

# OAHHS Hospital–Media Code of Conduct

## Introduction

This document is provided to assist both hospitals and the news media in communicating facts and data about patients. The OAHHS Hospital-Media Code of Conduct acknowledges a shared responsibility to provide accurate information to the public, and to assure patients and health care providers that the gathering and reporting of this information is consistent with state and federal laws and does not infringe upon patient privacy, professional medical ethics, or patient care.

It is the responsibility of the news media to determine what constitutes news and report news. It is the responsibility of physicians and hospitals to safeguard each patient's life, health and privacy. Therefore, hospitals and the news media should work cooperatively together to safeguard patient privacy and well-being and report news accurately and promptly.

The Oregon Association of Hospitals and Health Systems (OAHHS) updated the Code of Conduct in May 2014 with input from member organizations and the Oregon Medical Association (OMA).

## Guidelines for Hospitals

In an effort to be helpful and responsive to the media, OAHHS and each hospital will designate an authorized spokesperson to be accessible to the news media at all times. The spokesperson serves as the primary resource for the news media and assumes responsibility for coordinating exchange of information from and access to the hospital. It is the hospital's responsibility to keep information identifying the designated spokesperson current.

The hospital spokesperson is responsible for obtaining information about patients as rapidly as possible without interfering with the health, welfare or privacy of patients. No information that violates the confidentiality, privacy or legal rights of the patient can be given. The Health Insurance Portability and Accountability Act (HIPAA) privacy regulations specify the purposes for which information may and may not be released without authorization from the patient.

## Guidelines for News Media

News media should request to speak to the designated spokesperson(s) and not speak to others at the hospital unless directed by the spokesperson to do so. They should also familiarize themselves with and abide by this code of conduct.

## Condition and Location of Patients

### Inquiries that identify the patient by name

Hospitals may release information about a patient's general condition *only if the inquiry specifically identifies the patient by name*. As long as the patient has not requested that information be withheld, the hospital may release the patient's one-word condition and location to individuals who inquire about the patient by name. If the patient's medical condition prevents hospital staff from asking the patient about their preferences regarding release of information, condition and location information may be released **only if, in the hospital's professional judgment**, releasing such information is in the patient's best interest. No information may be given if a request does not include a specific patient's name or if the patient requests that the information not be released.

### Condition

Oregon hospitals have agreed to use one-word condition terms in response to media inquiries; "undetermined," "good," "fair," "serious" or "critical." Definitions of patient conditions:

- **Undetermined** - Patient is awaiting physician and/or assessment.
- **Good** - Vital signs are stable and within normal limits. Patient is conscious and comfortable. Indicators are excellent.
- **Fair** - Vital signs are stable and within normal limits. Patient is conscious, but may be uncomfortable. Indicators are favorable.
- **Serious** - Vital signs may be unstable and not within normal limits. Patient is acutely ill. Indicators are questionable.

- **Critical** - Vital signs are unstable and not within normal limits. Patient may be unconscious. Indicators are unfavorable.

### **Death of Patient**

Other than reporting that a death has occurred as allowed under HIPAA, information about the cause, time, or other details related to the death must come from the patient's physician, and a legal representative of the deceased must authorize its release. This means that hospitals cannot share information with the media on the specifics about sudden, violent or accidental deaths, or deaths from natural causes without the written authorization of the decedent's legal representative. Typically, any information about a death will be disclosed after efforts have been made to notify the next-of-kin.

**Question:** *Can the hospital tell the media the patient has died without getting the family's permission? In other words, is "deceased" a condition that can be disclosed?*

Yes, under the HIPAA privacy rule, if a patient has not asked that his or her information be kept out of the hospital's directory, the hospital may disclose the patient's general condition, including death, to anyone who asks for the patient by name. However, out of courtesy to the patient's family, such disclosures are typically withheld until family has been notified of the patient's death.

**Question:** *For deceased patients, can the hospital provide the media with the date and time of death, as recorded on the death certificate?*

No. The hospital may not disclose a patient's date or time of death to the media without authorization from the decedent's legal representative.

### **Mental Illness, Drug and Alcohol Abuse Cases**

State and federal laws may prohibit the disclosure of information about patients who are being treated for mental illness, or for alcohol or drug abuse (as specified in Oregon and Federal law regarding patient confidentiality for substance abuse or mental illness). This includes confirmation of the patient's admission to or discharge from the facility when the treatment is for mental illness, or drug or alcohol diagnosis, treatment or referral.

When reporters have information from the police or other sources concerning persons who are being treated for mental illness, or drug or alcohol abuse, it is recommended that all such inquiries to the healthcare facility be answered, "We cannot, under federal or state law, comment on such a case."

### **Location**

Under the HIPAA privacy rule, if a patient has not asked that his or her information be withheld from the hospital's directory, the hospital may disclose the patient's location in the hospital to anyone who asks for the patient by name, without the patient's authorization. If the patient is no longer at the facility, the hospital may disclose that fact in response to such an inquiry.

However, as a matter of policy, most Oregon hospitals will not routinely provide patient location to the media. See the hospital's designated representative regarding interviews or other access to the patient. A hospital may deny the media access to a patient if the patient refuses or if the hospital determines that the presence of photographers or reporters would aggravate the patient's condition or interfere with patient care.

A hospital representative may accompany the media at all times while they are in the hospital. At their discretion, hospitals may deny the media access to any area, including (but not limited to) operating rooms, intensive care units, maternity units, emergency departments, psychiatric departments, nurseries, pediatric units, and substance abuse units where all patients present have an expectation of a certain degree of privacy.

