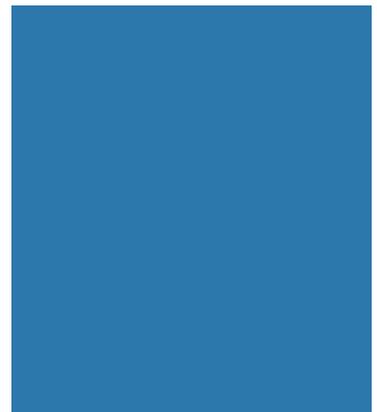


NORTH CAROLINA MEDICAL BOARD

Reporting Patient Information: A Guide to Exceptions to the Duty of Confidentiality

Updated: October 2019



Acknowledgements

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A Guide to Exceptions to the Duty of Confidentiality

What I may see or hear in the course of the treatment or even outside of the treatment in regard to the life of men, which on no account one must spread abroad, I will keep to myself holding such things shameful to be spoken about. —The Hippocratic Oath

Confidentiality is the foundation upon which the patient-physician relationship is built. It inspires the trust and confidence necessary for a patient to unburden himself of some of life's most sensitive secrets to his physician, empowering a clinician to have all the facts at his disposal to diagnose and treat those entrusted to his care. It is a solemn professional duty to maintain these confidences, one that cannot be set aside lightly. However, in limited instances, the professional obligation to safeguard patient confidences is subject to certain exceptions that are ethically and legally justifiable because of overriding societal considerations. *AMA Principles of Medical Ethics, Opinions on Privacy, Confidentiality & Medical Records*, 3.2.1. Physicians and other health care professionals in North Carolina are obligated under state law to break confidentiality and report certain patient conditions to government agencies and other parties, ostensibly to safeguard the public health.¹ Below is a comprehensive list of those situations where reporting is either mandatory or discretionary, a description of statutory immunity from civil or criminal liability that may protect a reporting clinician, and links to how and where to report.

MANDATORY REPORTING REQUIREMENTS

Animal Bites

A physician who attends a person bitten by an animal known to be a potential carrier of rabies shall report the incident within twenty-four (24) hours to the [local health director](#). The report must include the name, age, and sex of the person. N.C.G.S. 130A-196(a)

[NC Rabies Public Health Program Manual \(2013\)](#)

Blindness

When a physician or optometrist determines that a patient is blind, the clinician must report this to the Department of Health and Human Services, [Division of Services for the Blind](#) within 30 days after the examination is conducted. N.C.G.S. 111-4

[DSB Report of Eye Examination Instructions \(2012\)](#)

[DSB Report of Eye Examination \(2012\)](#)

Cancer/Certain Tumors

All health care providers who detect, diagnose, or treat cancer or benign brain or central nervous system tumors must report to the Central Cancer Registry each diagnosis of cancer or benign brain or central nervous system tumors in any person who is screened, diagnosed, or treated. Reports must be made electronically within six months of diagnosis. Diagnostic and demographic information must be included in the report. N.C.G.S. 130A-209(a). A physician who makes a report to the central cancer registry shall be immune from civil or criminal liability. N.C.G.S. 130A-211

If a health care professional fails to report as required, then the Central Cancer Registry may conduct a site visit to the provider or require access to information in order to report it. The health care professional may be required to reimburse the registry for its cost to access and report in an amount not to exceed one hundred dollars (\$100.00) per case. Thirty days after the expiration of the six-month reporting deadline, the registry shall send notice to each health care professional who has not submitted a report that failure to file within 30 days

¹ Health care professionals are also required to report certain instances of personal and professional conduct to their respective professional licensing agencies. Those reporting requirements do not fall within the purview of this article.

shall result in collection of the data by the registry and that liability for reimbursement shall be imposed. For good cause, the registry may grant an additional 30 days for reporting. N.C.G.S. 130A- 209(b)

Reports are made through leveraging various electronic transmission options. Contact the [Central Cancer Registry](#) and request to speak to the Physician Office Coordinator to establish reporting.

[Central Cancer Registry](#)

222 N. Dawson St.

Raleigh, NC 27603

(p) 919.715.0650

(f) 919.715.7294

Physician Office Coordinator

[NCCCR Physician Office Reporting Information \(2018\)](#)

Child Abuse, Neglect, Dependency or Death

Any physician who has cause to suspect that any child is abused, neglected, dependent, or has died as the result of maltreatment, shall report the matter to the director of the department of social services in the county where the child resides or is found. The report may be made orally, by telephone, or in writing. The report must include information known to the reporting physician, including the following: the child's name and address; the name and address of the child's parent, guardian, or caretaker; the child's age; the names and ages of other children in the home; the present whereabouts of the child if not at the home address; the nature and extent of any injury or condition resulting from abuse, neglect, or dependency; and any other information which the physician making the report believes might be helpful in establishing the need for protective services or court intervention. N.C.G.S. 7B-301(a)

