

# What Paperless Society?

What to Keep

When to Keep it

Who gets to see it

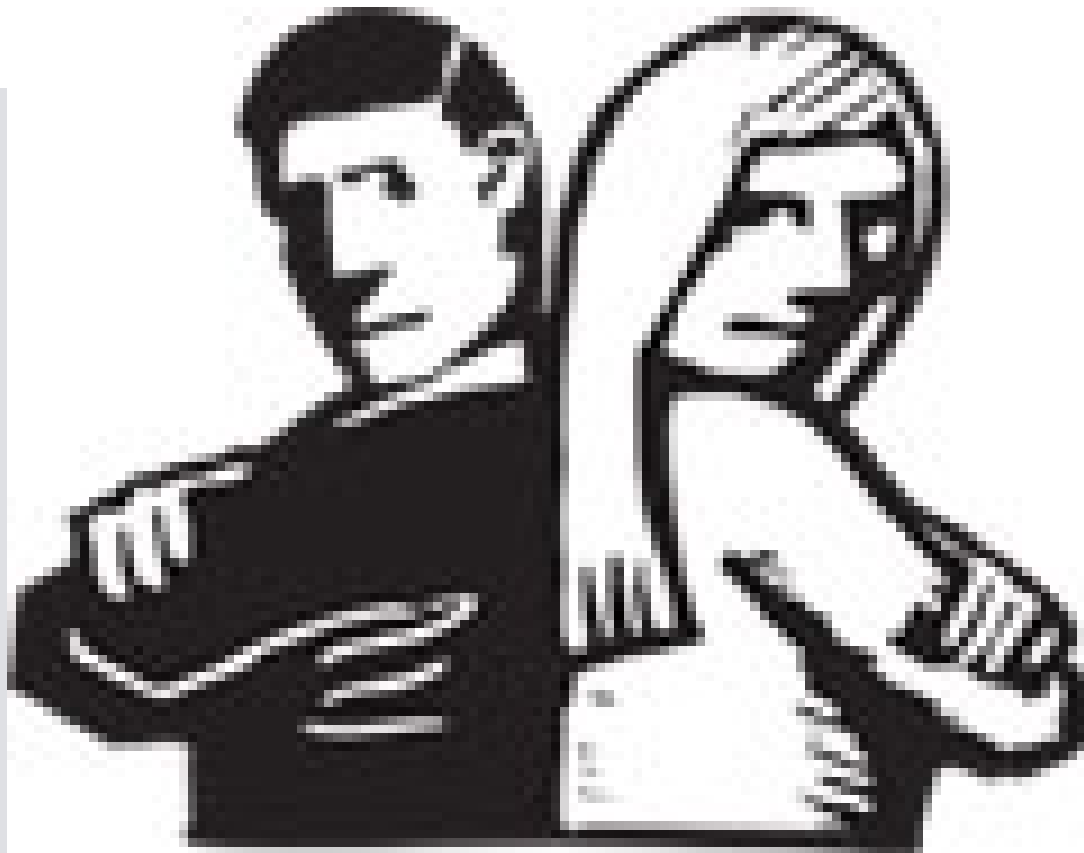


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***PEDROZA v. BRYANT***  
**1984**  
**WASHINGTON SUPREME COURT**

- Hospitals owe a duty of care to patients in the hospital to carefully select their members of the medical staff
- The standard of care will be defined by the joint commission standards for credentialing as well as the medical staff bylaws



**RCW 70.41.230**  
**DUTY OF HOSPITALS TO REQUEST INFORMATION**  
**ON PHYSICIANS GRANTED PRIVILEGES**

- **From the Physician**
  - Places worked
  - Terminations
  - Medical misconduct/malpractice matters
  - Additional information regarding actions or proceedings deemed appropriate



**RCW 70.41.230**  
**DUTY OF HOSPITALS TO REQUEST INFORMATION**  
**ON PHYSICIANS GRANTED PRIVILEGES**

- **From the Hospitals**
  - Misconduct/malpractice proceedings
  - Judgments/settlements
  - Professional misconduct matters under RCW 18.130.080
- **Violation of this Section is not Negligence Per Se**



# WAC 246-320-126

- Hospitals must require a criminal history disclosure statement and state patrol background inquiry for all persons associated with the hospital who will have unsupervised access to children under the age of 16, vulnerable adults and developmentally disabled individuals



**RCW 70.41.230(4)**  
**DUTY OF HOSPITALS TO PROVIDE**  
**INFORMATION**

- A hospital that receives a request for information from another hospital under this statute **shall** provide:
  - Information regarding the reasons for any suspension, termination, or curtailment of employment or privileges



***KADLEC MEDICAL CENTER v. LAKEVIEW ANESTHESIA***  
**2008**  
**5<sup>TH</sup> CIRCUIT COURT OF APPEALS**

- Anesthesiologist essentially terminated at Lakeview Medical Center
- Applies for locum tenens position at Kadlec
- Lakeview Medical Center responds to inquiry with dates of service on medical staff
- Patient seriously injured
- Kadlec sues Lakeview Medical Center for failure to disclose – court rules no affirmative obligation
- Not true in Washington



