

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

Joel A. Dvoskin, Ph.D., Chair
Governor's Advisory Council on
Behavioral Health and Wellness

Seeking Information

- The hospital does not appear to have either a duty or 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.