

Confidentiality

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Communicable Disease and the Law Conference

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Objectives

- Identify two circumstances when communicable disease information may be disclosed without the patient's permission
- Describe when public health professionals are required to make reports about minors with communicable diseases to child protective services and/or law enforcement

Two main laws

HIPAA	NC CD Confidentiality Law (GS 130A-143)
Protected health information (PHI)	Information that identifies a person who has or may have a reportable communicable disease or condition
General rule: Need written authorization to disclose	General rule: Need written consent to disclose
Exceptions: Disclosure without authorization allowed in numerous circumstances	Exceptions: Disclosure without consent allowed in narrower range of circumstances

Scenario #1

- An HIV positive young man is newly diagnosed with syphilis. He has a case manager who helps coordinate his healthcare services and HIV medications. She does not know about his new diagnosis of syphilis.
- Who can the LHD tell about his syphilis diagnosis?
 - His physician
 - His case manager
 - His insurance company
 - His pharmacist
 - His mother



Scenario #1

- An HIV positive young man is newly diagnosed with syphilis. He has a case manager who helps coordinate his healthcare services and HIV medications. She does not know about his new diagnosis of syphilis.
- Who can the LHD tell about his syphilis diagnosis?
 - **His physician**
 - **His case manager**
 - **His insurance company**
 - **His pharmacist**
 - His employer

Why?

HIPAA

- Allows disclosures without specific consent for purposes of treatment, payment, or health care operations

NC Law (GS 130A-143)

- Amended in 2011 to allow disclosures for treatment, payment & health care operations on the same terms as HIPAA

His physician – treatment

His case manager – likely is treatment under HIPAA

His insurance company – payment

His pharmacist – treatment

His employer – would need written consent

Scenario #2

- An older gentleman is diagnosed with TB. He begins treatment, but soon disappears. The LHD finds out that he has been staying at several different homeless shelters. They are unable to locate him to restart treatment and prevent further community exposures.



- True or False?
- The LHD can disclose the diagnosis of TB in the process of seeking a warrant for his arrest.

Scenario #2

- An older gentleman is diagnosed with TB. He begins treatment, but soon disappears. The LHD finds out that he has been staying at several different homeless shelters. They are unable to locate him to restart treatment and prevent further community exposures.
- **True**
- The LHD can disclose the diagnosis of TB in the process of seeking a warrant for his arrest.

Why?

- A person who violates TB control measures can be charged with a misdemeanor.
- A magistrate may issue an arrest warrant or criminal summons only after finding there is probable cause to believe the person has violated control measures. To make this finding, the magistrate needs information, including confidential CD information.
- GS 130A-143 allows disclosure of confidential CD information to a court or law enforcement official for purposes of enforcing the CD laws.

Practice tips for scenario #2

- You may tell the magistrate whatever is necessary to support assertion that control measures were violated.
- A warrant must specify the law that was violated. The degree of detail in the warrant is ultimately up to the magistrate, but you may ask that it specify only GS 130A-144(f). This identifies a violation of CD control measures without naming the disease/condition.
- The CD information disclosed in this process remains protected by GS 130A-143 and redisclosure is limited.

Scenario #3

- An 11 year old girl is diagnosed with chlamydia. She admits to having consensual sex with her 13 year old neighbor.
- Who should this be reported to?
 - Department of Social Services
 - Law Enforcement
 - Neither



Scenario #3

- An 11 year old girl is diagnosed with chlamydia. She admits to having consensual sex with her 13 year old neighbor.
- Who should this be reported to?
 - **Department of Social Services (probably)**
 - Law Enforcement
 - Neither

	DSS	Law Enforcement
Law	GS 7B-301	GS 90-21.20
Who must report	Any person or institution	Physician or administrator of health care facility
What to report	Cause to suspect a child is abused or neglected	<ul style="list-style-type: none"> •Certain injuries/illnesses caused by criminal acts •Serious physical injury or recurrent illness in a child under 18, if caused by nonaccidental trauma
Other considerations	<ul style="list-style-type: none"> •DSS deals with abuse or neglect by parents, guardians, custodians, or caretakers. •DSS must report to LE if child physically harmed by criminal act of someone other than parent/etc. 	No authority to directly report to law enforcement in absence of an injury or illness specified in the law.

Why DSS (probably)?

- Report required if “cause to suspect” abuse or neglect.
 - No duty to investigate facts or find evidence
 - Consider what you know in light of your professional experience: what did child say, what did you observe, etc.
- What is the role of the parent/etc.?
 - Promoting the sexual activity = abuse
 - Providing inadequate supervision = neglect
 - Factors in this scenario that provide heightened cause for concern: young ages of children involved, presence of STI suggests other sexual involvement, anything else?

Why not law enforcement?

- Report required only if:
 - Particular injuries or illnesses caused by criminal acts (gunshot wounds, other grave bodily harm)
 - Child under 18 has a recurrent illness or serious physical injury that appears to have been caused by nonaccidental trauma

Scenario #4

- A 15 year old girl is diagnosed with chlamydia. She admits to having consensual sex with her 20 year old neighbor.
- Must this be reported?
 - Yes
 - No
 - It depends



Scenario #4

- A 15 year old girl is diagnosed with chlamydia. She admits to having consensual sex with her 20 year old neighbor.
- Must this be reported?
 - Yes
 - No
 - **It depends**

Why “it depends”?

- This is statutory rape because the girl is under 16 and her partner is more than 4 years older.
- No duty in NC to report statutory rape *per se*.
- But individual cases may need to be reported. Need to make case-by-case determinations, keeping in mind the standards for reporting:
 - Is there cause to suspect abuse or neglect by the parent, guardian, custodian or caretaker?
 - Is there an injury or illness that must be reported to law enforcement?

Scenario #5

- A 17 year old female has been diagnosed with gonorrhea. The CD nurse reviewing the case sees that this is the 3rd time she has had gonorrhea in the past year. She has been successfully treated each time. During the interview, the 17 year old discloses that she is being repeatedly raped by her uncle.
- Who should this be reported to?
 - Department of Social Services
 - Law Enforcement
 - Neither



Scenario #5

- A 17 year old female has been diagnosed with gonorrhea. The CD nurse reviewing the case sees that this is the 3rd time she has had gonorrhea in the past year. She has been successfully treated each time. During the interview, the 17 year old discloses that she is being repeatedly raped by her uncle.
- Who should this be reported to?
 - **Department of Social Services (maybe)**
 - **Law Enforcement (definitely)**
 - Neither

Why law enforcement (definitely)?

- Child under 18 suffering a recurrent illness as a result of nonaccidental trauma

Why DSS (maybe)?

- Specific facts may provide cause to suspect abuse or neglect of a child under 18:
 - Is uncle her caretaker?
 - Are parents aware and not intervening?
 - Are parents unaware due to neglect?
- Case-by-case determination.

Key Points

- Disclosure of CD information usually requires written consent.
- But some disclosures may be made without consent, including disclosures:
 - For treatment, payment, or health care operations
 - Made to court or law enforcement officials for purposes of enforcing the CD laws
 - Made to comply with mandatory reporting laws
- Report to DSS if cause to suspect abuse or neglect
- Report to LE if specific injury or illness covered by law

Questions?

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References

- Giant microbes: <http://www.giantmicrobes.com>
- North Carolina Communicable Disease Manual, NC Laws and Rules:
http://epi.publichealth.nc.gov/cd/lhds/manuals/cd/laws_and_rules.html