# RCW 70.41.230(4) DUTY TO DISCLOSE

- A hospital or facility that receives a request for information from another hospital or facility



# **RCW 70.41.020(4)**

## **SCOPE OF DUTY**

- Hospital is an institution, place, building or agency that provides accommodations facilities and services continuously for 24 hours or more for observation, diagnosis or care of two or more people not related to the operator who are suffering from illness, injury or condition for which medical care would be appropriate

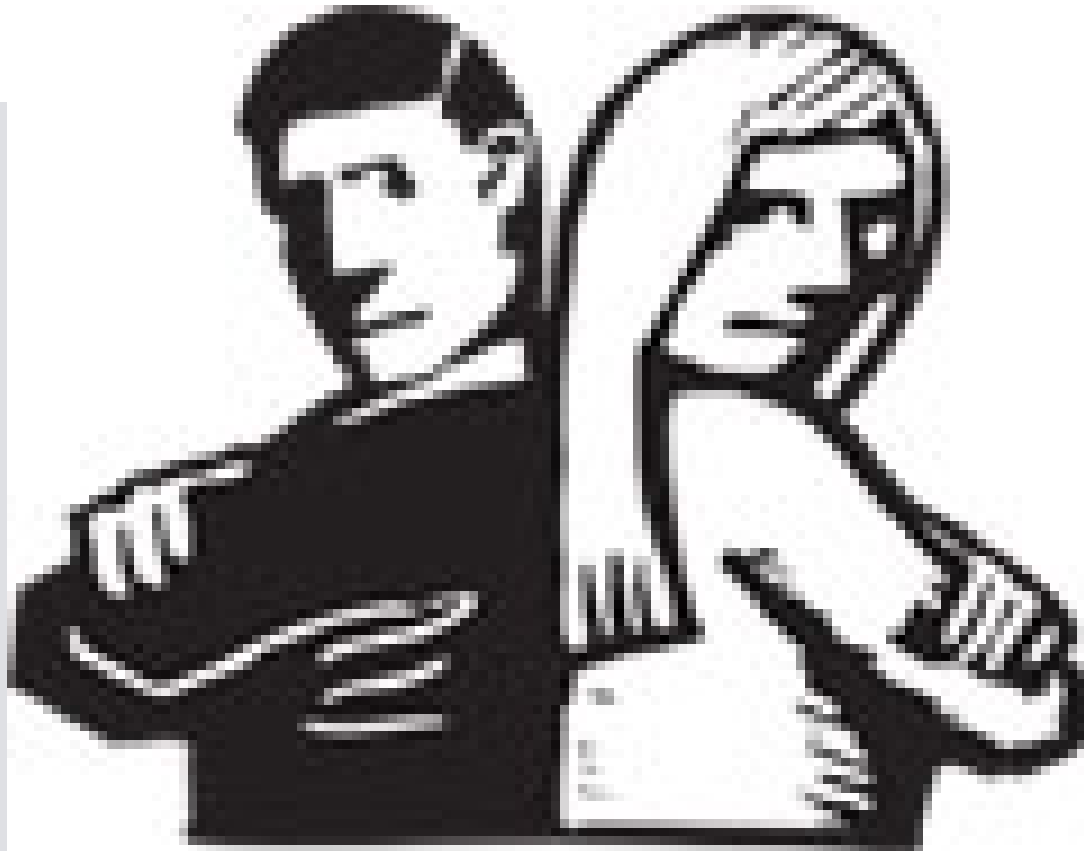


# **RCW 70.41.230(4)**

## **IMMUNITY**

- A hospital, facility or other person providing such information in good faith shall not be liable in any civil action for the release of such information





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# RCW 70.41.200(1)

- Every hospital shall maintain a coordinated Quality Improvement Program with the following elements:
  - a. Quality improvement Committee to oversee quality improvement program including review of services rendered in the hospital and to ensure that information gathered is used to review and revise hospital policies and procedures
  - b. Medical staff privilege sanction procedure to review competence
  - c. Periodic review of credentials
  - d. Process to address patient grievance
  - e. Continuous collection of information concerning negative health care outcomes



# RCW 70.41.200(1)(f)

- Relevant and appropriate information gathered pursuant to subsections (a) through (e) concerning individual physicians shall be maintained by the hospital in personnel or credentials files
  - Peer review and credentials file
  - No maintenance period



# SCOPE OF PROTECTION

## RCW 70.41.200(3)

- Information and documents, including complaints and incident reports
  - a. Created specifically for and
  - b. Collected and maintained by
  - c. A quality improvement committee
- Are not subject to review or disclosure except as provided by this section



# SCOPE OF PROTECTION COURT DECISIONS

## RCW 70.41.200(3)

- Incident reports generated for use by quality assurance committees and for risk management purposes and owned by the hospital's insurance company are not protected



