

# Permissible Disclosure to Law Enforcement Officials

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**Presented by: Risk Management**

# Protected Health Information Disclosures

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- Lifespan strives to work collaboratively, collegially, and timely to assist Law Enforcement Officer's (LEO's) in their public safety role
- Lifespan complies with state\* and federal\*\* confidentiality laws

\*State Law: RIGL 537.3 Confidentiality of Health Care Communication and Information Act

\*\*Federal Law: Health Insurance Portability and Accountability Act (HIPAA)

# Permissible Disclosure

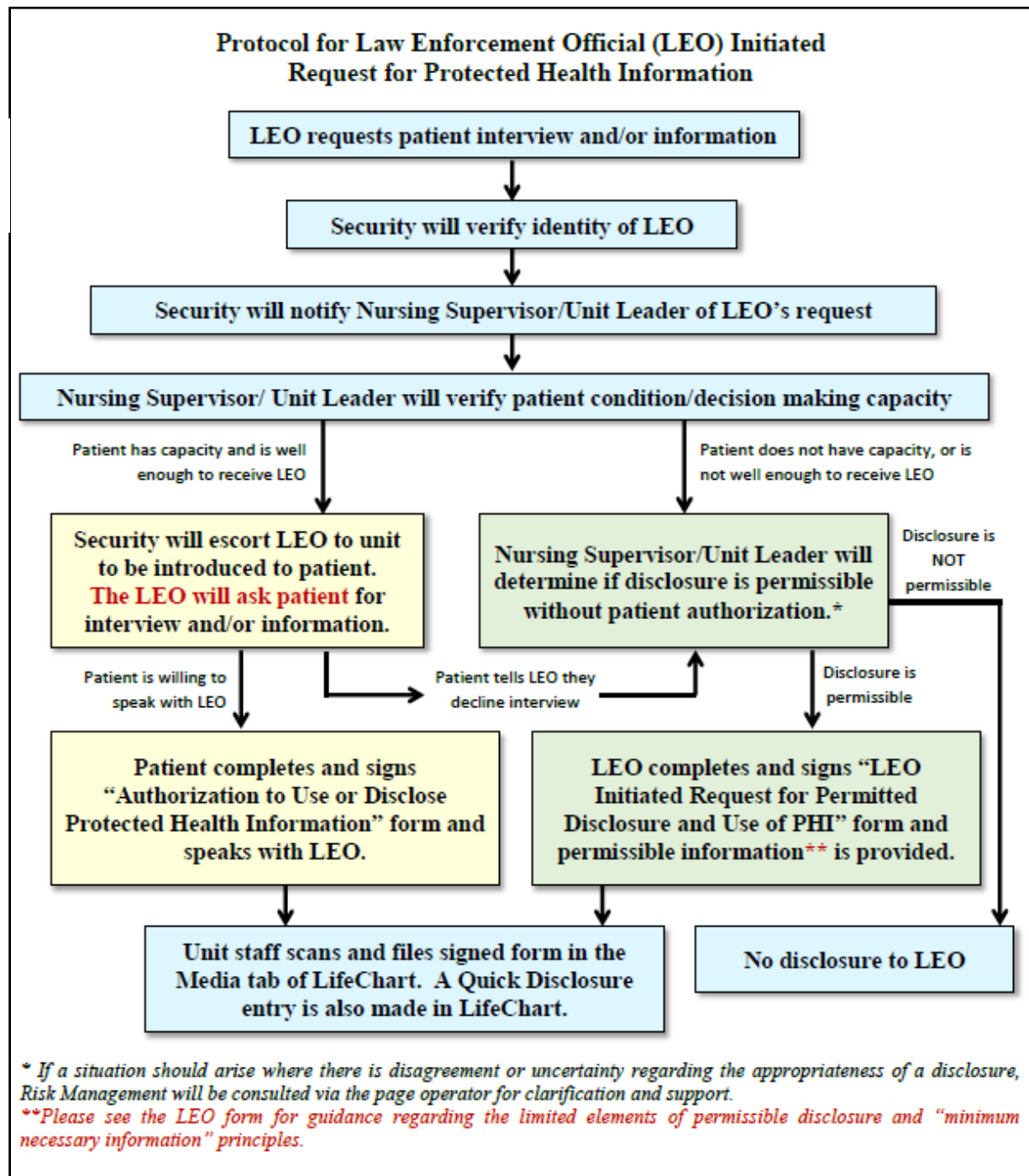
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A LEO may (or must) obtain protected health information (PHI) in the following circumstances:

