

HIPAA: Practical Application from a Non-Lawyer's Perspective

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Disclaimer: I am not a lawyer!

Although I assume everyone will think the information in this presentation is intended to make you want to hire me immediately, I see that law firms have these fancy disclaimers and I sure like tugging on their capes.... So here goes:

1. The information in this presentation is not intended to create an attorney-client relationship. Frankly, you don't want it to do so either. First, I'm not a lawyer. And since the presentation can in theory be attended by any EMS provider on the planet, claiming that you have an attorney-client relationship as a result of this presentation, even if I was a lawyer, would lead to an immediate claim that you've waived the privilege. If you're crazy enough to want that outcome, I wouldn't want to be your lawyer anyway. Even if you contact me after the class, that would not give rise to an attorney-client relationship either, even if I was a lawyer. Did I mention that I'm not a lawyer? Don't you feel better now?

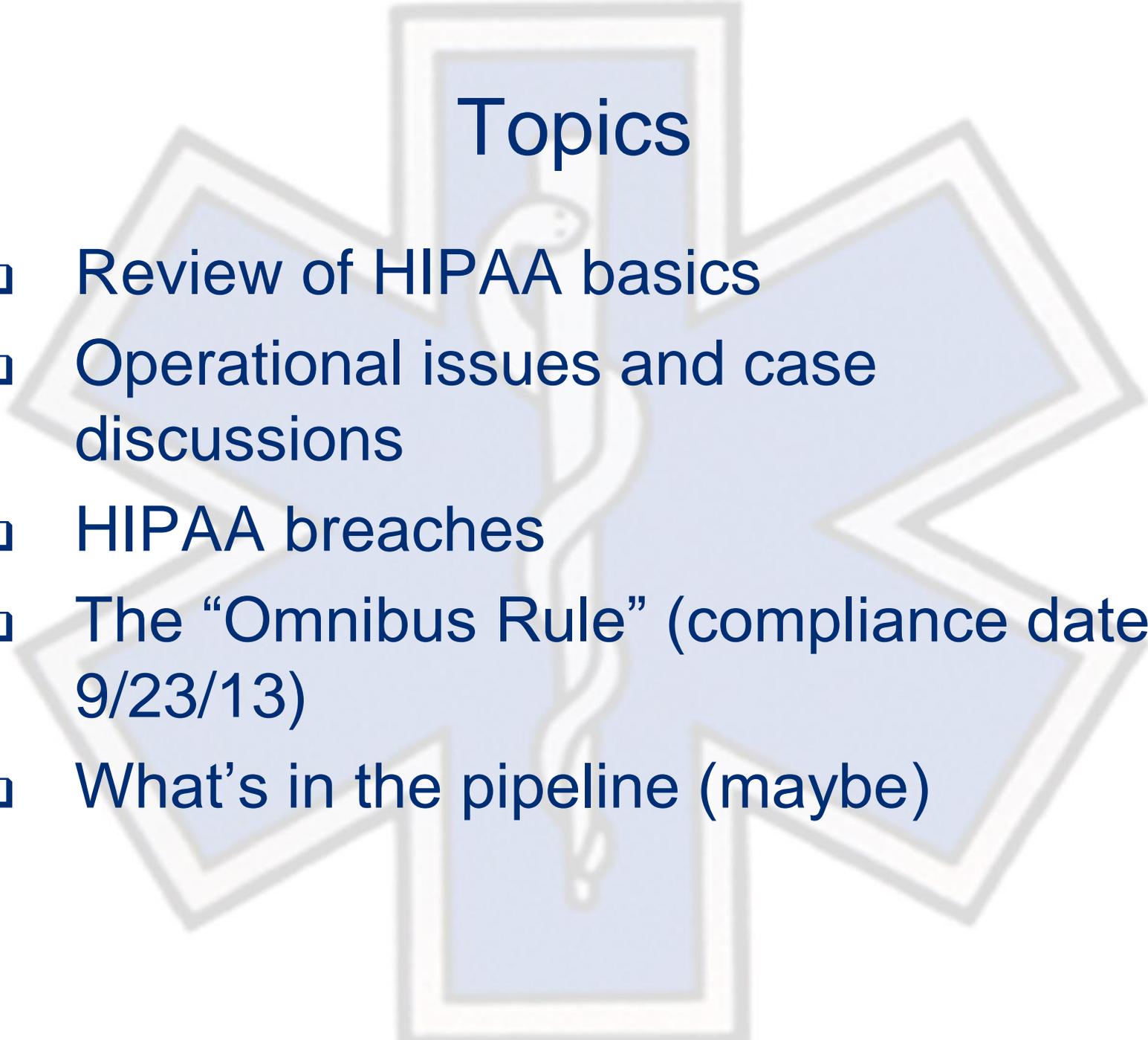
2. Don't send me any confidential information unless I expressly agree that I have an attorney-client relationship with you—which I can't because I'm not a lawyer. After all, I might have a conflict of interest (that is pretty unlikely, but you never know for sure), especially if I was a lawyer. So be smart and safe and keep it confidential until I say it's okay to send stuff to me ... or until a lawyer says it's OK to send it to him/her. Or me.

