



G39 Postmortem Human Identification Challenges Regarding Domestic Disappearance and the Health Insurance Portability and Accountability Act (HIPAA)

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The goals of this presentation are to: (1) identify and discuss the importance of the HIPAA Exception Law; (2) summarize the importance of forensic odontology in the postmortem identification process of partnering in an ongoing police investigation; (3) apply a better understanding of HIPAA Exception Law to specific situations involving domestic disappearance and law enforcement investigations; and, (4) examine the challenges of requesting antemortem dental records from health care providers and public/private insurance companies.

This presentation will impact the forensic science community by exploring how the postmortem identification process is delayed and confounded when requests for dental records go unfulfilled or the dental records are reportedly not available due to failure to understand HIPAA Exception Law.

The identification of missing or unknown persons is the most common role of the forensic odontologist.¹ Postmortem dental remains can be compared with antemortem dental records, including written notes, study casts, and radiographs, to confirm identity.² Individuals with numerous and complex dental treatments are often easier to identify than those individuals with little or no restorative treatment.

The HIPAA of 1996 established the privacy rule standards that address the use and disclosure of individuals' health information by organizations. The privacy rule applies to health plans, health care clearinghouses, and to any health care provider who transmits health information in electronic form.³ Within HIPAA is exception law. It permits, but does not require, the covered entity or health care provider to use and disclose protected health information, without an individual's authorization, for the following purposes or situations: (1) to the individual (unless required for access or accounting of disclosures); (2) treatment, payment, and health care operations; (3) opportunity to agree or object; (4) incident to an otherwise permitted use and disclosure; (5) public interest and benefit activities; and, (6) limited data set for the purposes of research, public health, or health care operations.³

A major goal of the privacy rule is to assure that individuals' health information is properly protected while allowing the flow of health information needed to provide and promote high-quality health care and to protect the public's health and well-being. The privacy rule permits use and disclosure of protected health information, without an individual's authorization or permission for law enforcement purposes and decedents.³ Covered entities may disclose protected health information to law enforcement officials for purposes that include, but are not limited to: (1) as required by law (including court orders, court-ordered warrants, subpoenas) and administrative requests; (2) to identify or locate a missing person; and, (3) in response to a law enforcement official's request for information about a victim or suspected victim of a crime.³ In addition, covered entities may disclose protected health information to coroners or medical examiners to identify a deceased person, determine the cause of death, and perform other functions authorized by law. The dental identification process must be carefully undertaken and relies on the comparison of information from the antemortem record with findings from the postmortem examination, and the efficiency of this process is dependent on the quality and availability of the dental record.¹

This presentation will explore how the postmortem identification process is delayed and confounded when requests for dental records go unfulfilled or the dental records are reportedly not available due to failure to understand HIPAA Exception Law.

Reference(s):

1. J. Hinchliffe. Forensic odontology, part 1. Dental identification. *British Dental Journal*. 210 (2011): 219-224.
2. Jahagirdar B. Pramod, Anand Marya, and Vidhii Sharma. Role of forensic odontologist in postmortem person identification. *Dental Research Journal*. 9(2012): 522-530.
3. *Summary of HIPAA Privacy Rule*. Last modified on July 26, 2013, <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>.

HIPAA, Forensic Odontology, Domestic Disappearance