

Confidentiality, Release of Information and Management of VHA Medical Record Information in the Courts

A Panel Presentation

Loretta A. Coonan, LCSW, Veterans Justice Outreach

Stephania H. Griffin, JD, VHA Privacy Officer

**Judge David Shakes, Colorado Springs Veterans Court, 4th Judicial
District, El Paso County**

Overview of Panel Discussion (LC)

- What a Veterans Court Judge Needs to Know – *Judge Shakes*
- Federal Laws regarding Release of Information – *Stephania Griffin*
- VHA Guidelines on Release of Information – *Stephania Griffin*
- The Role of the VJO and communication of VHA information to the court – *Loretta Coonan*
- Special Issues in Court Programs (Training or Mentor Court Sessions) *Loretta Coonan, Judge Shakes*
- Other Sources of Requests for Medical Record Information from the Legal System – *Loretta Coonan, Judge Shakes*
- Review of Do's and Don'ts – *Stephania Griffin and Loretta Coonan*
- Questions from the Field – *moderated by Loretta Coonan*

What Courts Need to Know (JDS)

- Types of clinical information most needed in Veterans Court
- Barriers Courts Face when requesting medical record information

Federal Statutes on Privacy and Release of information (SG)

- **Freedom of Information Act (FOIA), 5 U.S.C. 552** - provides for disclosure of information *unless* the information is clearly exempted from disclosure by law.
- **The Privacy Act, 5 U.S.C. 552a** - protects from disclosure any VA records about an individual which are retrieved by that individual's name or other identifiers.
- **38 U.S.C. 5701** – protects VA beneficiary names and addresses.
- **38 U.S.C. 7332** – protects from disclosure records which reveal identity, prognosis or treatment relating to drug abuse, alcohol, HIV / AIDS, and sickle cell anemia.
- **HIPAA, 45 C.F.R. 160 and 164** - Protects the privacy of individually identifiable health information and sets standards for the security of electronic health information.

38 U.S.C. 7332

§7332 applies if:


- (1) Identity of patient known,
- (2) identity connected with drug/alcohol abuse, sickle cell, and HIV/ AIDS,
- (3) records created in providing treatment/ counseling.

These records may not be released unless there is a special written consent or an exemption under the statute.

The records may be disclosed if:

- (1) it is beneficial to the patient
- (2) the patient gave consent freely, or
- (3) there is no harm to provision of treatment.
- §7332 compliant court order. See 38 C.F.R. 1.490 and 1.494

- **38 U.S.C. 7332** - Applies to records which reveal identity, prognosis or treatment relating to drug abuse, alcohol, HIV / AIDS, and sickle cell anemia.



HIPAA, 45 C.F.R. 160 and 164

Individually identifiable health information – information that:

- (1) is created or received from a health care provider;
 - (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
 - (3) identifies or reasonably could be used to identify the individual
- § 160.103.

- **HIPAA, 45 C.F.R. 160 and 164** - Protects the privacy of individually identifiable health information and sets standards for the security of electronic health information.

VHA Guidelines on ROI (SG)

- VHA must have the signed, written authorization from the Veteran before it may disclose health information to the court at the pre-hearing meeting or any other court-related meeting regarding the Veteran.
- If guests of the court will participate in the meetings, the signed written authorization must explicitly encompass the disclosure of health information to those individuals as well.



VHA Guidelines on ROI

- VHA staff may use VA Form 10-5345, Request for and Authorization to Release Medical Records or Health Information, to obtain the Veteran's signed, written authorization and its HIPAA-compliant.
- VHA staff may fill in or overprint VA Form 10-5345 to ensure consistency in the completion of the form.
- The Veteran must check the boxes related to Drug Abuse and Alcoholism or Alcohol Abuse in order to authorize the disclosure of this specific health information. [Required by 38 U.S.C. 7332]
- VHA may not condition treatment or benefits on the Veteran signing the VA Form 10-5345.

