	<input type="checkbox"/> Good Samaritan Medical Center	<input type="checkbox"/> Meridian Park Medical Center
<input type="checkbox"/> Mt Hood Medical Center	<input type="checkbox"/> Urgent Care St. Helens	

### Full Name of person being treated

### Test Results

Blood Alcohol Level (Equal to or greater than .08%)	Date Drawn	Time Drawn
Controlled Substance Name and Level	Date Drawn	Time Drawn

### Test Results Disclosed to (check one):

<input type="checkbox"/> Verbal Disclosure to officer present in the facility investigating the Motor Vehicle Accident		
Officer Name:	Badge#	Agency
<input type="checkbox"/> Telephone Disclosure to Law Enforcement office in county where accident occurred.		
Officer Name:	Badge#	Agency
<input type="checkbox"/> Telephone Disclosure to Oregon State Dispatch Center		
Officer Name:	Badge#	Agency

### Oregon Contact Numbers

Clackamas County Sheriff Office: (503) 655-8211	Washington County Sheriff Office: (503) 629-0111
Columbia County Sheriff Office: 1 (503) 397-1521	OR State Police Dispatch Salem 1 (503) 375-3555
Multnomah County Sheriff Office: (503) 823-3333	Other:

Disclosed by:      Signature	Printed Name	Date:
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Send completed form to Health Information Management to be scanned to patient's medical record.