3. Any references like web sites that I might mention are not under my control. Those sites are responsible for the content of those sites. The sun, the moon and the rotation of the Earth are not under my control either. I'm working on it, but don't hold your breath, and don't try to make me responsible for other sites, bad weather, global warming or any malady that befalls you. If you try, I may have to send my crack in-house security team to visit you.

4. The world is an ever-changing place, which means that content can become outdated quickly. While I've taken great pains to try to bring you the most current information, I can't guarantee that everything is timely, so don't rely on the timeliness or accuracy of the information presented here. Only a lawyer would put out information to impress you and then say "don't rely on it." Did I mention that I'm not a lawyer? Oh, never mind—still don't rely on it absolutely. Take it upon yourself and research it thoroughly. Even lawyers don't know it all!

In other words, if you violate HIPAA, it's not my fault!

Topics

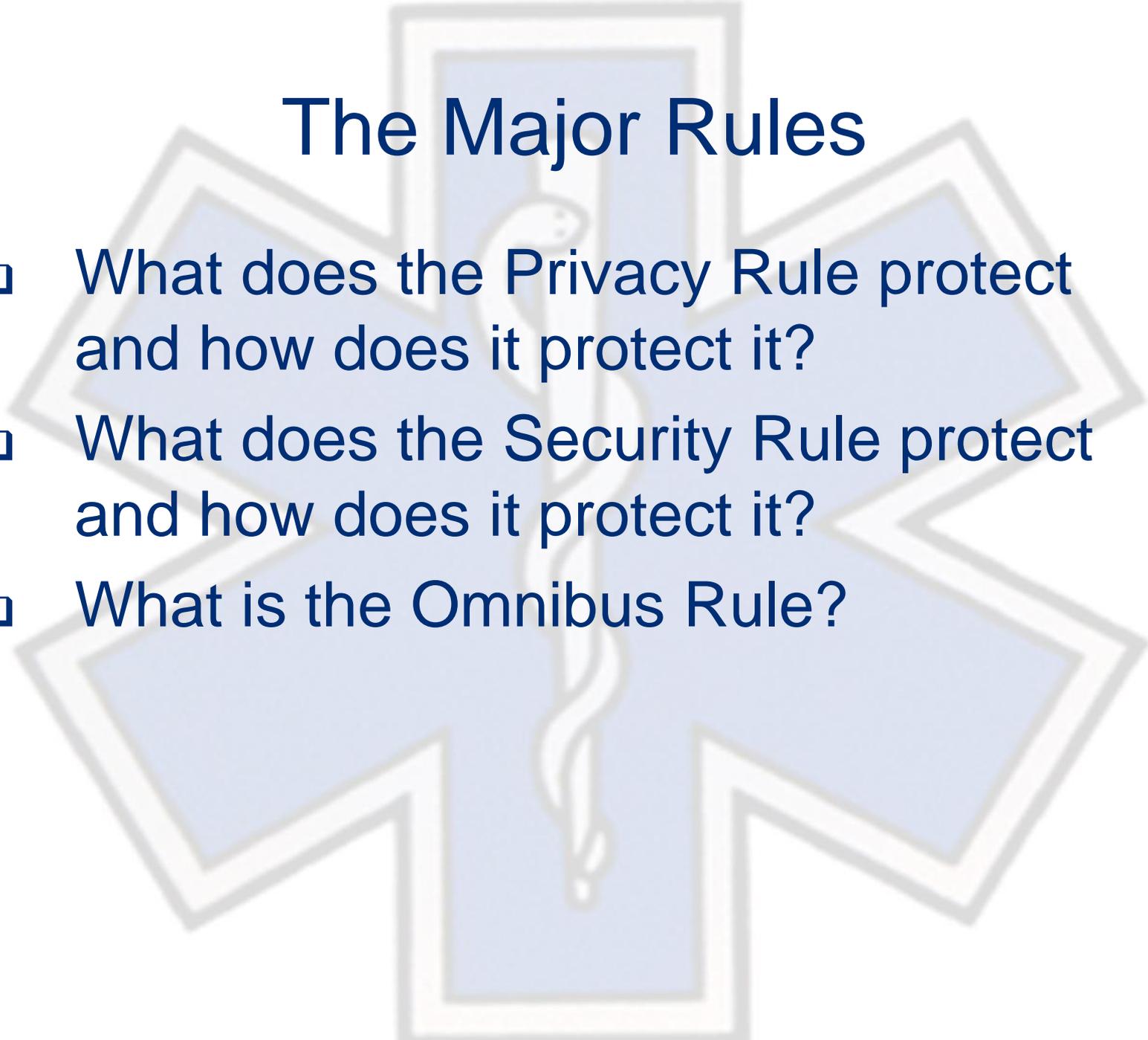


- ❑ Review of HIPAA basics
- ❑ Operational issues and case discussions
- ❑ HIPAA breaches
- ❑ The “Omnibus Rule” (compliance date 9/23/13)
- ❑ What’s in the pipeline (maybe)

Review of Basics

- ❑ What is HIPAA anyway?
- ❑ Who does HIPAA apply to?
- ❑ If I'm not a HIPAA covered entity, do I have to worry about patient privacy?
- ❑ Who are my agency's HIPAA privacy and security officers?
