

**Georgetown University
Health Information Systems
HEST-210**

**Legal Issues for
Health Information Exchange
Legal Standards and Liability**

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Legal Issues Confronting Health Information Exchange

- Privacy/Security
- Corporate/Finance
- Antikickback and Stark
- Tax
- Intellectual Property
- Liability for Use and Disclosure

When you say the teacup is empty

Always ask,

Empty of what?

--Zen Philosophy

Privacy/Security

HIPAA

- Privacy Rules Facilitate Transmission of Data for Treatment
- More Limited for Payment and Operations
- Security – Consistency with Current Standards

Privacy/Security

HIPAA

- Disclosures/Tracking and Responding to Requests
 - Public Health
 - Public Protection/Law Enforcement
 - Subpoenas
 - Patient Requests
 - Tracking

Privacy/Security

HIPAA Security

- Administrative, Physical and Technical Safeguards
- Audit Controls
- Access Controls
- Authentication
- Certification

Focus on Legal Standards and Liability

- Legal Presumptions/Policy Implications
 - Public Health
 - Privacy (Rules for Disclosure and Use)
 - Liability

Legal Presumptions in Public Health

- Vaccination
- Organ Donation
- Fluoridation of Water

Implications for Public Health?

Legal Presumptions for Use and Disclosure of Health Care Information

Information May Be Sent or Received:

- With Consent
- Without Consent
- Over Objections

Implications for Public Health?

Liability for Inappropriate Disclosure or Use

- Three Parties
 - PHI Contributors/Originators
 - Infomediaries
 - PHI Users
- State and Federal Enforcements

Liability for Adverse Event From Use of Data

- Medical Malpractice
 - Primer
 - Standard of Care
 - Breach
 - Causation of Injury

Liability for Adverse Event From Use of Data

- Medical Malpractice
 - Who can be party?
 - PHI User - Provider
 - Infomediary - HIE
 - PHI Contributor - Prior Provider
 - Issues
 - Quality/Accuracy/Integrity
 - Impact of False Claim

Liability for Failure to Use Data

- Implications of Available Information
 - Duty to Consult:

Yes: Primus v. Galgano

No: Suniga v. Eyre
Susnis v. Radfar

Liability – The Inexorable Progress of American Jurisprudence

- Innovation Leads to New Standards of Care
 - Helling v. Carey (Glaucoma Testing)
 - Das v. Thani (Fetal Monitoring)
 - Shannon v. McNulty (Nurse Call Center)

Summary

- Goal is to use HIE to improve functioning of health care system and quality of care provided. Current and evolving law supports that development.
- Legal presumptions can be structured to accomplish the goal while preserving individual rights.
- Standard of Care will evolve to mandate consultation of available PHI.

Recommendations

- Focus on getting the right information to the point of care for use in real time.
- Avoid false choice of interoperability versus privacy. The structure you create will reflect values choices.
- The right to consent does not protect privacy or support healthcare any more than the right to refuse. The legal presumption determines how the same right is exercised. Exceptions are important but should not be the rule.
- Limit the exposure of early adopters, infomediaries and good faith users. They are creating a better health care system for everyone.