

Impact of FOIA and other Requests on a Local Health District (and Beyond)

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Objectives

- Appreciate the clinical and non-clinical complexity and demands of a TB case
- Identify potential pitfalls in establishing and maintaining communication with patients
- Understand the importance of charting practices
- Recognize the impact of FOIA and other requests on LHD (and beyond)



Background

- 29 year old female attorney
- PMH: chronic sinusitis
- Non-smoker
- Married
- Travel to Dominican Republic in 2011
- Workplace – large company, campus-like, open workspace



Clinical Course

- August 2013: started feeling “poorly”
- Ensuing months: fatigue, cough, intermittent fever, anorexia
- November 2013: CXR RLL consolidation c/w pneumonia, but mass cannot be excluded
- Ensuing weeks: despite antibiotic tx, no improvement
- December 2, 2013: CXR RLL consolidation improved; RLL cavitation noted – *TB suspected*



Clinical Course - continued

- December 5, 2013: PPD 20+ mm
- December 6, 2013: bronchial washings
 - AFB smear 4+
 - AFB ID by DNA probe positive
- December 11, 2013: treatment started
 - INH 300 mg qd
 - Rifampin 600 mg qd
 - Pyrazinamide 1500 mg qd
 - Ethambutol 200 mg qd
- January 9, 2014: drug susceptibility report for *Mycobacterium tuberculosis*: pansensitive



Clinical Course - continued

- Persistent rash
- Tachycardia, headache, tingling around jaw, abdominal pain, transient warm sensations in legs, nosebleed, seeing spots, back pain, night sweats
- Prescribed pyridoxine
- Discontinuation of RIPE for 5 days during initial phase
- Rifabutin test dose in LHD negative pressure room
- Adequate regimen achieved by 1/31/14



Clinical Course - continued

- Consultations between HCHD and
 - Eric Houpt, MD, UVA
 - Connie Haley, MD, MPH, SNTC
 - David Ashkin, MD, SNTC
 - Jane Moore, VDH
 - Denise Dodge, VDH
 - Debbie Staley, VDH
 - Pulmonologist
 - ID
 - Allergist
 - Dermatologist



Non-clinical Course

- Numerous phone calls, email, and texts between patient and LHD Medical Director (Dr. R), PHN, and ORW
- Dr. R gave patient his personal cell number and told patient to “call anytime”
- Patient often questioned clinical decisions, conveyed worry about her privacy



Letters from patient to HCHD

- February 11, 2014
- July 3, 2014
- September 15, 2014



February 11, 2014 patient letter

- Sent to Henrico County Health Department
- Sent to Virginia Department of Health, Office of Privacy and Security
- Cc to US Department of HHS, Office for Civil Rights, Philadelphia , PA



Excerpts from February 11 patient letter

- *“This letter serves as a request for information and documentation regarding my health information and notice of complaint of violation of my privacy rights.”*
- *“...provide me with any and all genetics and/or genotyping laboratory results that was completed using my DNA...”*
- *“...certain personally identifying information about me was disclosed to my employer and disseminated to my coworkers at the same time my protected health information regarding my medical condition was also disclosed.”*



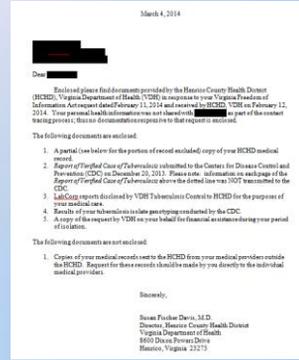
Code Relevant to February 11 letter

- Code of Virginia §2.23700 et seq., FOIA
- 45 CFR §164.528, Accounting of disclosures of protected health information
- 45 CFR Parts 160 and 164, Subparts A, C, and E, Privacy and Security Rules



