

Northwest Evaluator

The Pacific Northwest
Drug Recognition Expert Newsletter



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COORDINATOR COMMENTS

by Sergeant Timothy Plummer

After all is said and done, the 2006 Oregon DRE In-service was a success. In total there were 174 DRE's, 12 prosecutors and other guests in attendance. It was good to meet with everyone and the feed back from the in-service has been positive. My thanks goes out to all who participated and attended.

The revised DRE Student and Instructor material is scheduled to be available from NHTSA around the first of April. In addition to DRE material, there will also be revised SFST material. This material will be distributed as soon as it becomes available.

I have fielded a number of questions regarding DRE re-certification training in Portland during the Mutli-Disciplinary DUII Training Conference in April. The program has conducted this training twice in the past two years. After looking at the data, the cost and what benefit is gained from sponsoring this training, it has been decided to discontinue the training. In its place I would recommend attending certification training offered in Portland following the DRE School. This will help with two issues. It will provide opportunities for re-cert evaluations and staff the training site with experienced DRE's to locate volunteers for evaluations.

The Oregon 2006 DRE School is scheduled for May. The Pre-School will be May 2nd and 3rd, with the DRE School running May 4-12, 2006. Certification training will be held in Portland at the ODOT Building May 31-June 3, and June 7-10. Anyone interested in helping contact Darke Hull with Portland Police Bureau by either email darkehull@hotmail.com, work #(503) 823-0097, or pager #(503) 793-6046.

Contained in this edition of the NW Evaluator is a well written article by Sergeant Mark Matsushima with the Multnomah County Sheriff's Office. The article addresses the Health Insurance and Accountability Act (HIPAA). Hopefully this information will act as a resource and guide when dealing with our partners in the medical community.

The SAIF Corporation's 11th Annual Agriculture Safety Seminar concluded March 9, 2006. There were an estimated 1600 attendees at 26 seminars throughout the state. Oregon DRE/DRE instructors provided presentations on substance abuse issues, drug identification and impairment, and related issues such as "Meth lab hazards" and "dump sites," along with potential metal and chemical theft related to the agriculture community. A "**job well done**" goes out to those DRE/DRE instructors who provided this training. The response from the attendees has been very positive.

Other events on the horizon include Operation Trucker Check scheduled for the third week in May and another one in September 2006.

Included in this publication is information about the 2006 DUII Multi-Disciplinary Training conference being held at the Embassy Suites in Tigard, Oregon April 28-29, 2006, and the Twelfth Annual IACP DRE Training Conference on Drugs, Alcohol and Impaired Driving being held in Kansas City, Missouri, June 14-16, 2006.

Keep up the good work and be safe.

DEMYSTIFYING HIPAA
Sergeant Mark Matsushima
Multnomah County Sheriff's Office

If you've gone to an emergency room lately to do an investigation following a traffic crash, you've probably been told something to the effect that HIPAA (the Health Insurance Portability and Accountability Act) will not allow you to gain access to the patient's PHI (Personal Health Information). Did it leave you scratching your head and wondering what they were talking about?

An Emergency Room Physician I often work with summed up the problem this way. "You have two groups of people pretty good at what they do; medical folks patching people up and law enforcement folks doing the investigation. The only way we are allowed to communicate now is through a bunch of regulations that neither of us really understands. Its not that we don't want to help, it's just that we're not sure if we can."

The purpose of this article is to help unravel some of the mysteries of HIPAA by giving you an overview of its internal workings. To get this information to work for you:

1. Familiarize yourself not only with the information in this article, but also any available applicable reference materials.

2. Meet with your local healthcare providers, HIPAA Compliance Officers, and other administration representatives to find common ground to work from and work out any issues ahead of time. Any relationship and understanding you can gain in this open and continuous communication is vital because:

* Rarely does HIPAA *require* a PHI disclosure by a healthcare provider, but it does *permit* it under the right circumstances. Even so, the healthcare provider is not required to provide the information.

* Emergency Medical and Intensive Care Units are more versed in HIPAA than regular treatment units of a healthcare facility. You are more likely to encounter problems once the patient has gone to another location.

* If all else fails, ask to speak with the healthcare facility's HIPAA Compliance Officer, who you should already be familiar with, to work through the roadblock.

3. Keep your local prosecutors in on the conversations and get their input at each step of the way.

A LITTLE BACKGROUND FIRST

HIPAA was enacted by the United States Department of Health and Human Services in 1996, with final compliance required by October 2003. Its intent is to safeguard "protected health information (PHI)" in the form of individually identifiable health information that can be

maintained or transmitted in any form; whether oral, written, or electronic. HIPAA and its penalties for non-compliance apply to healthcare providers and others with open access to PHI such as insurance carriers and benefit coordinators. It also applies to emergency response personnel providing emergency medical care, including law enforcement personnel certified as Medical First Responders or higher.

