



COVID-19 FOR COPS

Local BOH & Dispatch May Legally Communicate Specific Health Information To Promote 1st Responder Safety

Issued April 1, 2020 — May be copied and circulated without limitation

A Massachusetts police chief asks: "John, [can] you confirm your opinion about the BOH notifying us of identity and address. They believe that at most they can only give us [an] address. It is still a struggle getting information from them. I run a Regional PSAP, as well as being Chief, and they refuse to give me information on the other town we dispatch for."

Please provide my response to any official or citizen who needs to be informed.

- **Massachusetts law — specifically 105 CMR 300.120(A) — allows the communication of personal health information to first responders dealing with COVID-19.** 105 CMR 300.120(A) is a Department of Public Health (DPH) regulation with the force of law at all times — not to mention during a state and national emergency declared by the Governor and President. Here is the exact language with the key phrases highlighted in purple:

105 CMR 300.120: Confidentiality (A) All confidential personally identifying information, whether kept in an electronic system or paper format, including but not limited to, reports of disease, records of interviews, written or electronic reports, statements, notes, and memoranda, about any individual that is reported to or collected by the Department or local boards of health pursuant to 105 CMR 300.000, shall be protected by persons with knowledge of this information. Except when necessary for the Commonwealth's or local jurisdiction's disease investigation, control, treatment and prevention purposes, or for studies and research authorized by the commissioner pursuant to M.G.L. c. 111, § 24A, **the Department and local boards of health shall not disclose any personally identifying information without the individual's written consent.**

- **The simple meaning of the highlighted purple language:** If necessary for a local jurisdiction's efforts to control, treat, and prevent disease, a board of health (BOH) may disclose personal information (name, address, etc.). This is the exact position of the Massachusetts Association of Health Boards (MAHB), which is the statewide organization that provides technical assistance to local BOHs throughout the Commonwealth.¹

¹ This appears in a recent written, but undated, memorandum from MAHB concerning "COVID-19."

- **What could be more fundamental to control, prevent, and treat COVID-19 than letting first responders know exactly when, where, and with whom they are at risk?** This is the obvious meaning of 105 CMR 300.120(A). Also see G.L. c. 111, § 104.²

Note: Some local health officials are confused by a memorandum from the DPH Commissioner on March 18, which mentions addresses only. However, the purpose of that memorandum was to establish a *minimum disclosure* requirement. DPH officials acknowledge that local BOHs can disclose specific names and other information pursuant to 105 CMR 300.120(A).³

- **Federal law also allows the communication of personal health information to deal with COVID-19.** In February 2020, the U.S. Dept. of Health and Human Services, Office of Civil Rights, printed *BULLETIN: HIPAA Privacy and Novel Coronavirus*. It stated:

Disclosures to Prevent a Serious and Imminent Health Threat [1] Care providers may share patient information with anyone as necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public – consistent with applicable law (such as state statutes, regulations, or case law) and the provider's standards of ethical conduct. See 45 CFR 164.512(j). Thus, [2] providers may disclose a patient's health information to anyone who is in a position to prevent or lessen the serious and imminent threat, including family, friends, caregivers, and law enforcement without a patient's permission. HIPAA expressly defers to the professional judgment of health professionals in making determinations about the nature and severity of the threat to health and safety.

- **Full disclosure to first responders is legal and manifestly ethical.** As mentioned above, HIPAA disclosure is consistent with Massachusetts law [105 CMR 300.120(A)] and federal law [45 CFR 164.512(j)]. And disclosure is consistent with — indeed, the embodiment of — the highest ethical standards for health care officials and providers who vow, first and foremost, to “do no harm.”⁴

² This old but still valid statute (111, § 104) states: “If a disease dangerous to the public health exists in a town, the selectmen and board of health shall use all possible care to prevent the spread of the infection and may give public notice of infected places by such means as in their judgment may be most effectual for the common safety.” [emphasis added]. Notice how this statute talks about *public notice* for places, while 105 CMR 300.120 applies to all personal information necessary for people involved, like first responders, who are actively at risk and must actively control and prevent the spread of disease.

³ The contents of this bulletin have been reviewed by DPH.

⁴See Wikipedia — “Hippocratic Oath.”

911 Center COVID-19 Screening for ALL Calls for Service

The International Public Safety Association (IPSA) — www.joinipsa.org — presented Fairfax County, Virginia's Public Safety Communications screening questions for all calls.⁵

❖ **Does the patient or anyone else on scene have any of these symptoms?**

- ✓ Measured body temperature of 100.4 or higher.
- ✓ Fever (hot to the touch in room temperature).
- ✓ Chills.
- ✓ Difficulty breathing or shortness of breath.
- ✓ Persistent cough.
- ✓ Any new respiratory problems (e.g., sneezing, wheezing, congestion, etc.).

❖ **Has the patient or anyone else on scene traveled outside the United States in the past 14 days?**

❖ **Has the patient or anyone else on scene been exposed to someone with COVID-19?**

If **any symptom + international travel or exposure to person with COVID-19, then click INFECTIOUS DISEASE button and list symptom(s) in CAD.**

May communicate any information over the air that is necessary for a safe response. 105 CMR 300.120(A).

Law enforcement pre-arrival instructions

- ✓ Direct involved parties to come outside the residence/office to meet responding officer. (Goal is to meet subjects outside in open air to minimize exposure.)

Medical pre-arrival instructions

- ✓ Keep the patient/subject isolated. Do not allow anyone to come in close contact.
- ✓ Enter call for dispatch according to EMD protocol or event type.

⁵ Edited for readability and Massachusetts law by John Sofis Scheft, Esq.