

Law Enforcement and Health Care

Evidence and HIPAA

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The Two Types of Evidence You May Encounter

1. Physical:

- Any type of item having an objective existence.
- Anything of size, shape, and dimension.
- Can be the size of a fiber or a house (or bigger)
- Can prove a crime or establish elements of a crime
- Can link a suspect to a victim or can exonerate the innocent.
- Can corroborate the victim's statement
- Typically more reliable than witnesses and bridges the gaps.



The Two Types of Evidence You May Encounter

2. Trace Evidence

- Criminalistic term to describe physical evidence so small it requires the use of a stereomicroscope and/or a polarized light scope.
- Examples include: hair, plant, mineral, and synthetic fibers, and particulates like insulation, paint chips, metal shavings, etc.



Why worry about these types of evidence?

Locard's Theory of Transfer

No one can enter a location without bringing some type of physical or trace evidence with them and depositing it; and no one can exit a location without taking some type of physical or trace evidence with them. Very important concept for proper initial recognition of evidence possibilities at crime scenes.

Regretfully, a victim of a crime is also part of the crime scene. They bring with them evidence.



The Person, The Evidence

- Dying Declarations (not covered by HIPAA)
- Excited Utterances (not covered by HIPAA)
- Statements, particularly if death is a possibility (not covered by HIPAA)
- Chain of Custody (Victim / Suspect)
- Physical / Trace Evidence on body that needs collected
 - Extremities bagged (hands, feet, etc.)
 - Photographs (with a scale)
 - Personal belongings / evidence of crime



Evidence Collection Importance

- **The importance of proper evidence recognition, collection, and preservation cannot be overstated—primary sources of evidence include the crime scene, the victim, the suspect and/or his environment**
- **Physical evidence can prove that a crime was or was not committed, place a suspect in contact with a victim, place a suspect at a crime scene, place a victim at a crime scene, establish the identity of person(s) involved with a crime, develop modus operandi, identify contraband, provide leads, prove/disprove an alibi, incriminate or exonerate a suspect, and/or reconstruct a series of events in question**
- **In order to be useful, evidence must be properly identified, collected, entered into evidence, and maintained (chain of custody)—chain of custody is one of the primary areas that a good defense attorney will try to attack**
- **Regardless of the particular setting of the crime (indoor, outdoor, etc.), the essential elements of proper evidence management remain the same**



Chain of Custody

A written record of the names and dates for the custody of the evidence (*who & when*)

- Mark evidence (if possible)
- Place in container
- Seal securely
- Personalize seal
- Why is strict adherence to chain of custody important?



Sealing Evidence

Prevention

- Loss of evidence from package
- Cross contamination by other evidence
- Tampering - theft or adulteration

Sealing

- Do not use staples. The lab will not take anything with staples in the packaging. Use tape.
- When in doubt of an item, inform law enforcement so they can handle accordingly.
- If the item is dangerous (like a weapon), have law enforcement take control of it.



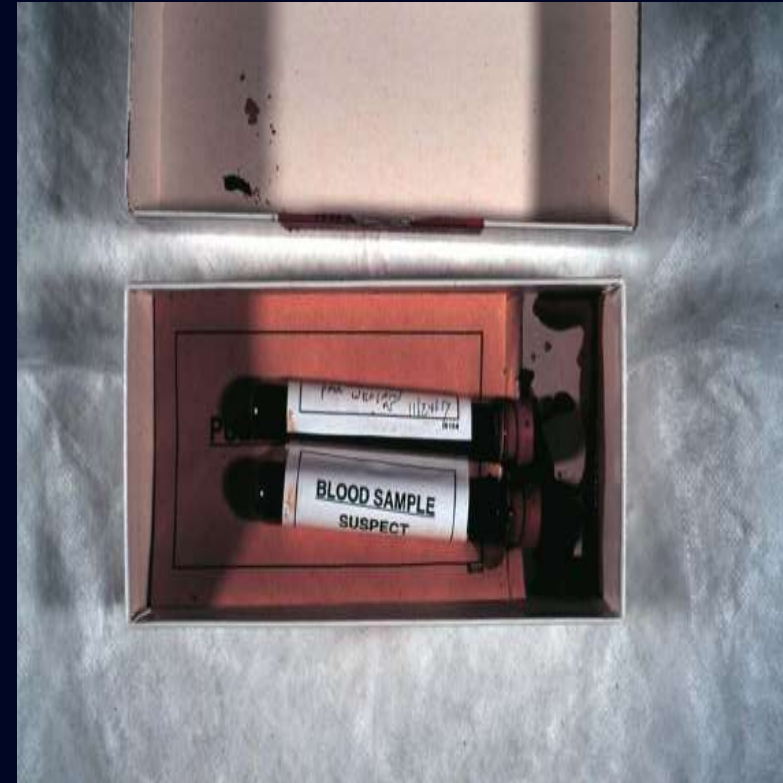
Packaging

- **Dry items should be packaged in porous containers such as paper bags, envelopes, boxes**
- **Wet items should be allowed to air dry prior to final packaging**
- **Very wet items can be transported in plastic containers but should be air-dried as soon as possible**



Other Useful Techniques

- **Keep tissue and liquid samples refrigerated**
- **-Never freeze liquid tubes of blood**
- **-Put glass tubes in plastic bag**
- **•Package items separately when recovered separately**
- **•If items found together, then package together (ex. wallet and contents)**
- **•Don't allow fluids or stains to touch each other or unaffected areas**
- **-Minimize interior movement of items**
- **Some kits have instructions / forms. Follow the directions exactly. Do not improvise. There are state / federal laws that govern these kits.**



HIPAA and Law Enforcement

- 3 Main Circumstances to disclose Personal Health Information (PHI)
 1. Pursuant to legal process (limited to scope of request).
 - Subpoena (Administrative)
 - Search Warrant
 - Court Order
 - Grand jury subpoena
 - When required by law



HIPAA and Law Enforcement

2. Identifying / locating a certain class of person(s).
 - Locating fugitives, suspects, missing persons, victims, and witnesses.

What information can you give in these types of cases?



HIPPA and Law Enforcement

- Name and address;
 - Date and place of birth;
 - Social security number;
 - ABO blood type and rh factor;
 - Type of injury;
 - Date and time of treatment;
 - Date and time of death; and
 - Description of distinguishing characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars, and tattoos.
- * **NOTE: Do not feel like you are offending an officer by asking for credentials. Note who you gave the information to.**



HIPAA and Law Enforcement

3. As necessary to alert law enforcement to the commission and circumstances of a crime.

- Individual agrees to disclosure (medical release form typically done by L.E.)
- * Individual is somehow incapable of allowing disclosure due to incapacity / emergency and law enforcement has represented that:

The information is needed to determine if someone other than the individual has committed a crime, and such information will not be used against the individual; and the need for the information is acute and without it law enforcement efforts will be adversely affected; and the covered entity determines in the exercise of professional judgment that disclosure is in the best interests of the individual.

- * **These incidents typically needs to be initiated by law enforcement, unless state / federal law mandates disclosure.**



HIPAA and Law Enforcement

When to Report without L.E. request

- When a death is a result of suspected criminal conduct.
- Negligent homicide.
- Overdoses from narcotics / illegal drugs.
- Crimes on Premises.
- Off-site emergencies.
 - Commission, nature, location
 - Identity of victim(s)
 - Identity, location, description, etc. of suspect



Questions ? / Contact Information



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