VA Form 10-5345

| Department of Veterans Affairs | | REQUEST FOR AND AUTHORIZATION TO RELEASE HEALTH INFORMATION | |
|---|--|---|---------------|
| <small>PRIVACY ACT INFORMATION: The execution of this form does not authorize the release of information other than that specifically described below. The information requested on this form is solicited under Title 38 U.S.C. The form authorizes release of information in accordance with the Health Insurance Portability and Accountability Act, 45 CFR Parts 160 and 164; 5 U.S.C. 552a; and 38 U.S.C. 5701 and 7332 that you specify. Your disclosure of the information requested on this form is voluntary. However, if the information including the last four of your Social Security Number (SSN) and Date of Birth (used to locate records for release) is not furnished completely and accurately, VA will be unable to comply with the request. The Veterans Health Administration may not condition treatment, payment, enrollment or eligibility on signing the authorization. VA may disclose the information that you put on the form as permitted by law. VHA may make a "routine use" disclosure of the information as outlined in the Privacy Act system of records notices identified as 24VA10P2 "Patient Medical Record - VA" and in accordance with the VHA Notice of Privacy Practices. VA may also use this information to identify Veterans and persons claiming or receiving VA benefits and their records, and for other purposes authorized or required by law.</small> | | | |
| TO: DEPARTMENT OF VETERANS AFFAIRS (Name and Address of VA Health Care Facility) | | | |
| LAST NAME- FIRST NAME- MIDDLE INITIAL | | LAST 4 SSN | DATE OF BIRTH |
| NAME AND ADDRESS OF ORGANIZATION, INDIVIDUAL, OR TITLE OF INDIVIDUAL TO WHOM INFORMATION IS TO BE RELEASED | | | |
| VETERAN'S REQUEST | | | |
| I request and authorize Department of Veterans Affairs to release the information specified below to the organization, or individual named on this request. I understand that the information to be released includes information regarding the following condition(s): | | | |
| <input type="checkbox"/> DRUG ABUSE <input type="checkbox"/> SICKLE CELL ANEMIA | | | |
| <input type="checkbox"/> ALCOHOLISM OR ALCOHOL ABUSE <input type="checkbox"/> TESTING FOR OR INFECTION WITH HUMAN IMMUNODEFICIENCY VIRUS (HIV) | | | |
| DESCRIPTION OF INFORMATION REQUESTED | | | |
| Check applicable box(es) and state the extent or nature of information to be provided: | | | |
| <input type="checkbox"/> HEALTH SUMMARY (Prior 2 Years) | | | |
| <input type="checkbox"/> INPATIENT DISCHARGE SUMMARY (Dates): _____ | | | |
| <input type="checkbox"/> PROGRESS NOTES: | | | |
| <input type="checkbox"/> SPECIFIC CLINICS (Name & Date Range): _____ | | | |
| <input type="checkbox"/> SPECIFIC PROVIDERS (Name & Date Range): _____ | | | |
| <input type="checkbox"/> DATE RANGE: _____ | | | |
| <input type="checkbox"/> OPERATIVE/CLINICAL PROCEDURES (Name & Date): _____ | | | |
| <input type="checkbox"/> LAB RESULTS: | | | |
| <input type="checkbox"/> SPECIFIC TESTS (Name & Date): _____ | | | |
| <input type="checkbox"/> DATE RANGE: _____ | | | |
| <input type="checkbox"/> RADIOLOGY REPORTS (Name & Date): _____ | | | |
| <input type="checkbox"/> LIST OF ACTIVE MEDICATIONS _____ | | | |
| <input type="checkbox"/> OTHER (Describe): _____ | | | |
| _____ | | | |
| PURPOSE(S) OR NEED | | | |
| Information is to be used by the individual for: | | | |
| <input type="checkbox"/> TREATMENT <input type="checkbox"/> BENEFITS <input type="checkbox"/> LEGAL <input type="checkbox"/> OTHER (Specify below) | | | |

VA Form 10-5345 is available online at: <http://vaww.va.gov/vaforms/medical/pdf/vha-10-5345-fill.pdf>

This is where the check boxes for the 7332 protected conditions are located on the form.

