The Duties of Psychiatric Providers to Seek and Share Information about Criminal and Sex Offense Histories of Patients

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The hospital does not appear to have either a duty of a right to seek criminal history information (e.g., NCIC “rap sheets)

The hospital does not appear to have either the right, the ability, or the duty to seek information about a patient’s status as a registered sex offender
If the Hospital Becomes Aware

• The hospital may become aware of criminal or sex offender history...
  • By the patient’s self-report
  • By a collateral informant (e.g., family member)
  • By law enforcement
If the Hospital Becomes Aware

• This appears to be protected health information

• The hospital has a duty to assess and mitigate the risk of harm to other patients by taking such information into account in risk assessment and treatment planning

• Such information should only be shared with clinical staff who are otherwise able to access PHI (e.g., treatment team)
Discharge Planning

• Discharge plans can only be shared in accordance with federal and state confidentiality laws.

• Discharge plans must include all relevant information
  • To facilitate continuity of care
  • To prevent serious (esp. imminent) harm to clinicians or patients in the next clinical setting
Remaining Questions

- If the hospital becomes aware that a patient is breaking the law **solely** by failing to register...
  - ...Does the hospital have a legal duty to report?
  - ...Does the hospital have a legal duty NOT to report?
- Clearly, however, the hospital appears to have a duty to encourage and assist the patient in complying with the law.