Anyone who makes a report, cooperates with the county department of social services in a protective services assessment, testifies in any judicial proceeding resulting from a protective services report or assessment, or otherwise participates in the Child Protective Services program, is immune from any civil or criminal liability, provided that the person was acting in good faith. In any proceeding involving liability, good faith is presumed. N.C.G.S. 7B-309

No privilege shall be grounds for any physician failing to report that a child may have been abused, neglected, or dependent, even if the knowledge or suspicion is acquired in an official professional capacity, except when the knowledge or suspicion is gained by an attorney from that attorney's client during representation only in the abuse, neglect, or dependency case. N.C.G.S. 7B-310. Failure to report the above is a misdemeanor. N.C.G.S. 7B-301(b)

Children and Non-Accidental Trauma

Cases involving recurrent illness or serious physical injury to any child under the age of 18 years where the illness or injury appears, in the physician's professional judgment, to be the result of non-accidental trauma must be reported by the physician as soon as it becomes practicable before, during, or after completion of treatment. The report must be made by the physician to the chief of police or the police authorities of the city or town in which the hospital or other institution or place of treatment is located. If the hospital or other institution or place of treatment is located outside the corporate limits of a city or town, then the report must be made to the sheriff of the respective county or to one of the sheriff's deputies. This reporting requirement is in addition to the duty set forth in G.S. 7B-301 to report child abuse, neglect, dependence, or the death of any child as the result of maltreatment to the director of the department of social services in the county where the child resides or is found. N.C.G.S. 90-21.20(c1). Any physician involved in making a report, if done in good faith, will have immunity from civil or criminal liability. N.C.G.S. 90-21.20(d)

Communicable Diseases

A physician who has reason to suspect that a person about whom the physician has been consulted professionally has a communicable disease or communicable condition as set forth in 10A NCAC 41A .0101, must report information to the [local health director](#) of the county or district in which the physician is consulted. N.C.G.S. 130A-135. A physician who makes a report will be immune from any civil or criminal liability. N.C.G.S. 130A-142

Pursuant to 10A NCAC 41A .0101, the following diseases and conditions are declared to be dangerous to the public health and must be reported within the time period specified after the disease or condition is reasonably suspected to exist:

- (1) acquired immune deficiency syndrome (AIDS) - 24 hours;
- (2) anthrax - immediately;
- (3) botulism - immediately;
- (4) brucellosis - 7 days;
- (5) campylobacter infection - 24 hours;
- (6) Candida auris – 24 hours;
- (7) Carbapenem-Resistant Enterobacteriaceae (CRE) – 24 hours;
- (8) chancroid - 24 hours;
- (9) chikungunya virus infection - 24 hours;
- (10) chlamydial infection (laboratory confirmed) - 7 days;
- (11) cholera - 24 hours;
- (12) Creutzfeldt-Jakob disease – 7 days;
- (13) cryptosporidiosis - 24 hours;
- (14) cyclosporiasis - 24 hours;
- (15) dengue - 7 days;
- (16) diphtheria - 24 hours;
- (17) Escherichia coli, shiga toxin-producing - 24 hours;
- (18) ehrlichiosis -- 7 days;
- (19) encephalitis, arboviral - 7 days;
- (20) foodborne disease, including Clostridium perfringens, staphylococcal, Bacillus cereus, and other and unknown causes - 24 hours;
- (21) gonorrhea - 24 hours;
- (22) granuloma inguinale - 24 hours;
- (23) Haemophilus influenzae, invasive disease - 24 hours;
- (24) Hantavirus infection – 7 days;
- (25) Hemolytic-uremic syndrome – 24 hours;
- (26) Hemorrhagic fever virus infection – immediately;
- (27) hepatitis A - 24 hours;
- (28) hepatitis B - 24 hours;
- (29) hepatitis B carriage - 7 days;
- (30) hepatitis C, acute - 7 days;
- (31) human immunodeficiency virus (HIV) infection confirmed - 24 hours;
- (32) influenza virus infection causing death - 24 hours;
- (33) legionellosis - 7 days;
- (34) leprosy – 7 days;
- (35) leptospirosis - 7 days;
- (36) listeriosis – 24 hours;
- (37) Lyme disease - 7 days;
- (38) lymphogranuloma venereum - 7 days;
- (39) malaria - 7 days;