Responses to February 11 letter

- **February 20:** HCHD acknowledged within 4 working days and invoked 7 day extension
- **March 4:** HCHD letter that records mailed
- **March 4:** HCHD cover letter with records
- **April 11:** HCHD letter with VDH Office of Privacy and Security *Disclosure of Medical Information*
- **April 11:** VDH CIO sent *Response to Data Request Office of Civil Rights* to HHS Office of Civil Rights



Virginia Department of Health
Office of Privacy and Security
Disclosure of Medical Information

Patient Name: [REDACTED]
Phone Number (Day): [REDACTED]
Email or P.O. Box: [REDACTED]
City: [REDACTED]
Restriction: _____

Begin Date: 12/09/13 End Date: 04/11/14

Signature of Patient: _____ Date: _____

Disclosure Log:
Date Information Disclosed: 12/09/13 - 04/11/2014

Name/Address of Requester: Virginia Department of Health, Office of Epidemiology, TB Control Program, 109 Governor Street, Richmond, VA 23219

Purpose of Disclosure: correspondence for public health investigation.

Date Information Disclosed: 12/20/13

Name/Address of Recipient: Centers for Disease Control and Prevention, Atlanta, GA

Purpose of Disclosure: *Report of Treated Case of Tuberculosis* for purpose of mandatory disease reporting. Note: no patient identifying information included on report.



April 16, 2014
Response to DATA REQUEST FOIA Reference No. 14-17702

Background Information:
The Virginia Department of Health (VDH) is a single agency comprised of multiple organizational work units providing executive services. Relevant to this request, four work units joined the following ones:
1. Office of the Commissioner (OCOM) provides agency leadership;
2. Office of Epidemiology (OIEP) provides oversight for programs addressing the public health aspects of communicable disease and houses the Division of Disease Prevention (DDP), Tuberculosis (TB) Control Unit;
3. Henrico Health District (HHD), and
4. Chickahominy Health District (CHD).
Typical medical and case management is provided by the health district in which the individual resides. Work sites correct investigation are located by the jurisdiction in which the work site is located. The OIEP, DDP, TB Control Unit provides consultation, surveillance and financial assistance.

Response 1
Complaint states "within the Virginia Department of Health and Henrico County Department of Health responded to Complainant's February 11, 2014, written request for an accounting of disclosure of her personal health information (PHI)."
On February 11, 2014, the HHD received the Complainant's request for "any and all information regarding with whom (including, but not limited to, state and extra-agency personnel, health care providers, and HR departments) my personal health information was disclosed between the dates of December 9, 2013 and February 11, 2014." VDH is a state agency; thus a request for records is governed by the Virginia Freedom of Information Act (FOIA), Va. Code § 2.2-2700 et seq., as well as 59FAC. On February 20, 2014, the HHD sent written correspondence to the Complainant that acknowledged the request and stated that due to the nature of the request, the requested information could not be provided to her earlier the working day. Pursuant to Va. Code § 2.2-2706(1), HHD invoked a seven-day work day extension that is allowed by Virginia's FOIA. The deadline for responding to her request was March 6, 2014.
The HHD received the Complainant's request via fax from HHD on February 20, 2014. OIEP received a hard copy via USPS on February 27, 2014. OIEP, DDP, TB Control provided information related to the Complainant's request for financial assistance for housing and food costs and TB genetic test results to the HHD for inclusion in the response. On February 26, 2014 OIEP final documents to include the information available to VDH for inclusion in the response prepared for the Complainant as requested.
The HHD mailed the requested documents to the Complainant on March 6, 2014 through the USPS. The disclosure information requested by the Complainant was disclosed then that covered by FOIA's accounting of disclosure requirement; thus, the HHD's provided the Complainant with a copy of its entire patient record on health. This record documents disclosures not required by the accounting, but covered by her request, such as disclosures to health care providers for treatment purposes.
On April 17, 2014, the HHD also provided the Complainant with an Accounting of Disclosures in the format required by 56A-522(a) of the Privacy Rule. The HHD provided the accounting within the 60-day
* Data government offices were closed on February 17, 2014 and March 5, 2014.