- The LEO presents a court order, search warrant, or valid subpoena, or
- The patient or the patient's representative signs a HIPAA compliant authorization form, or
- The LEO completes and signs the Lifespan LEO form indicating the *limited* PHI is necessary for the purpose of carrying out public safety responsibilities\*

\*The LEO form describes the frequently encountered situations in which a LEO may be entitled to PHI without patient authorization.

# Resource >



# Protocol - Security is Intermediary

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- The Lifespan affiliate's Security Department will act as intermediary
- LEO's are required to call or report to the Security office prior to visiting a patient unit
- Security will verify the identity of the LEO
- Security will contact the Nursing Supervisor/Unit Leader to assist the LEO in obtaining the requested information
- Security will serve as LEO escort if patient interview is requested

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## PROTOCOL SCENARIO 1

**PATIENT AGREES TO DISCLOSURE**

# Protocol – Patient Agrees to Disclosure

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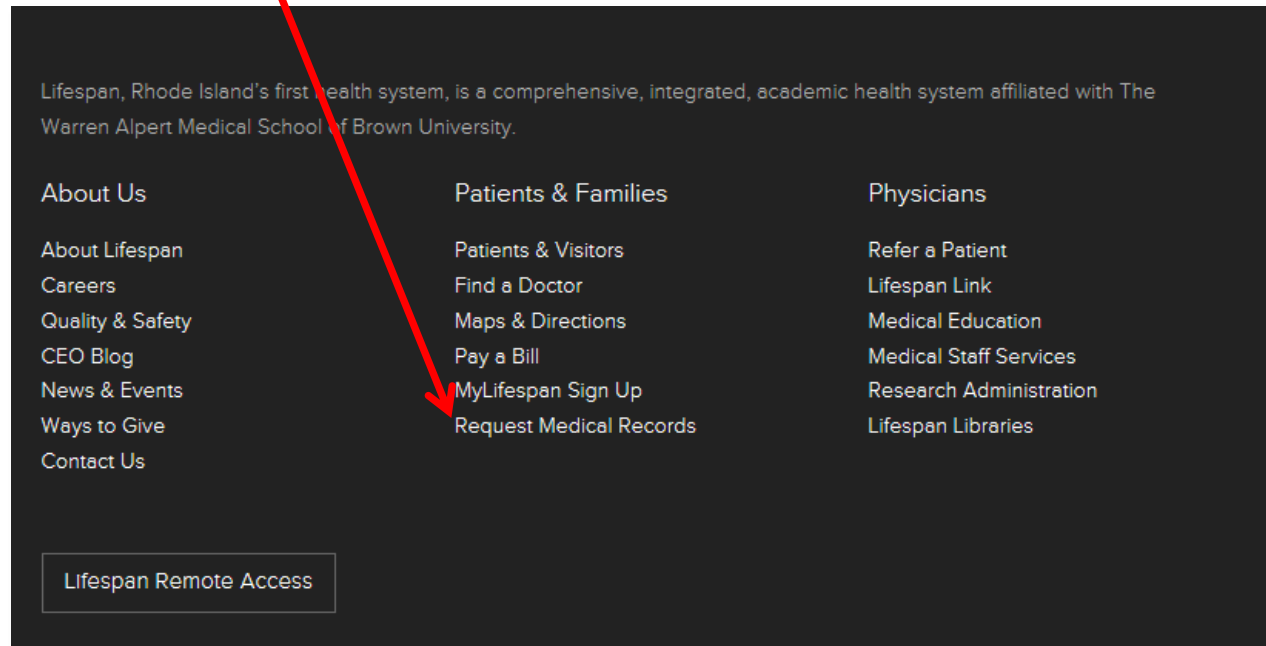
## LEO Requests Interview:

- Nursing Supervisor/Unit Leader will verify patient decision making capacity and readiness to receive LEO
- Nursing Supervisor/Unit Leader will coordinate with unit nursing staff to arrange for LEO to address patient
- Nursing staff will introduce the LEO to the patient
- **The LEO will ask the patient** if they are willing to be interviewed

# Protocol – Patient Agrees to Disclosure

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- Patient agrees and signs a “Authorization to Use or Disclose Protected Health Information” form which can be found on the Lifespan.org web page.