- ❑ What are HIPAA's major rules that affect me?

The Major Rules



- ❑ What does the Privacy Rule protect and how does it protect it?
- ❑ What does the Security Rule protect and how does it protect it?
- ❑ What is the Omnibus Rule?

At the Core of HIPAA Protection: Protected Health Information (PHI)

- ❑ Individually identifiable health information
- ❑ Past, present or future health care or payment

PHI

- ❑ Where does PHI exist and where does it come from?
- ❑ What may we do with PHI?
 - TPO uses and disclosures
- ❑ Do we need the patient's permission to use or disclose PHI?
- ❑ What is the "Minimum Necessary" standard?

Penalties for Violations

- ❑ For unknowingly violating: \$100 - \$50K per violation
- ❑ For knowingly violating: \$1000 - \$50K per violation
- ❑ For violation from willful neglect
 - Corrected: \$10K - \$50K per violation
 - Uncorrected: \$50K per violation
 - Mandatory
- ❑ \$1.5M annual maximum

Criminal Prosecution and Prison

- Access, use, or disclosure of PHI with malicious intent or for personal gain
 - Theft
 - Fraud
 - Extortion
 - Sale
 - Snooping



Operational Issues and Case Discussions

Case #1

A man at the scene who identifies himself as your patient's husband asks for information on the patient's condition.

- *What are the HIPAA issues that need to be considered?*
- *What are your requirements and/or those of your agency under HIPAA?*

Case #2

You overhear other crew members at the station talking casually about the seizure patient they just ran.

