

# Overinterpreting HIPAA Can Harm Patient Care

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FORT MYERS, FLA. — Physicians who overinterpret the Health Information Portability and Accountability Act of 1996 and do not disclose any information, even in instances where it would be in the best interest of patient care, have “HIPAARANOIA,” according to a presentation at the annual meeting of the Academy of Psychosomatic Medicine.

The Health Insurance Portability and Accountability Act (HIPAA) limits disclosure of sensitive information, including

**‘The P in HIPAA is not for privacy. Anyone who tells you it is does not know what HIPAA is about. HIPAA is really a disclosure policy.’**

HIV status, genetic information, alcohol and substance use, psychotherapy notes, domestic violence, and sexual assault. Outside of those exceptions, information related to treatment, payment, and health care

operations can be disclosed without patient consent, provided that patients are informed of the policy.

“The P in HIPAA is not for privacy. Anyone who tells you it is does not know what HIPAA is about,” said Rebecca W. Brendel, M.D. “HIPAA is really a disclosure policy.” Dr. Brendel is a fellow in forensic psychiatry at Massachusetts General Hospital, Boston.

“Even though the HIPAA ‘P’ may not stand for privacy, there is an indirect effect in making patients more aware of the privacy of their medical records,” commented Teresa A. Rummans, M.D.

Psychiatrists have always been cognizant of the private nature of patient information, and that’s the case now more than ever. “We have to be careful about what we write in a medical record. We need to be very straightforward with patients about their diagnoses, not only Axis I, but Axis II as well,” said Dr. Rummans, professor of psychiatry, Mayo Clinic, Rochester, Minn.

Some physicians may not know that HIPAA permits disclosure of patient information with physician referrals and consultations. Dr. Brendel cited the following example: A consultant or liaison psychiatrist is consulted regarding a patient who is not stable following an overdose on “psych meds” in a suicide attempt. The patient is still intubated and sedated for aspiration pneumonia. The psychiatrist on site calls the patient’s psychiatrist at an out-of-state hospital, but the physician refuses to share patient information, citing HIPAA.

“We now know that HIPAA would authorize disclosure without specific consent for treatment, payment, and health care operations,” Dr. Brendel said. “It’s probably not too helpful to tell the other psychiatrist [he or she is] flat out wrong.” She suggested explaining your understanding of the HIPAA law or recommending the

other psychiatrist contact a HIPAA manager at their institution.

“The old-fashioned way is to have the patient give verbal consent over the phone to the outside psychiatrist,” Dr. Brendel said.

A person attending the meeting asked whether the HIPAA disclosure provisions for psychiatrists working at an institution also apply to private practice. “If that person electronically bills they will be under HIPAA and can release information. No

one is going to chase you down and put you in jail for acting in the best interest of the patient.”

One thing to keep in mind is that HIPAA is not absolute in all cases, Dr. Brendel said. For example, states may pass laws that are more protective, so HIPAA is a “floor” and not a “ceiling” statute. She added that individual providers might make their own policies more protective than HIPAA.

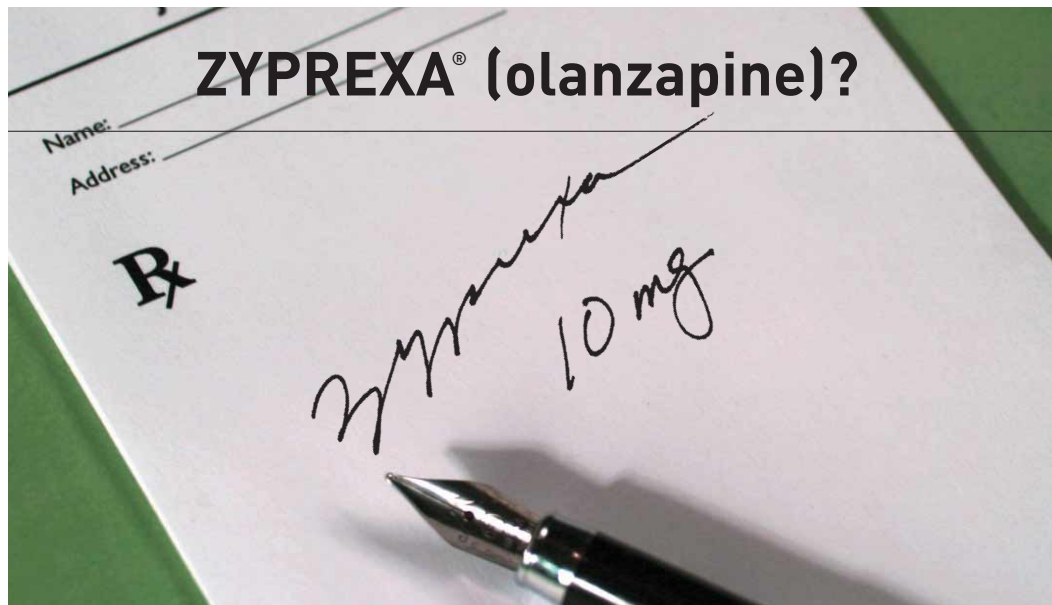
Another meeting attendee asked for ad-

vice regarding a case manager at a community mental health center who refuses to release information.

“We’re talking about the emergency exception,” Dr. Brendel said.

In such cases, she advised e-mailing articles about HIPAA rules to outside case managers.

“The best antidote for misconstruction of HIPAA is education. The more accurate information is disseminated, the fewer problems we will have.” ■



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