

Physician Practices Be Alert: You Might Be Violating Digital Media and Data Privacy Law Blog

By Forrest Campbell Jr. on 04.20.2015

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Over the past months, my experiences with physician practices have made me realize that many practices do not understand how HIPAA applies to subpoenas for medical records. More worrisome, I suspect that many practices nationwide routinely violate HIPAA when they receive a subpoena.

Here's what I've observed: Practices receive state court subpoenas that are signed by lawyers and that demand the production of medical records, and the practices automatically assume they must produce the records. This is a dangerous assumption—the production of the records may very well violate HIPAA.

Here's what HIPAA requires in general terms: If a practice receives a state court subpoena for medical records that is signed by a lawyer, the practice should not produce the records unless (1) the practice also receives (a) a court order requiring production, (b) a HIPAA “qualified protective order” that’s been entered in the lawsuit, (c) a HIPAA compliant authorization from the patient that authorizes the disclosure demanded by the subpoena, or (d) certain other matters designated by HIPAA’s rule concerning subpoenas, or (2) the practice takes certain additional actions required by HIPAA’s rule for subpoenas.

If a practice receives such a subpoena without receiving any of these “additional” items or taking these “additional” actions, the practice will likely violate HIPAA if the records are produced.

Here's what practices should do. Because this area of HIPAA is somewhat complex and difficult for practices to navigate on their own, practices should consult with legal counsel when they receive such a subpoena. Legal counsel can advise whether HIPAA permits the disclosure, whether the practice needs to object to the subpoena, and whether other actions should be taken. On numerous occasions, we have reviewed such subpoenas, determined that they did not comply with HIPAA, and sent a letter objecting to the subpoena, and the practice never heard from the parties again.

Take away: If you receive a state court subpoena signed by a lawyer demanding the production of medical records, do not automatically produce the medical records.