- *What are the HIPAA issues that need to be considered?*
- *What are your requirements and/or those of your agency under HIPAA?*

Case #3

A police officer asks if your patient has been drinking.

- *What are the HIPAA issues that need to be considered?*
- *What are your requirements and/or those of your agency under HIPAA?*

Case #4

You lose the Toughbook on which you have been entering your PCR's.

- *What are the HIPAA issues that need to be considered?*
- *What are your requirements and/or those of your agency under HIPAA?*

Case #5

You treat a race car driver injured at the local track, and the track manager asks for a copy of your run report.

- *What are the HIPAA issues that need to be considered?*
- *What are your requirements and/or those of your agency under HIPAA?*

Case #6

A patient you recently transported for an overdose alleges a HIPAA violation after her neighbor told her he heard the call on his scanner.

- *What are the HIPAA issues that need to be considered?*
- *What are your requirements and/or those of your agency under HIPAA?*

Case #7

You were the IC at an MVC at which an EMT is injured, and the chief requests information about the injury for his after-action report.

- *What are the HIPAA issues that need to be considered?*
- *What are your requirements and/or those of your agency under HIPAA?*

Case #8

The chief calls you to ask about his neighbor that you just transported.

- *What are the HIPAA issues that need to be considered?*
- *What are your requirements and/or those of your agency under HIPAA?*

Case #9

A 16 year old who is 3 months pregnant is having vaginal bleeding. Her father asks what is wrong with her.

- *What are the HIPAA issues that need to be considered?*
- *What are your requirements and/or those of your agency under HIPAA?*

Case #10

You suspect a child is the victim of abuse.

- *What are the HIPAA issues that need to be considered?*
- *What are your requirements and/or those of your agency under HIPAA?*

Case #11

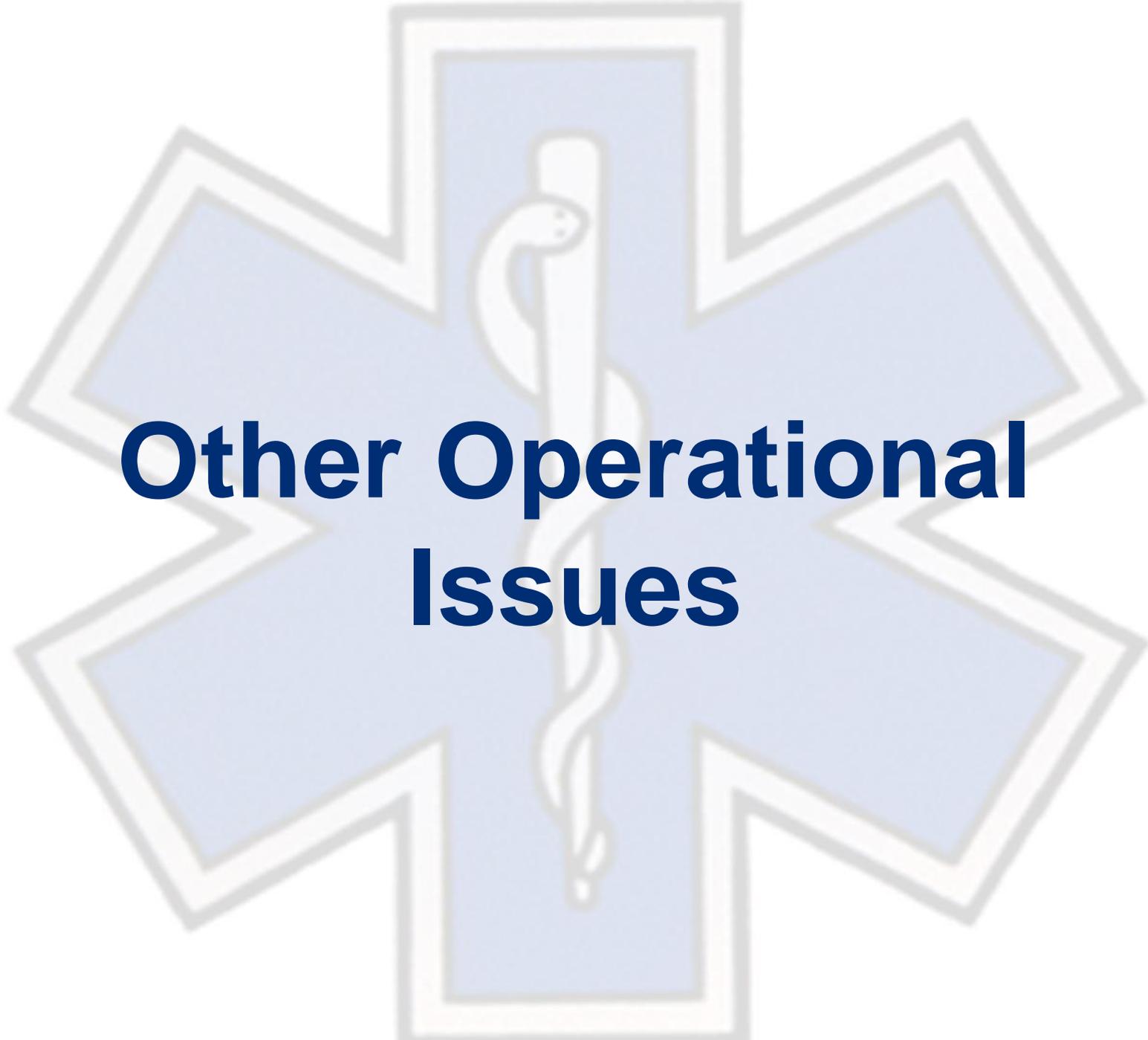
A fellow member is taking pictures on his cell phone camera of a motor vehicle collision.