- (40) measles (rubeola) - 24 hours;
- (41) meningitis, pneumococcal - 7 days;
- (42) meningococcal disease - 24 hours;
- (43) Middle East respiratory syndrome (MERS) - 24 hours;
- (44) monkeypox – 24 hours;
- (45) mumps - 7 days;
- (46) nongonococcal urethritis - 7 days;
- (47) novel influenza virus infection – immediately;
- (48) plague - immediately;
- (49) paralytic poliomyelitis - 24 hours;
- (50) pelvic inflammatory disease – 7 days;
- (51) psittacosis - 7 days;
- (52) Q fever - 7 days;
- (53) rabies, human - 24 hours;
- (54) Rocky Mountain spotted fever - 7 days;
- (55) rubella - 24 hours;
- (56) rubella congenital syndrome - 7 days;
- (57) salmonellosis - 24 hours;
- (58) severe acute respiratory syndrome (SARS) – 24 hours;
- (59) shigellosis - 24 hours;
- (60) smallpox –immediately;
- (61) Staphylococcus aureus with reduced susceptibility to vancomycin – 24 hours;
- (62) streptococcal infection, Group A, invasive disease - 7 days;
- (63) syphilis - 24 hours;
- (64) tetanus - 7 days;
- (65) toxic shock syndrome - 7 days;
- (66) trichinosis -- - 7 days;
- (67) tuberculosis - 24 hours;
- (68) tularemia - immediately;
- (69) typhoid - 24 hours;
- (70) typhoid carriage (Salmonella typhi) - 7 days;
- (71) typhus, epidemic (louse-borne) - 7 days;
- (72) vaccinia – 24 hours;
- (73) vibrio infection (other than cholera) -- 24 hours;
- (74) whooping cough - 24 hours;
- (75) yellow fever - 7 days.

Reports of the diseases and conditions listed above must be made to the [local health director](#). The initial report must be made by telephone for diseases and conditions required to be reported within 24 hours. In addition, the report must also be made on the communicable disease report card or in an electronic format provided by the Division of Public Health and must include the name and address of the patient, the name and address of the parent or guardian if the patient is a minor, and epidemiologic information. This secondary report must be made within seven days.

Forms or electronic formats provided by the Division of Public Health for collection of information necessary for disease control and documentation of clinical and epidemiologic information about the cases shall be completed and submitted for the following reportable diseases and conditions:

- (A) acquired immune deficiency syndrome (AIDS);
- (B) brucellosis;
- (C) cholera;

- (D) cryptosporidiosis;
- (E) cyclosporiasis;
- (F) E. coli O157:H7 infection;
- (G) ehrlichiosis;
- (H) Haemophilus influenzae, invasive disease;
- (I) Hemolytic-uremic syndrome/thrombotic thrombocytopenic purpura;
- (J) hepatitis A;
- (K) hepatitis B;
- (L) hepatitis B carriage;
- (M) hepatitis C;
- (N) human immunodeficiency virus (HIV) confirmed;
- (O) legionellosis;
- (P) leptospirosis;
- (Q) Lyme disease;
- (R) malaria;
- (S) measles (rubeola);
- (T) meningitis, pneumococcal;
- (U) meningococcal disease;
- (V) mumps;
- (W) paralytic poliomyelitis;
- (X) psittacosis;
- (Y) Rocky Mountain spotted fever;
- (Z) rubella;
- (AA) rubella congenital syndrome;
- (BB) tetanus;
- (CC) toxic shock syndrome;
- (DD) trichinosis;
- (EE) tuberculosis;
- (FF) tularemia;
- (GG) typhoid;
- (HH) typhoid carriage (Salmonella typhi);
- (II) vibrio infection (other than cholera); and
- (JJ) whooping cough.

Communicable disease report cards, surveillance forms, and electronic formats are available from the Division of Public Health and from local health departments. 10A NCAC 41A .0102

[Communicable Disease Branch - Epidemiology Section](#)

North Carolina Department of Health and Human, Division of Public Health Services
 1902 Mail Service Center
 Raleigh, NC 27699-1902
 (p) 919.733.3419
 (f) (secure line) 919.715.4699

[Confidential Communicable Disease Report \(2016\)](#)

[NC Division of Public Health Communicable Disease Manual \(2019\)](#)

Communicable Disease with Special Requirements -- Hepatitis B

Pregnant women and donors of blood, plasma, platelets, other blood products, semen, ova, tissues, or organs must be tested for and reported to the [local health director](#) if positive for hepatitis B infection. 10A NCAC 41A .0203(d). The attending physician of a child who is infected with hepatitis B virus and who may pose a significant

risk of transmission in the school or day care setting because of open, oozing wounds or because of behavioral abnormalities such as biting must notify the [local health director](#). 10A NCAC 41A .0203(e)

[Confidential Communicable Disease Report - Hepatitis B, Carrier \(2012\)](#)

Communicable Disease with Special Requirements -- HIV

The attending physician must notify the local health director when the physician, in good faith, has reasonable cause to suspect a patient infected with HIV is not following or cannot follow control measures and is thereby causing a significant risk of transmission. 10A NCAC 41A .0202(5). Furthermore, the attending physician of a child who is infected with HIV and who may pose a significant risk of transmission in the school or day care setting because of open, oozing wounds or because of behavioral abnormalities such as biting must notify the [local health director](#). 10A NCAC 41A .0202(3). In addition to the reporting requirements already set forth for the HIV patient, if the attending physician knows the identity of the spouse of an HIV- infected patient and has not, with the consent of the infected patient, notified and counseled the spouse, the physician must list the spouse on a form provided by the Division of Public Health and shall mail the form to the Division. 10A NCAC 41A .0202(2).