# Protocol – Patient Agrees to Disclosure

- The completed and signed authorization is scanned and uploaded into the Media Tab in LifeChart
- A “Quick Disclosure is documented in LifeChart

Quick Disclosure

Released by: [Redacted] Date: 2/14/2017

Purpose: Law Enforcement Compliance Info released: [Redacted]

Released to: Patient Guardian Relation **Third Party** Care Provider

Requester: PROVIDENCE POLICE DEPAR Name: [Redacted]

Site: Default Address

> Address...

Authorization received? Yes No

Comments: [Rich text editor with 'Insert SmartText' and navigation icons]

Accept Cancel

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## PROTOCOL SCENARIO 2

**PATIENT DECLINES**

**or**

**PATIENT IS UNABLE TO AGREE**

(due to medical condition)

# Protocol – Patient Declines or is Unable to Agree

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- Staff may provide *limited* information to law enforcement under certain conditions as permitted by law
- The LEO completes and signs a LEO form indicating the limited information is necessary for the purpose of carrying out public safety responsibilities
  - The LEO form describes the frequently encountered situations\* in which a LEO may be entitled to PHI without patient authorization

\*To **identify or locate** a suspect, fugitive, material witness, or missing person OR **patient is a victim** and PHI is required for investigation

# LEO Initiated Request for Permitted Disclosure and Release of PHI

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Check one.

1. **FOR IDENTIFICATION or to LOCATE SUSPECT, FUGITIVE, MATERIAL WITNESS or MISSING PERSON PERMITTED DISCLOSURE INCLUDES THE FOLLOWING:**

- (1) Name and address;
- (2) Date and place of birth;
- (3) Social security number;
- (4) ABO blood type and rh factor;
- (5) Type of injury;
- (6) Date and time of treatment;
- (7) Date and time of death, if applicable; and
- (8) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos, if known.

**NO OTHER PHI MAY BE DISCLOSED.**

2. **FOR INVESTIGATION OF A PATIENT WHO IS (OR IS SUSPECTED TO BE) A VICTIM OF A CRIME (excluding domestic violence).** In the event that hospital or provider is unable to obtain patient's agreement to disclose because of incapacity or other emergency circumstances, I represent that:

- (1) Such PHI is needed to determine whether a violation of law by a person other than the patient-victim has occurred; **and**
- (2) Such PHI is not intended to be used against the patient-victim; **and**
- (3) An immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the patient is able to agree to the disclosure.

# Protocol – Patient Declines or is Unable to Agree

- The completed and signed LEO form will be scanned and uploaded into the Media Tab in LifeChart
- A “Quick Disclosure will be documented in LifeChart

The screenshot shows the 'Quick Disclosure' form in the LifeChart system. The form is titled 'Quick Disclosure' and has a green header bar with a search icon, 'Actions' dropdown, and 'Close X' button. The form is divided into several sections:

- Released by:** A text input field with a red error icon and a search icon.
- Date:** A date picker set to '2/14/2017'.
- Purpose:** A dropdown menu with 'Law Enforcement Compliance' selected and a search icon.
- Info released:** A text input field with a red error icon.
- Released to:** A tabbed interface with 'Patient', 'Guardian', 'Relation', 'Third Party', and 'Care Provider' tabs. 'Third Party' is selected.
- Requester:** A text input field with 'PROVIDENCE POLICE DEPAR' and a search icon.
- Site:** A text input field with 'Default Address' and a search icon.
- Name:** A text input field.
- Address:** A large text input field with a '> Address...' prompt.
- Authorization received?:** Radio buttons for 'Yes' and 'No'.
- Comments:** A rich text editor with a toolbar containing icons for undo, redo, bold, italic, link, unlink, and a text input field with 'Insert SmartText'.