- *What are the HIPAA issues that need to be considered?*
- *What are your requirements and/or those of your agency under HIPAA?*

Case #12

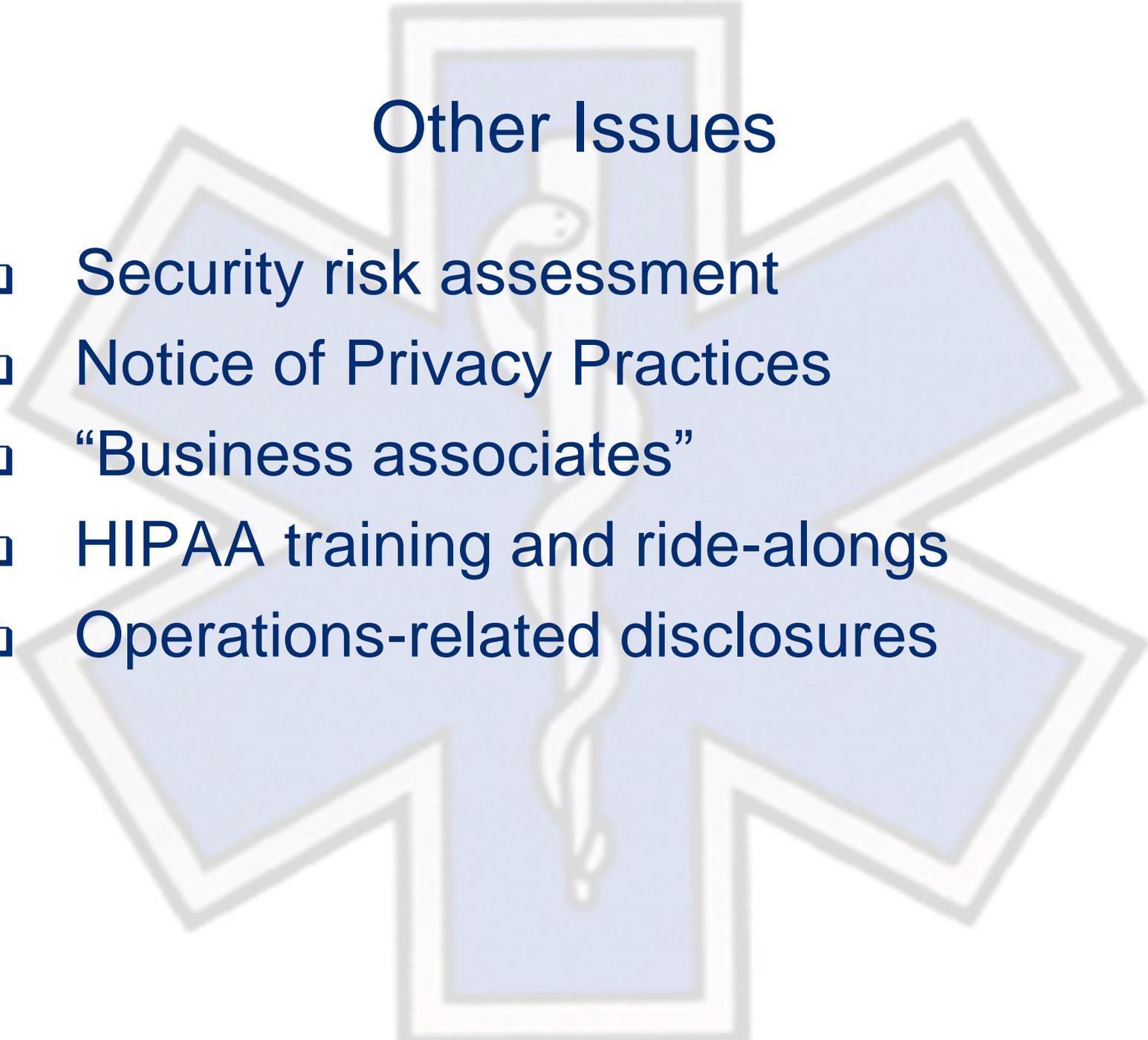
While caring for a possible intoxicated person in a parking lot, you see a bystander recording the incident on his cell phone camera.