[Communicable Disease Branch - Epidemiology Section](#)

North Carolina Department of Health and Human Services, Division of Public Health
1902 Mail Service Center
Raleigh, NC 27699-1902
(p) 919.733.3419
(f) 919.733.0490
(f) 919.715.4699 (secure line)

[HIV/AIDS Reporting Information \(2018\)](#)

Criminal Activity

Cases of wounds, injuries or illnesses which must be reported by physicians include every case of a bullet wound, gunshot wound, powder burn or any other injury arising from or caused by, or appearing to arise from or be caused by, the discharge of a gun or firearm, every case of illness apparently caused by poisoning, every case of a wound or injury caused, or apparently caused, by a knife or sharp or pointed instrument if it appears to the treating physician that a criminal act was involved, and every case of a wound, injury or illness in which there is grave bodily harm or grave illness if it appears that the wound, injury or illness resulted from a criminal act of violence. N.C.G.S. 90-21.20(b)

Such cases of wounds, injuries or illnesses must be reported as soon as practicable before, during or after completion of treatment. The report must be made by the treating physician to the chief of police or the police authorities of the city or town of this State in which the hospital or other institution, or place of treatment is located. If such hospital or other institution or place of treatment is located outside the corporate limits of a city or town, then the report must be made to the sheriff of the respective county or to one of his deputies. N.C.G.S. 90-21.20(a). Each report must state the name of the wounded, ill or injured person, if known, and the age, sex, race, residence or present location, if known, and the character and extent of his injuries. N.C.G.S. 90-21.20(c). Any physician participating in good faith in the making of a report shall have immunity from civil or criminal liability. N.C.G.S. 90-21.20(d)

Disabled Adults

Any physician having reasonable cause to believe that a disabled adult is in need of protective services must report this information to the [director of the county department of social services](#). The report may be made orally or in writing. The report shall include the name and address of the disabled adult; the name and address of the disabled adult's caretaker; the age of the disabled adult; the nature and extent of the disabled adult's injury or condition resulting from abuse or neglect; and other pertinent information. N.C.G.S. 108A-102

Any physician who makes a report pursuant to this statute, who testifies in any judicial proceeding arising from the report, or who participates in a required evaluation shall be immune from any civil or criminal liability unless found to be acting maliciously or in bad faith. N.C.G.S. 108A-102(c)

Dispensing Physicians

Physicians who dispense any controlled substances are required to submit prescription information to the North Carolina Controlled Substance Reporting System. Dispensing physicians shall report the dispenser's DEA number, the name of the patient for whom the controlled substances is being dispensed, the patient's full address, telephone number and date of birth, the date the prescription was written, the date the prescription was filled, the prescription number, whether the prescription is new or a refill, estimated days of supply of dispensed drug, the National Drug Code of the dispensed drug, the prescriber's DEA number, the prescriber's national provider identification number, and the method of payment. There are two exceptions where reporting is not required: (1) When the controlled substance is provided directly to the ultimate user and the quantity does not exceed a 48-hour supply; and (2) When a non-narcotic, non-anorectic Schedule V controlled substances is provided directly to the ultimate user for the purposes of assessing a therapeutic response when prescribed according to indications approved by the FDA.

Dispensers are encouraged to report prescription information no later than 24 hours after delivery of the prescription. N.C.G.S. 90-113.73. Unless the Department of Health and Human Services specifically approves a paper submission, the prescription information should be submitted electronically in the American Society for Automation in Pharmacy Telecommunication Format for Controlled Substances. Electronic transmissions must also meet data protection requirements under the Health Insurance Portability and Accountability Act. 10A NCAC 26E .0603.

[North Carolina Controlled Substances Reporting System](#)

Occupational Illness or Disease

A North Carolina physician treating a person for an occupational injury occurring while working on a farm or for an occupational disease or illness listed below must report the information to the Department of Health and Human Services. A physician who reports in good faith will be immune from civil liability. N.C.G.S. 130A-459

Under 10A NCAC 41C .0702, the following diseases, illnesses, and injuries are declared to be dangerous to the public health and must be reported within the time period specified after the disease, illness, and injury is diagnosed:

- (1) asbestosis – 15 working days;
- (2) silicosis – 15 working days;
- (3) elevated blood lead levels for adults aged 18 years of age and above – 15 working days;
- (4) injuries caused by tractors, farm equipment, or farm machinery that occur while working on a farm and require medical care – 15 working days;
- (5) carbon monoxide poisoning - 15 working days.