Background 2

- Recall: Patient had cavitation CXR
- Recall: Patient started treatment on 12/11/13
- Culture conversion to negative: 2/18/14, (reported 4/17/14)
- Conversion **69 days** after start of treatment
- Treatment recommendation: *"The continuation phase should be extended for an additional 3 months for patients who have cavitation on the initial or follow-up CXR and are culture-positive at the time of completion of the initial phase of treatment (2 months)."*



Background 2 - continued

- Patient informed of treatment recommendation
- Emphasized that *"Patients who have cavitation on initial CXR and who have positive culture at completion of 2months of therapy are at a substantially increased risk of relapse."*
- Patient disputed recommendation



May 22, 2014 HCHD letter

- Outlined clinical course
- Reiterated 9 month treatment recommendation
- Described determinants of culture conversion
- Provided specific citations
- Referenced consultation with and opinion of VA TB Program Medical Consultant
- Explained reasoning for denial of request for repeat genotyping (used for surveillance purposes and not for clinical management)



June 23, 2014 HCHD letter - excerpt

"Against medical advice of the Henrico Health Department, you, NAME, have chosen to stop your treatment for tuberculosis disease. This is the Henrico Health Department's final attempt to convey to you that your risk of reactivation of tuberculosis disease is significantly increased due to your decision to limit treatment to six months. You have been advised to complete a 9 month regimen. This advice is based on clinical judgment, your history of cavitations by CXR, and culture reports."



July 3, 2014 patient letter

- *"...serves as my formal request for amendment to my medical record pursuant to the rights granted to me by CFR §§ 164.524 and 164.526."*
- *"The inaccuracy and/or incompleteness in my medical record is leading to inappropriate conclusions by you and the clinicians in your department."*
- *"I have never met you, spoken to you, or even know what you look like, Ms. Davis. I do not know who you are or what your role is at the Henrico County Department of Health. You have never provided your medical credentials to me or my doctors."*



Code Relevant to July 3 letter

- 45 CFR § 164.524, Access of individuals to protected health information
- 45 CFR § 164.526, Amendment of protected health information
- 45 CFR §164.528, Accounting of disclosures of protected health information
- 45 CFR §160.306, Complaints to the Secretary of HHS



HCHD response to July 3 letter

- Pursuant to Title 45 CFR § 164.526 (a)(2)(iv)
 - found record to be accurate and complete; denied request of amendment of medical record
 - Informed patient of right to submit a written statement disagreeing with denial
 - Provided information about where to file a complaint, if patient so wishes (VDH HIPPA coordinator and/or Secretary of HHS)
- Sent August 28, 2014



September 15, 2014 patient letter

- *"Please consider this letter and its attachments a statement of disagreement ("Statement") with your denial..."*
- *"Lastly, please also consider this letter as a request for an accounting of disclosures pursuant to 45 CFR § 164.528 for the period between January 1, 2014 and the date of this letter."*



HCHD response to September 15 letter - pending

Pursuant to 45 CFR § 164.526 (d)(3) will include a rebuttal to the statement of disagreement and pursuant to 45 CFR § 164.528 will provide an accounting of disclosures from 4/12/14 through 9/15/14



Letter Totals

Patient

- February 11, 2014
- July 3, 2014
- September 15, 2014

HCHD

- February 20, 2014
- March 4, 2014
- March 4, 2014
- April 11, 2014
- April 11, 2014 (VDH)
- May 22, 2014
- June 23, 2014
- August 28, 2014
- November XX, 2014



Lessons Learned

- Case management is complex in unanticipated ways
- Combination of patient isolation and profession has implications
- Over-accommodating may enable
- OAG (Robin Kurz) is an invaluable resource
- We never learned this stuff in medical school
- FOIA and account of disclosure requests are time-consuming and labor-intensive
- Role of the Health Director and Medical Director may be confusing to patients
- How far do you push to ensure compliance?



Questions