# SCOPE OF PROTECTION

## RCW 4.24.250

- Proceedings, reports, and written records of hospital quality review committees or boards are not subject to review or disclosure
  - a. Meeting minutes and attachments



# SCOPE OF PROTECTION COURT DECISIONS

## RCW 4.24.250

- Regularly constituted committee or board of the hospital whose duty is to review and evaluate the quality of patient care
  - Joint commission standards and medical staff bylaws
  - Open discussion is the goal of the protection so membership should be protected
  - Existence, name, meeting dates and times not protected



# **WHO GETS TO SEE THIS INFORMATION WITHOUT WAIVING CONFIDENTIALITY**

## **RCW 70.41.200(6)**

- MQAC for records of committee decisions in which physician's privileges are terminated or restricted

## **RCW 70.41.200(7)**

- DOH and Joint Commission may audit records of quality improvement committee or peer review committee



# WHO GETS TO SEE THIS INFORMATION WITHOUT WAIVING CONFIDENTIALITY

## RCW 70.41.200(8) and RCW 4.24.250

- Information and documents, including complaints and incident reports created specifically for and collected and maintained by a quality improvement committee or peer review committee, may be shared with another quality improvement committee or peer review committee without losing confidentiality
- Privacy protection of Ch. 70.02 RCW and HIPAA apply to all such sharing of information



# RCW 70.02.010(7)

## HEALTH CARE INFORMATION

- Any information oral or recorded that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care



# HIPAA

## INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION

1. Information that relates to:
    - Past, present or future physical or mental health
    - Provision of health care
    - Payment for health care
- AND
2. Identifies the individual or reasonably can be used to identify the individual



# ASSOCIATED WITH OR REASONABLY USED TO IDENTIFY AN INDIVIDUAL

- Name
- Address
- DOB
- Social Security Number
- Names of relatives
- Admit date
- Discharge date
- Treatment date
- Employers
- Phone numbers

De-identification is adequate as long as you have no actual knowledge that the information remaining could be used to identify the individual



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**U.S. Department of Justice  
United States Attorney's Office  
Eastern District of Arkansas**

**For Immediate Release  
July 20, 2009**

**DOCTOR AND TWO FORMER HOSPITAL EMPLOYEES PLEAD  
GUILTY TO HIPAA VIOLATIONS**

**Dr. Holland, . . . admitted that after watching news reports on television, he logged on to the SVIMC patient records from his computer at home and accessed a patient's files to determine if the news reports were accurate. . . . He admitted he accessed the file because he was curious.**

**Sarah Elizabeth Miller, formerly an account representative . . . admitted that on October 20 and 21, 2008, she accessed a patient's files approximately 12 times out of curiosity. . . . SVIMC fired Miller from her position.**

**Candida Griffin was the emergency room unit coordinator . . . admitted that she became curious about the patient's status and accessed the medical chart to find out if the patient was still living. . . . SVIMC fired Griffin from her position.**



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***U.S. Department of Justice***  
**UNITED STATES ATTORNEY JOYCE WHITE VANCE**  
**NORTHERN DISTRICT OF ALABAMA**

**For Immediate Release**  
**August 28, 2009**

**TWO AGREE TO PLEAD GUILTY TO HEALTH CARE FRAUD, HIPAA VIOLATIONS,  
AND AGGRAVATED IDENTIFY THEFT CHARGES**

**Without authorization or approval from UHC, Smith and Moore gained access to the company's electronic database and obtained names and dates of birth of certain persons who had Flexible Spending Accounts and were also covered by a prescription drug plan sponsored by the Federal Employees Health Benefit Plan ("FEHBP"). The defendants and others used this information to create counterfeit and unauthorized prescriptions. These counterfeit prescriptions were then presented to pharmacies for the purpose of illegally obtaining controlled substances. The drugs were then illegally sold to third parties.**



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# CORRECTIVE ACTION

- Who gets to see what is largely governed by the medical staff bylaws regarding fair hearings
  - Typically require disclosure to practitioner of all documents that will be used as exhibits in the fair hearing
  - Disclosed to hearing panel, hearing officer, practitioner, practitioner's attorney, practitioner's expert and court reporter



# LITIGATION

## RCW 70.41.200(3)

- The practitioner suing over a restriction on his/her privileges may discover and introduce into evidence information collected and maintained by quality improvement committees regarding him/her
  - Meeting minutes - incident reports - complaints-external reviews
- The practitioner suing over a restriction on his/her privileges may discover and introduce into evidence the fact that another practitioner has had privileges restricted or terminated including the specific restrictions imposed and the reasons for the restrictions



# LITIGATION HOLDS

- Court created rule requiring the preservation of potential evidence at such time as litigation becomes reasonably foreseeable
- Drafts of documents such as meeting minutes and letters and all notes
- Alert the players - those who have created or do create the relevant documents to preserve them
- Alert your IT folks to suspend any automated electronic deletion system



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