WORKING WITH HIPAA

If the patient is allowing their information to be shared, and you at least have the patient's name or specific physical and circumstantial identifiers, to start with, the hospital can usually acknowledge that the subject is there, where in the facility they are located, and give a generalized description of their overall condition.

However, if they have "OPTED OUT" (i.e. expressly indicated they do not want their information shared), or without a patient's name or unique information in cases they are a criminal suspect, fugitive, material witness, or missing person, there are a few more hoops to go through to get the same information.

Healthcare providers will need one or more of the following disclosure pathway questions answered affirmatively to get information about a patient or details about that patient's condition and/or treatment.

IS THE PATIENT WILLING TO TALK TO LAW ENFORCEMENT?

This obviously is the best option. For the most part, healthcare providers will attempt, without undue influence, to get patients to voluntarily speak with you and/or submit to examinations you are asking for. The request can be as simple as "There is a Deputy/Officer here to talk with you." Unless the patient has already "OPTED OUT" or specifically requests you to go away, the provider will consider it as a voluntary contact. Often times just asking a person for access to their PHI is the simplest way to get it.

IS THE DISCLOSURE REQUIRED BY LAW?

HIPAA allows for individual states to designate certain conditions where healthcare providers must report what normally would be considered PHI to public safety authorities. These mandatory reporting categories under the Oregon Revised Statutes include but are not limited to suspected child abuse, elder abuse, abuse of a developmental-ly disabled/mentally ill person, and/or suspicious wounds or deaths. As of current, unless a child witnessed the incident, instances of suspected domestic violence do not fall under the mandatory reporting requirements.

A side note to this category applies to DUI investigations. The 2003 Oregon Legislature made reporting the BAC of a person reasonably believed to be the driver involved in a motor vehicle crash mandatory within a five day period of time of when the hospital test was conducted. You can

usually gain immediate access to this information by first asking the healthcare provider if a BAC test was done, and if so what the results were.

HIPAA does not recognize “exigent circumstances” such as for blood draws or other “forced” examinations in its privacy and access rules. Healthcare providers are not required to perform these examinations since “exigency” exists under the rules of evidence, not as a required disclosure.

Likewise, unless you can articulate a reason for disclosure under the exemption pathways, healthcare providers cannot tell or notify you when a patient will be discharged. Just because you may have an obligation to take someone into custody, the healthcare provider may not share that same obligation as a mandatory reporting requirement.

IS THE DISCLOSURE NECESSARY FOR IMMEDIATE PUBLIC SAFETY REASONS?

There are three main sub-questions that apply under this heading. Is the disclosure necessary to:

1. Identify and apprehend a subject who appears to have escaped from custody or a corrections facility?
2. Stop criminal conduct currently occurring on the healthcare provider’s premises?
3. Prevent/lessen an imminent threat to the health or safety of a person or the public?

In these circumstances, PHI disclosure is permitted. It is likely that hospitals and other healthcare providers will continue to call immediately for law enforcement assistance and provide all the information they can as they have in the past.

IS LAW ENFORCEMENT REQUESTING DISCLOSURE FOR PURPOSES OF IDENTIFYING OR LOCATING A SUSPECT, FUGITIVE, MATERIAL WITNESS, OR MISSING PERSON?

When you are unable to identify a patient or voluntarily obtain certain specific information about a patient who falls within one of the mentioned categories, you may initiate a request for disclosure of PHI without a court order. The disclosure will be limited to a patient’s:

1. Name and Address
2. Date and Place of Birth
3. Social Security Number
4. Blood Type and Rh Factor
5. Type of Injury

6. Date and Time of Treatment
7. Date and Time of Death (If Applicable)
8. A Description of Distinguishing Physical Characteristics (limited to height, weight, gender, race, hair, eye color, presence/absence of facial hair, scars, and/or tattoos).

IS LAW ENFORCEMENT REQUESTING DISCLOSURE ABOUT A VICTIM OR SUSPECTED VICTIM OF A CRIME NOT SUBJECT TO MANDATORY REPORTING?

If the patient is conscious and capable of providing such information, they must either agree or not agree to the release of PHI for investigatory purposes. The agreement to disclose the information may be verbal only.

If the patient is unconscious or otherwise incapable of consent, you will need to specifically articulate (and likely in writing) that:

1. The information is needed to determine whether a violation of law by a person other than the patient has occurred.
2. The information will not be used against the patient.
3. Immediate law enforcement activity would be materially and adversely affected by waiting until the patient is able to agree to the disclosure.

