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To: Quality Assurance Officers/EMS Operational Programs
Regional Administrators/MIEMSS

From: Sarah M. Sette 
Assistant Attorney General

Re: EMS and Social Media

Date: May 30, 2013

The purpose of this memo is to provide general information concerning the use of pictures of patients, the scene of a medical emergency, medical records or other images related to the practice of emergency medical services by emergency medical services (EMS) providers in social media and any legal implications of such conduct.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), establishes the federal standards for privacy of health information and addresses photographs and other patient imagery. Under HIPAA, health information which identifies an individual is protected from unauthorized disclosure. Code of Federal Regulations (CFR) Section 160.103 defines such information as follows:

Individually identifiable health information is information that is a subset of health information, including demographic information collected from an individual, and:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

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(i) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

This definition includes photographs of patients taken by EMS providers if the patient can be identified, whether directly through their features, or indirectly through unique clothing or a license plate or the nature of the particular injury or motor vehicle crash or event. Similarly, a photograph of a medical record such as EKG, or a unique injury or treatment, might also be susceptible to being linked to a specific patient.

Accordingly, distributing such a photograph, whether via email, by posting it on Facebook, or through other media, may be an unauthorized disclosure of protected health information and violate HIPAA.

HIPAA provides for the following penalties for wrongful disclosure:

42USC1320d-5 General penalty for failure to comply with requirements and standards

(a) General penalty

(1) In general

Except as provided in subsection (b), the Secretary shall impose on any person who violates a provision of this part a penalty of not more than \$100 for each such violation, except that the total amount imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed \$25,000.

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42USC1320d-6 Wrongful disclosure of individually identifiable health information

(a) Offense

A person who knowingly and in violation of this part-

- (1) uses or causes to be used a unique health identifier;
- (2) obtains individually identifiable health information relating to an individual;
- or
- (3) discloses individually identifiable health information to another person,

shall be punished as provided in subsection (b).

(b) Penalties

A person described in subsection (a) shall-

- (1) be fined not more than \$50,000, imprisoned not more than 1 year, or both;
- (2) if the offense is committed under false pretenses, be fined not more than \$100,000, imprisoned not more than 5 years, or both; and
- (3) if the offense is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, be fined not more than \$250,000, imprisoned not more than 10 years, or both.

In addition to the federal standards in HIPAA, Maryland has its own law regarding the confidentiality of medical records found in Health General Article, Sections 4-301, et seq., Annotated Code of Maryland. EMS providers and other health care providers may not improperly disclose any medical record, including an EKG or other document disclosing condition or treatment. Penalties for violation of this law may include fines up to \$250,000 and imprisonment, in addition to civil liability.

Additionally, publication of such pictures on social media websites or other distribution of such photographs by EMS providers may constitute prohibited conduct under COMAR 30.02.04.01 and subject an EMS provider to discipline by the EMS Board whether the patient is identifiable or not. The EMS Board has previously found such actions to be unprofessional conduct and the basis for disciplinary actions against EMS providers.

Within this legal framework, individual EMS operational programs may develop policies for social media use that are appropriate to their program and the community they serve.

I hope this information is of assistance. Please feel free to contact me if you need further information.