When a physician makes a report of a disease, illness, injury, or elevated blood lead level pursuant to G.S. 130A-456, the report must be made to the Occupational Health Section. 10A NCAC 41C .0703

[Occupational and Environmental Epidemiology Branch - Occupational Health](#)

North Carolina Department of Health and Human Services, Division of Public Health
1912 Mail Service Center
Raleigh, NC 27699-1912
(p) 919.733.1145

(f) 919.733.9555

[Report of Occupational Illness or Injury \(2002\)](#)

Pesticide-Related Illness or Injury

Physicians must report the following pesticide-related illness or injuries that are considered harmful to the public's health within the time period specified after the illness or injury is diagnosed: (1) acute pesticide-related illness or injury – 48 hours; (2) acute pesticide-related illness or injury resulting in death – immediately. 10A NCAC 41F .0102

A report of a pesticide-related illness or injury may be submitted in one of three ways. A physician may call the Carolinas Poison Center at 1.800.222.1222 or call the Occupational and Environmental Epidemiology Branch at 1.800.200.7090 or 1.919.707.5900. Alternatively, a physician may fax or mail the reporting form to:

[Occupational and Environmental Epidemiology Branch - Pesticides & Health](#)

North Carolina Department of Health and Human Services, Division of Public Health

1912 Mail Service Center

Raleigh, NC 27699-1912

(f) 919.870.4807

[Report of Acute Pesticide-Related Illness or Injury Form \(2009\)](#)

Smallpox Vaccination Irregularities

The attending physician of a person vaccinated against smallpox must report to the [local health director](#) the existence of any autoinoculation, generalized vaccinia, eczema vaccinatum, progressive vaccinia, and/or post vaccination encephalitis. The report must be made to the local health department within 24 hours. 10A NCAC 41A .0208

Death

A physician is required to notify the County Medical Examiner of certain deaths. Upon the death of any person resulting from violence, poisoning, accident, suicide or homicide; occurring suddenly when the deceased had been in apparent good health or when unattended by a physician; occurring in a jail, prison, correctional institution or in police custody; or occurring under any suspicious, unusual or unnatural circumstance, the medical examiner of the county in which the body of the deceased is found shall be notified by a physician in attendance, hospital employee, law-enforcement officer, funeral home employee, emergency medical technician, relative or by any other person having suspicion of such a death. N.C.G.S. 130A-383

Deaths Involving Communicable Disease Must Be Reported to Funeral Workers

A physician attending any person who dies and is known to have smallpox, plague, HIV infection, hepatitis B infection, rabies, or Jakob-Creutzfeldt is required to provide written notification to all individuals handling the body with the proper precautions to prevent infection. This written notification must be provided to funeral service personnel at the time the body is removed from any hospital, nursing home, or other health care facility. When the patient dies in a location other than a health care facility, the attending physician must notify the funeral service personnel verbally of the following precautions as soon as the physician becomes aware of the death. Persons handling bodies of persons who died and were known to have HIV infection, hepatitis B infection, Jakob-Creutzfeldt, or rabies shall be provided written notification to observe blood and body fluid precautions. N.C.G.S. 130A-395

Fetal Death (Spontaneous)

Each spontaneous fetal death occurring in the state at 20 or more completed weeks gestation, as calculated from the first day of the last normal menstrual period until the day of delivery, must be reported within 10 days after delivery to the local registrar of the county in which the delivery occurred. The report shall be made on a

form prescribed and furnished by the State Registrar. When a fetal death occurs outside of a hospital or other medical facility, the physician in attendance at or immediately after the delivery shall prepare and file the report. When a fetal death is attended by a person authorized to attend childbirth, the supervising physician shall prepare and file the report. Fetal deaths attended by lay midwives shall be treated as deaths without medical attendance and the medical examiner should prepare and file the report. N.C.G.S. 130A-114

Maternal Death

Physicians will provide the Maternal Mortality Review Committee reasonable access to all relevant medical records associated with cases under review by the Committee. N.C.G.S. 130A-33.60(d)

Miscarriages or Abortions

Physicians who advise, procure, or cause a miscarriage or abortion after the sixteenth week of a woman's pregnancy must report to the North Carolina Department of Health and Human Services (DHHS) (1) the method used to determine the probable gestational age of the unborn child at the time the procedure is performed, and (2) the results of the method used, including the measurements of the unborn child and the ultrasound image that depicts the measurements. Physicians who procure or cause a miscarriage or abortion after the twentieth week of a woman's pregnancy must report to DHHS the findings and analysis on which the physician based the determination of the existence of a medical emergency. N.C.G.S. 14-45.1(b1)