If all three criteria are met, the healthcare provider will make the final determination of whether or not disclosure is in the best interests of the patient based on the provider’s professional judgment.

IS THE PATIENT IN CUSTODY?

If the patient is in custody, either under arrest or already in the custody of a correctional authority, you have greater access to the patient PHI as it applies towards:

1. The provision of healthcare to the subject.
2. The health and safety of the subject or other inmates.
3. The health and safety of the officers, employees, or others at a correctional facility.
4. The health and safety of individuals, officers, and/or other persons responsible for the transporting of inmates or their transfer from one institution, facility or setting to another.
5. Law Enforcement on the premises of the correctional institution.
6. The administration and maintenance of the safety, security, and good order of the correctional institution.

(Continued on Page 4)

DUII MULTI-DISCIPLINARY IMPAIRED DRIVING TRAINING CONFERENCE

The conference will be held on April 28 & 29, 2006, at the Embassy Suites Hotel in Tigard, Oregon. Space is limited so you need to register right away. You can obtain information and a registration form on ODOT’s website at <http://www.odot.state.or.us/ffp/ts/DUIIMDC.htm>.

In situations where arrest is an option, this may end up being your only fall back position to obtain access to PHI without a court order.

IS DISCLOSURE REQUIRED AS A RESULT OF A SUBPOENA, SEARCH WARRANT, OR OTHER COURT ORDER?

Although staff will still consult with their legal advisors, healthcare providers are obligated to cooperate fully with any lawful court order. Remember to be specific as to what PHI you want access to when you write your search warrant or subpoena since the scope of your inquiries will be limited only to what you are asking for (any subpoena you write must comply with Oregon Rules of Civil Procedure 55H). Discoveries that lead to the need to divulge further PHI information not originally asked for will require subsequent follow up court orders.

OTHER HELPFUL RESOURCES

The Oregon Association of Hospitals and Health Systems (OAHHS) serves as a resource center for numerous healthcare providers in the state. Their website at www.oahhs.org has numerous and usually the most up to date articles, writings, opinions, and reference guides available including the **GUIDELINES FOR RELEASE OF PROTECTED HEALTH INFORMATION**. This is the same resource book used by healthcare providers throughout the state to guide their policies.

FRESH KHAT IN PORTLAND, OREGON

The Oregon State Police Portland Metro Forensic Laboratory (Clackamas, Oregon) recently received two exhibits containing a total of 90 bundles of fresh green leaves and stem bundles, suspected khat. Each bundle was wrapped in a large leaf and husk-like strips; unraveled bundles each showed three sub-bundles of stems/leaves. The exhibits were seized by the Portland Police Bureau (circumstances unknown). Because of the possibility of cathinone degradation over time, the evidence was frozen until analyzed. Analysis of extracts of the plant material (total net mass 7.31 kilograms) by GC and GC/MS confirmed cathinone, cathine, and phenylpropanolamine (not quantitated). This was the second submission of khat to the Oregon State Police Laboratory System.



Information obtained from Microgram Bulletin - January 2006

ABUSE OF PRESCRIPTION DRUGS SEEN AS GLOBAL PROBLEM

The International Narcotics Control Board (INCB) said in its annual report that abuse of prescription drugs has become a major problem not just in the U.S. but also in Canada and Mexico, the BBC reported March 1.

The INCB estimated that 10 million illegal shipments of prescription drugs entered the U.S. -- where prescription drug abuse now equals the problem of illicit drug abuse -- each year. The United Nations agency said that the Internet has become a major conduit for shady sales of prescription drugs, and urged all countries to screen incoming and outgoing mail.

The INCB report, which looked at drug trends around the world, also concluded that drug-crop replacement strategies have not been effective, that cocaine production is rising in South America, and that Afghanistan is now producing 87 percent of the world's opium. The agency also said that more people are using marijuana in Africa (34 million) than in the European Union (30 million).

Information obtained from Join Together News Summary - March 3, 2006

'PHARMING' A NEW RECIPE FOR TEEN TROUBLE

PORTLAND, Ore. – A mother got the call most parents dread. The phone rang at 2 a.m. one morning, and the voice on the other end informed her that her son was in an ambulance, his life hanging in the balance.

But it wasn't a car accident or urban violence that had her 16-year-old teenage son fighting for his life, it was 45 tablets of Dramamine, a common over-the-counter motion sickness medicine. The dosage equaled eight full boxes of the drug.

This was no suicide attempt. This teenager had taken the massive dosage of the readily available and legal drug in order to get high. He is expected to survive, but others are not so lucky.

This past June, a 15-year-old boy died after mixing a large number of Dramamine pills with whiskey. He then drowned in a Salem pond.