- *What are the HIPAA issues that need to be considered?*
- *What are your requirements and/or those of your agency under HIPAA?*



Other Operational Issues

Other Issues



- ❑ Security risk assessment
- ❑ Notice of Privacy Practices
- ❑ “Business associates”
- ❑ HIPAA training and ride-alongs
- ❑ Operations-related disclosures

Other Issues

- Patient requests
 - For copy of records (paper or electronic)
 - To bill patient directly and not the insurance company
- PHI for deceased individuals
- Member injuries or illnesses
 - Line-of-duty
 - Off duty

Are These HIPAA Violations?

- ❑ You give someone else your password.
- ❑ You fax a PCR to the wrong number.
- ❑ You throw your “field sheet” in the trash after the call.
- ❑ You leave the PCR open on the station computer while you run another call.
- ❑ You leave your Toughbook on the scene.
- ❑ You copy patient data onto your flash drive to do QA work at home.

What is a Breach?

“The acquisition, access, use, or disclosure of ***unsecured*** PHI in a manner not permitted under the Privacy Rule which compromises the security or privacy of the PHI.”

What is “Unsecured” PHI?

“PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified in HHS [U.S. Department of Health and Human Services] guidance.”

Two acceptable methods of securing PHI:

- *Destruction*
- *Encryption*

Breaches



- ❑ What are some other examples of breaches?
- ❑ What do I do if I discover a breach?
- ❑ What will happen to me if I report a breach?
- ❑ What should the agency do if I report a breach?

What's in the Pipeline

- Proposed accounting rules for disclosures to external entities:
 - For TPO purposes
 - That are not permitted under HIPAA, unless the patient has already received breach notification
 - For public health activities
 - For judicial and administrative proceedings
 - For law enforcement purposes
 - To avert a serious threat to health and safety
 - For military and veterans' activities
 - For workers' compensation

What's in the Pipeline

- Proposed patient right: access report for e-PHI
 - Date of access
 - Time of access
 - First and last name of person who accessed if available
 - What information was accessed
 - The action of the person who accessed (create, modify, delete, print, etc.)
- Systematic compliance audits

Get in front of the proposed changes now!



Thank you!

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