Nuclear, Biological or Chemical Weapons

A health care professional must report that a condition or illness was caused by the use of a nuclear, biological or chemical weapon of mass destruction to the State Health Director (919.707.5000) or a [local health director](#). N.C.G.S. 130A-476. A health care professional acting in good faith and without malice in disclosing this information is immune from civil or criminal liability. In any proceeding involving liability, good faith and lack of malice are presumed. However, if a health care provider willfully withholds information, the immunity from civil or criminal liability is not available if the health care professional had actual knowledge that a condition or illness was caused by use of a nuclear, biological, or chemical weapon of mass destruction as defined in N.C.G.S. 14-288.21(c).

HIV/HEP-B in Health Care Workers

All health care workers who perform or assist in surgical or obstetrical procedures or dental procedures and who know they are infected with HIV or hepatitis B are required to notify the State Health Director. The notification must be made in writing to the Chief, Communicable Disease Control Branch, 1902 Mail Service Center, Raleigh, NC 27699-1902. 10A NCAC 41A .0207(b)

Harm to Mentally Ill, Developmentally Disabled, or Substance Abusers

Although this reporting requirement does not necessarily involve the disclosure of confidential patient information, it is a mandatory reporting requirement and, therefore, included here. Health care providers who are employed or volunteer at a facility that provides care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers, are required to report certain criminal violations. Providers who witness any sexual offenses or offenses against morality committed against a client must report the offense within twenty-four (24) hours to one of the following: (1) the county department of social services, (2) the city or county district attorney, or (3) the appropriate local law enforcement agency. Failure to report is a Class A1 misdemeanor. N.C.G.S. 122C-66 (b1)

Threats of Self Harm or Harm to Another

In North Carolina, there is no duty to report threats of self harm or harm to others, unless the physician has "control" over the patient. However, threats of serious physical harm to oneself or to another should be taken very seriously. When there is a reasonable probability that the patient may carry out such a threat, the physician should take reasonable precautions for the protection of the intended victim, which may include notification of

law enforcement authorities. *AMA Principles of Medical Ethics, Opinions on Privacy, Confidentiality & Medical Records*, 3.2.1.

The case of *Tarasoff v. Regents of the University of California* took this ethical principle and imposed an affirmative duty of health care providers to break confidentiality and warn third parties when a client threatens imminent harm against another person. This affirmative duty, sometimes referred to as the *Tarasoff* duty, is not wholly accepted in North Carolina. As a general rule, there is no affirmative duty to protect others from harm from third parties. *Gregory v. Kilbride*, 150 N.C. App. 601 (2002). However, North Carolina courts have imposed an affirmative duty on physicians when a physician, during the course of treatment of a mental patient, has “control” over the patient. See *Pangburn v. Dr. M. Saad and Dr. E.V. Maynard*, 73 N.C. App. 336 (1985). Specifically, in this case, physicians were held liable because they released a mental patient that had been involuntarily committed. The patient had made threats of harm both to himself and others. He carried out those threats on another person immediately after his release.

Statutory requirements only require discretionary reporting. Responsible professionals, working at facilities that primarily provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers, may disclose confidential information when, in their opinion, there is an imminent danger to the health or safety of the client or another individual. N.C.G.S. 122C-55(d)

DISCRETIONARY REPORTING

Adverse Drug and Device Events

A physician, who suspects the occurrence of an adverse reaction to a drug or medical device, has an ethical obligation to report such events to the proper authorities or through a report or letter to a medical journal. When such an adverse event is serious, the Food and Drug Administration (FDA) should be notified. Serious adverse events include death, hospitalization, or medical or surgical intervention. Mere suspicion of a relationship between the drug or medical device and the serious adverse event will suffice to participate in the reporting system. *AMA Principles of Medical Ethics, Opinions on Physicians & the Health of the Community*, 8.8

[MedWatch](#)

The FDA Safety Information and Adverse Event Reporting Program
Food and Drug Administration (FDA)
5600 Fishers Lane
Rockville, MD 20852-9787

[FDA Safety Information and Adverse Event Reporting Form](#)

Impairment Affecting Driving

A physician may report, after consultation with the patient, information about a patient who has a mental or physical disability that the physician believes may affect the patient's ability to safely operate a motor vehicle to the Commissioner of Motor Vehicles. N.C.G.S. 20-9.1(a)

A physician disclosing or not disclosing information pursuant to this section is immune from any civil or criminal liability that might otherwise be incurred or imposed based on the disclosure or lack of disclosure provided that the physician was acting in good faith and without malice. In any proceeding involving liability, good faith and lack of malice are presumed. N.C.G.S. 20-9.1(c)