It is a trend police and health officials say they are seeing more and more often: use and abuse of legal pharmaceuticals, usually found at home, by kids looking for a buzz.

One of the most popular current practices is called "pharming", where young people meet at parties and then mix and match drugs pilfered from the home medicine cabinet to see what kind of high they can get. It is a practice that doctors say can lead to serious injury and death if non-compatible drugs, especially painkillers, are mixed with other substances, such as alcohol.

(Continued from Page 4 – ‘Pharming’)

Bill Deiz is with the Oregon Partnership, and he is trying to help educate parents about the drugs and how they are being acquired and used. Deiz says that young people learn about pharming and the effects of large drug doses at school, parties and from Internet postings from those who have tried drug combinations.

Information obtained from KATU News by Brian Barker - December 15, 2005

Ambien Cited in Growing Number of Impaired-Driver Cases

The prescription sleep aid Ambien has become a leading culprit in impaired-driving cases nationally, including a number of incidents where users drove off in their cars without ever waking up, the New York Times reported March 8.

Americans received 26 million prescriptions for Ambien last year, and the drug's popularity is being reflected in traffic incident reports. In Washington, for example, Ambien was involved in 78 impaired-driving arrests last year, up from 56 in 2004.

"We are aware of reports of people driving while sleepwalking, and those reports have been provided to the U.S. Food and Drug Administration (FDA) as part of our ongoing postmarketing evaluation about the safety of our products," said a spokesperson for Sanofi-Aventis, the maker of Ambien. A FDA spokesperson said that the current warnings for Ambien, which advise against using the drug with alcohol and warn about sleepwalking and hallucinations, are sufficient.

Drivers under the influence of Ambien, often totally oblivious, have driven the wrong way on highways and crashed into other cars. "These cases are just extremely bizarre, with extreme impairment," said Laura J. Liddicoat, a state forensic toxicology supervisor in Wisconsin. Other experts at a meeting of the American Academy of Forensic Sciences shared similar stories.

Skeptics say that drivers who claim to be asleep at the wheel could be lying to protect themselves, but some experts said it is possible that Ambien users could actually be asleep while driving. South Carolina resident Dwayne Cribb said he took Ambien before bed one night last October and woke up in jail, having unwittingly gone for a drive and crashed into a parked van and a tree.

In another case, a British man successfully dodged criminal charges after he was arrested for disturbing a U.S. Airlines flight; the man said he had taken Ambien and downed two single-serving bottles of wine. Experts say that combining alcohol with Ambien is especially dangerous.

Forensics experts say that Ambien has become one of the top 10 drugs involved in impaired-driving cases in some states. Some say that Ambien should have stronger warnings, and that doctors should be more careful about prescribing the drug.

Information obtained from Join Together News Summary - March 8, 2006

18th Annual Symposium on Alcohol and Drug Impaired Driving Enforcement

Institute of Police Technology and Management (IPTM) is holding their 18th Annual Symposium in West Palm Beach, Florida, July 18-20, 2006. Each year, IPTM's Symposium explores the latest developments in many different aspects of DUI enforcement and prosecution-ranging from the most recent drug craze to the latest technology available to the newest laws on the books.

To register visit IPTM's website at iptm.org.

DRUG AWARENESS IN GRANT COUNTY

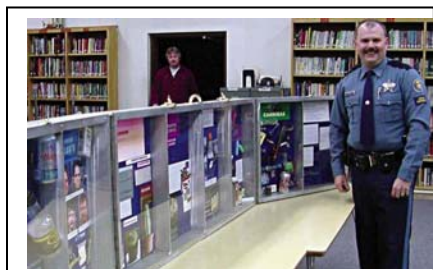
Larry Johnson, Senior Trooper with the State Police, Fish and Wildlife division, has been a drug recognition evaluator for the past 10 years. During that time he has given presentations on drug awareness, but what he didn't have was an impressive folding display case detailing seven kinds of drugs, including panels on alcohol, tobacco and prescription medicines.

The display took a year, \$800 from the Grant County Safe Communities Coalition and volunteer labor from the Oregon Department of Fish and Wildlife to get the display built. The State Police, John Day Police Department, the County Sheriff and the Oregon Department of Transportation also sponsored Johnson's presentation.

All the items were gathered in Grant County, including a bag of black tar heroin and a bent spoon used to mix the stuff before injection.

To view the full article go to <http://www.blue-mountaineagle.com/print.asp?ArticleID=10401&SectionID1&SubSectionID=12>.

Information obtained From Blue Mountain Eagle - Wednesday, January 25, 2006



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**12TH ANNUAL IACP
"Drugs, Alcohol, &
Impaired Driving Conference"**

June 14-16, 2006

Kansas City, Missouri

For more information, visit the conference website at www.decp.org