**Question:** *For obstetrical patients, can the hospital confirm that the patient is in labor and delivery or has been released from labor and delivery?*

No. Disclosing the fact that a patient is in labor provides more information than the patient's general condition. A hospital may not disclose that a patient is in labor or has been released from labor and delivery without patient authorization.

**Question:** *Since hospitals can only use one-word patient condition reports, may a hospital disclose that a patient was treated and released?*

Yes. Under the HIPAA privacy rule, a hospital may disclose, to individuals who ask for the patient by name, that a patient was treated and released because this only provides the patient's general condition (that they were treated at the hospital) and the patient's location (that the patient is no longer at the hospital). No specific health information is provided. Therefore, assuming the other requirements for disclosures of directory information are met, this is a permissible disclosure of directory information under HIPAA.

**Question:** *If the hospital can say that someone has been "treated and released" without getting permission, may the hospital disclose when the patient was released or to where the patient was released?*

No. Although a hospital may disclose that a patient was treated and released as information regarding the patient's location (or lack thereof) in the hospital, it may not release information regarding the date of release or where the patient went upon release without patient authorization.

**Question:** *When a patient has opted out of the hospital directory, what should the hospital say?*

Under the HIPAA medical privacy rule, a hospital is permitted to release only directory information (i.e. the patient's one-word condition and location) to individuals who inquire about the patient by name unless the patient has requested that information be withheld. In response to a media inquiry about a patient who has opted out of the directory, therefore, a hospital should respond by stating that the federal medical privacy regulations allow the hospital to release to the media only the information in the hospital's directory and that the hospital does not have any information about the person in its directory.

### **Beyond the One-Word Condition: Media Access to Patients**

Before entering a hospital, reporters, photographers and videographers must obtain permission from the hospital and abide by facility rules regarding media access to patients. Hospitals are responsible for ensuring that any media access to the patient will not compromise patient care or patient privacy, or upset patients or grieving families. The following activities will be permitted *only if* they are coordinated in advance through the hospital's designated spokesperson and written authorization is obtained from the patient:

- Drafting a detailed statement (*i.e.*, anything beyond the one-word condition)
- Taking photographs or video of patients
- Interviewing or recording patients

In general, if the patient is a minor, permission for any of these activities must be obtained from a parent or legal guardian. Under certain circumstances, minors can authorize disclosure of information without parental approval or notification.

### **Photography and video**

Many Oregon hospitals have policies regarding taking photographs, capturing video, or filming in patient care areas. Beyond permission from the patient, permission may also need to be obtained from staff caring for the patient, the patient's physician, and/or hospital management. Photography may be completely prohibited in some areas of the hospital.

### **Matters of Public Record**

#### **What is a matter of public record**

Matters of public record refer to situations that are reportable by law to public authorities, such as law enforcement agencies, the coroner, or public health officer. While laws and/or regulations require hospitals to report a variety of information through established channels to public authorities, it is not the responsibility of hospitals to provide that information in response to calls or other inquiries from the media or other parties, *including law enforcement officials*.

Media questions may be referred to the public entity (such as the coroner's office, police, fire or health department) that receives such reports. The public entity will be guided by the applicable statute as to whether it can release any or all of the information received.

### **Are public record cases different from other cases?**

No. Patients who are involved in matters of public record have the same privacy rights as all other patients, as far as the hospital is concerned. For example:

- The mode of transportation by which a patient arrives at the hospital should have no bearing on the hospital's approach to releasing information about the patient. The fact that someone has been transported to the hospital by the police or fire department from an accident, crime scene or fire is a matter of public record likely to be reported by those agencies.
- There are numerous state statutes addressing reporting of incidents ranging from child abuse to gunshot wounds. The fact that a hospital has an obligation to report certain confidential information to a governmental agency does not make that information public and available to news reporters. In fact, state laws may provide enhanced privacy protection for some reportable information, such as HIV status; sexually transmitted diseases; child, spouse or elder abuse; and reportable genetic anomalies.

These public records may prompt media calls to the hospital requesting a patient's condition. As long as the patient has not requested that information be withheld, the hospital may release the patient's one-word condition and location to individuals who inquire about the patient by name. If the patient's medical condition prevents hospital staff from asking about information preferences upon admission, condition and location information may be released **only if**, *in the hospital's professional judgment*, releasing such information is in the patient's best interest.

### **Are celebrity cases or cases that have received prior media attention different?**

No. Celebrities, public figures and public officials are not subject to different standards than other patients when it comes to hospital policies for releasing information to the media. Also, just because something has been previously reported or disclosed by the media, does not mean that patient privacy protections do not apply or are waived.

### **Releasing Patient Information in Disaster Situations**

#### **When appropriate, release general information to help dispel public anxiety**

In highly charged situations such as disasters, the public may benefit from the release of general information when specific information cannot be released due to HIPAA privacy restrictions. For example, the hospital might say, "the facility is treating four individuals as a result of the explosion." The hospital may state the number of patients who have been brought to the facility by gender or by age group (adults, children, teenagers, etc.). This type of general information can help reduce undue anxiety.

#### **Work effectively with the media**

Oregon hospitals will make every effort to make current information available to the media as soon as possible. If information is not yet available or if next-of-kin has not been notified, all media inquiries may be logged and callbacks made as soon as it is permissible to release information. A location may be provided for all media to gather so that information can be released in a press conference format that does not compromise patient privacy or the hospital's need for added security in a disaster situation.