North Carolina Department of Transportation, Division of Motor Vehicles
1100 New Bern Ave Raleigh, NC 27697
919.715.7000

Impairment Affecting Pilots

A physician who reports to the Federal Aviation Administration (1.866.TELL.FAA) that a pilot or an applicant for a pilot's license suffers from or probably suffers from a physical disability or infirmity that the physician believes will or reasonably could affect the person's ability to safely operate an aircraft shall have immunity, civil or criminal, that might otherwise be imposed. A physician who testifies about a pilot's or an applicant's mental or physical disability or infirmity in any related administrative proceeding will also be immune from civil or criminal liability. N.C.G.S. 90-21.20A

Trends Suggesting Nuclear, Biological or Chemical Weapons

A health care provider, a person in charge of a health care facility, or a unit of State or local government may report to the State Health Director (919.707.5000) or a [local health director](#) any events that may indicate the existence of a case or outbreak of an illness, condition, or health hazard that may have been caused by a terrorist incident using nuclear, biological, or chemical agents. Events that may be reported include unusual types or numbers of symptoms or illnesses, unusual trends in health care visits, or unusual trends in prescriptions or purchases of over-the-counter pharmaceuticals. To the extent practicable, a person who makes a report under this subsection shall not disclose personally identifiable information. N.C.G.S. 130A-476

A physician disclosing or not disclosing such information is immune from any civil or criminal liability that might otherwise be incurred or imposed based on the disclosure or lack of disclosure provided that the health care provider was acting in good faith and without malice. In any proceeding involving liability, good faith and lack of malice are presumed. However, if a health care provider willfully does not disclose such information, the immunity from civil or criminal liability shall not be available if the person had actual knowledge that a condition or illness was caused by use of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21(c).

ADDITIONAL GUIDANCE ON CONFIDENTIALITY

For additional guidance regarding the ethical principles of confidentiality and patient privacy, relevant provisions of the American Medical Association's Code of Medical Ethics are outlined below.

Confidentiality

The principle of patient confidentiality not only enables a patient to feel secure in the information shared during the physician-patient relationship, but it also allows the physician to provide effective care. The trust that is established between a patient and physician should not be broken without the express consent of the patient. However, as discussed above, some exceptions exist which are justified because of risks to others. In the event that confidential information is disclosed as required by law or court order, the physician should generally notify the patient. Physicians should only disclose the minimal information as required by law and they should always advocate for the protection of confidential information. *AMA Principles of Medical Ethics, Opinions on Privacy, Confidentiality & Medical Records*, 3.2.1

Autopsy Results

When a family member or guardian consents to an autopsy, a physician may disclose autopsy results to those that granted consent to the procedure. *AMA Principles of Medical Ethics, Opinions on Privacy, Confidentiality & Medical Records*, 3.2.2. In North Carolina, official autopsy reports are public record. N.C.G.S. 132-1.8

Medical Information Postmortem

Confidentiality does not cease when a patient dies. All medically related confidences disclosed by a patient to a physician and information contained within a deceased patient's medical record, including information entered postmortem, should be kept confidential to the greatest possible degree. However, as discussed above, some exceptions exist which are justified because of risks to others. Physicians may disclose confidential patient

information after death only (1) with patient's explicit consent; (2) when required by law; (3) to prevent harm to or to benefit, identifiable individuals or the community; or (4) for medical research and education if the patient's identity is removed.

When disclosing information, physicians should consider the effect on the patient's reputation and restrict disclosures to the minimum necessary information. *AMA Principles of Medical Ethics, Opinions on Privacy, Confidentiality & Medical Records, 3.2.2*

Fifty years after the date of the patient's death, patient health information is no longer protected by HIPAA in order to balance the privacy of the patient and their family with the need of historical accounting. See [Health Information of Deceased Individuals](#).

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

The Health Insurance Portability and Accountability Act (HIPAA) privacy rule addresses the use and disclosure of a patient's confidential health information. Under HIPAA this information is called protected health information ("PHI"). Generally, a healthcare provider may not use or disclose PHI without the patient's written authorization. However, the HIPAA privacy rule permits a number of uses and disclosures without written authorization.