At the bottom right of the form, there are 'Accept' and 'Cancel' buttons.

# Risk Management Assistance

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If a situation should arise where there is disagreement or uncertainty regarding the appropriateness of a disclosure, Risk Management is available for consultation 24/7 via the page operator for clarification and support.

# Scenarios

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## **LEO calls Security and requests a patient's condition:**

The security department will verify the identity of the LEO and call the Nursing Supervisor/Unit Leader for assistance.

Nursing Supervisor/Unit Leader will determine if disclosure is permissible as per state confidentiality law. If so, the LEO will be asked to complete a **Law Enforcement Official (LEO) Initiated Request for Permitted Disclosure and Use of PHI.**

# Scenarios

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## **LEO calls Unit directly requesting PHI or interview:**

Unit staff will redirect the call to Security, who will verify the officer's identity and relay call back information to the Nursing Supervisor/Unit Leader. Nursing Supervisor/Unit Leader will determine if disclosure is permissible as per state confidentiality law. If so, the LEO will be asked to complete a **Law Enforcement Official (LEO) Initiated Request for Permitted Disclosure and Use of PHI.**



# Scenarios

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## **LEO presents to the Unit asking if patient is there:**

Unit staff will call the Security Office for assistance (suggest Security come up to the unit to act as intermediary). Security will refer the LEO to the Nursing Supervisor/Unit Leader who will determine if disclosure is permissible as per state confidentiality law. If so, the LEO will be asked to complete a **Law Enforcement Official (LEO) Initiated Request for Permitted Disclosure and Use of PHI.**

# Scenarios

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## **LEO requests information on a restricted patient:**

LEO should call or present to the Security Office for assistance. Security will check with the Nursing Supervisor/Unit Leader, without acknowledging to LEO the patient is being treated to verify if patient has the capacity and is clinically stable to speak with the LEO. If the patient has capacity, is stable and wishes to speak with police, Security will escort the LEO to the patient location. If the patient declines and the LEO already knows the patient is in the hospital, the Nursing Supervisor/Unit Leader will determine if disclosure is permissible in the absence of patient authorization as per state and federal confidentiality laws. If so, the LEO will be asked to complete a **Law Enforcement Official (LEO) Initiated Request for Permitted Disclosure and Use of PHI**.

# Scenarios

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## **LEO requests opportunity to interview patient:**

LEO should present to the Security Office for assistance. Security will check with the Nursing Supervisor/Unit Leader who will verify if patient has the capacity and is clinically stable to speak with the LEO. If deemed appropriate, Security will escort the LEO to the floor to be introduced to the patient. **The LEO will personally ask the patient for an interview.** If the patient agrees, the patient's nurse will ensure the patient signs the **Authorization to Use or Disclose Protected Health Information** form as evidence of their willingness to speak with the LEO. If the patient declines an interview, Nursing Supervisor/Unit Leader will determine if disclosure is permissible without patient authorization as per state confidentiality law. If so, the LEO will be asked to complete a **Law Enforcement Official (LEO) Initiated Request for Permitted Disclosure and Use of PHI.**

# Scenarios

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## **A LEO has a court order to speak to a patient:**

Security will escort the officer to the Nursing Supervisor/Unit Leader, who will make arrangements for the patient to speak with the LEO. Security will escort the LEO to the patient. Patient interviews cannot interfere with patient care.

# Scenarios

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## **A LEO wishes to photograph a patient:**

The Nursing Supervisor/Unit Leader will coordinate this request. A patient with decision making capacity may permit a LEO to take their photograph but is required to complete and sign the **Authorization to Use or Disclose Protected Health Information** form. Once clinical leaders confirm authorization has been obtained, Security will escort the LEO to the patient. The taking of photographs cannot interfere with patient care. A surrogate decision maker may not authorize a LEO to take photographs of the patient.

# Scenarios

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**A LEO wishes to be notified when patient is discharged so the patient can be arrested:**

Rhode Island law does not permit disclosure of patient information for the sole purpose of alerting an officer of the discharge in order to coordinate an arrest.

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Thank you!