Mandatory Disclosure Requirements under HIPAA

Under the HIPAA privacy rule, there are two mandatory disclosure requirements. Healthcare providers are required to disclose PHI (1) to patients, or their personal representative, upon specific request and (2) to the U.S. Department of Health and Human Services when it is investigating, reviewing, or enforcing HIPAA compliance. 45 C.F.R. 164.502(a)(2)

Permitted Disclosures under HIPAA

The HIPAA privacy rule also permits certain disclosures of PHI without a patient's written authorization. 45 C.F.R. 164.512. Some of these disclosures include:

- (1) **When the disclosure is required by law.** This would include the mandatory reporting requirements under North Carolina law listed above. Disclosure should be limited to the relevant requirements of the applicable law. For disclosures related to victims of abuse, judicial or administrative proceedings, or law enforcement purposes, healthcare providers will need to meet further requirements discussed below.
- (2) **Uses and disclosures for public health activities.** HIPAA permits the disclosure of confidential health information to public health authorities who are legally authorized to receive information in order to prevent or control diseases, injuries or disabilities. Public health authorities would include local and state health departments, the Food and Drug Administration (FDA), the Centers for Disease Control and Prevention (CDC) and the Occupational Safety and Health Administration (OSHA). Examples of permitted disclosures would include reporting diseases or injuries that may endanger the general public, vital events, such as births or deaths, child abuse and neglect, or the safety or effectiveness of FDA regulated products. See [Permitted Uses and Disclosures: Exchange for Public Health Activities](#) for additional guidance.
- (3) **Disclosures about victims of abuse, neglect or domestic violence.** Healthcare providers may disclose confidential information about individuals the provider reasonably believes to be a victim of abuse, neglect or domestic violence. Healthcare providers can only report adult victims with the adult's consent unless the disclosure is otherwise required by law. If consent is not required by law, the provider must notify the adult victim or the victim's personal representative of the disclosure unless it would place the individual at risk of serious harm. For victims of child abuse or neglect, consent is not required.
- (4) **Uses and disclosures for health oversight activities.** Healthcare providers may disclose PHI to healthcare oversight agencies for oversight activities authorized by law, including audits; civil, administrative, or

criminal investigations, proceedings, or actions; inspections; licensure or disciplinary actions; health care system oversight; oversight of government benefit programs; oversight of regulatory and civil rights compliance. The North Carolina Medical Board is considered a health oversight agency under this section. See [Permitted Uses and Disclosures: Exchange for Health Oversight Activities](#) for additional guidance.

- (5) **Disclosures for judicial and administrative proceedings.** Healthcare providers may disclose information if the PHI is requested through a court or administrative tribunal order. PHI may also be disclosed pursuant to a subpoena or other lawful process if certain conditions are met. This includes receiving a satisfactory assurance that the party seeking information made reasonable efforts to either give the patient notice of the request or obtain a protective order. See [Court Orders and Subpoenas](#) for additional guidance.
- (6) **Uses and Disclosures for law enforcement purposes.** There are six circumstances where disclosure to law enforcement is permitted: (1) as required by law (including court orders, warrants and subpoenas) and administrative requests; (2) to identify or locate suspects, fugitives, material witnesses or missing persons; (3) regarding victims of crimes; (4) where the provider has a suspicion that criminal conduct was the cause of death of an individual; (5) where the provider believes in good faith that PHI constitutes evidence of criminal conduct that occurred on the premises; (6) when reporting a crime in an emergency. Conditions, such as the type of PHI disclosed, may apply. See [A Guide for Law Enforcement](#) for additional guidance.
- (7) **Uses and disclosures about decedents.** PHI may be disclosed as needed to funeral directors. In addition, coroners and medical examiners may require access to PHI to identify the deceased, determine the cause of death and perform other functions authorized by law.
- (8) **Uses and disclosures for cadaveric organ, eye or tissue donations.** Healthcare providers may use or disclose PHI to facilitate organ, eye or tissue donation and transplantation.
- (9) **Uses and disclosures for research purposes.** The use and disclosure of PHI for research requires the Healthcare provider to obtain either a waiver or representation by the researcher that the use of the PHI meets certain criteria. For more information see [Protecting Personal Health Information in Research: Understanding the HIPAA Privacy Rule](#).
- (10) **Uses and disclosures to avert a serious threat to health and safety.** Healthcare providers may disclose PHI to someone they believe can prevent or lessen serious or imminent threats to a person or the public. This would include disclosing PHI to the target of the threat.
- (11) **Uses and disclosures for specialized government functions.** Examples of specialized government functions include military missions, intelligence and national security activities authorized by law, protective services for the President, medical suitability determinations for U.S. State Department employees, protecting the health and safety of inmates and correctional institution employees, and enrollment in government benefit programs.
- (12) **Disclosures for workers' compensation.** PHI may be disclosed to comply with workers' compensation laws and other similar benefit programs for work-related injuries or illnesses. See [Workers' Compensation](#) for additional guidance.

In all circumstances, the healthcare provider should reasonably limit the disclosure of confidential information to the minimum necessary to accomplish the purpose of the permitted disclosure. Notice to the patient of the disclosure may also be required. Prior to any permissible use or disclosure, healthcare providers should carefully review the privacy rule to ensure that all conditions are met. For more information see [Summary of the HIPAA Privacy Rule](#).