VHA Guidance on ROI

- Veteran has the right to revoke his authorization, VA Form 10-5345 at any time.
- Revocation must be submitted in writing to the VHA facility to be effective. Verbal revocations cannot be accepted.
- Inform Veteran that revocation of his authorization means VHA cannot share any of his information with the courts and potential consequences of such action.



VHA Guidance on ROI

- **New Guidelines on Disclosures to Community**

Partners for Homeless Programs

- If a Veteran is homeless, 24VA10P2 Routine Use #40 and HIPAA 45 CFR 164.512(j) would provide authority to disclose pertinent information on the Veteran related to obtaining housing and related services, such as the Veteran's homeless status, without a signed authorization to community partners.
- If the Veteran is known to not be homeless, 24VA10P2 Routine Use #5 and HIPAA 45 CFR 164.510(b)(1)(ii) would provide authority to disclose pertinent information on the Veteran related to obtaining housing and related services, such as the Veteran's homeless status, to a community partner aware of and trying to provide services to the Veteran (i.e., being on the "By Name List" (BNL) is evidence of the community partner awareness of the Veteran), BUT:
 - If the Veteran is present, they should be given the opportunity to object to the disclosure, or
 - If they are not present, VHA can use its professional judgement to determine if the Veteran would object and could make the disclosure based on that judgement.
- Regardless of whether or not the Veteran is homeless, the disclosure of 38 USC 7332-protected information requires a signed, written authorization from the Veteran.

VHA Guidance on ROI

- The VHA Homeless Program Staff should limit the information disclosed to the community partner under the authorities discussed to the minimum amount needed for the community partner to immediately assist the Veteran.
- In addition to using these authorities to disclose information necessary for the coordination of housing and homeless services, these authorities may also be used to develop and manage “By Name Lists” (BNL).
- VA and Non-VA community partners collaborate to develop BNLs, which are master lists of homeless Veterans in the community. These lists are populated through information obtained from outreach, Homeless Management Information System (HMIS; community data collection system), shelters, Homeless Operations Management & Evaluation System (HOMES; VA data collection system), and any other providers in the community who may work with veterans experiencing homelessness.
- VA and community partners work collaboratively to establish and maintain the BNL, which includes sharing information on Veterans already on the BNL, on Veterans needing to be placed on the BNL and Veterans needing to be removed from the BNL.

Accounting of Disclosures

- VHA staff must account for the disclosure of any individually identifiable health information to the court or any third party, such as community partners, in accordance with VHA Handbook 1605.1 Paragraph 35.
- The accounting must include the following:
 - (1) The name of the individual to whom the information pertains,
 - (2) The date of each disclosure,
 - (3) Nature or description of the information disclosed,
 - (4) A brief statement of the purpose of each disclosure or, in lieu of such statement, a copy of a written request for a disclosure, and
 - (5) The name and, if known, address of the recipient.

Accounting of Disclosures

- The accounting can be maintained concurrently or created retrospectively upon request.
- Accounting of disclosures must be retained for 6 years or the life of the record, whichever is longer.
- Veterans have a right to a copy of the accounting of disclosures from their records. Veterans must request the accounting in writing.

Extent of Disclosure to Court

VHA Perspective (SG)

- Get consent from Veteran whenever possible.
- When in doubt, DO NOT RELEASE.
- If consent is not possible, obtain a court order
- If there is information implicating 7332, get a 7332 compliant court order
- De-identify data whenever possible

Court Management of VHA (JDS)

- Can a specialty Court Program share VHA information with other agencies/organizations/individuals?
 - Aggregate information for purpose of grant funding applications?
 - If court does not use the veterans name can we share veteran treatment history with press?
 - How do specialized courts manage HIPAA/client records

Data Ownership after Disclosure (SG/JDS)

- Once health information is legally disclosed to the Court, i.e., pursuant to an authorization, or any third party, such as community partners for homeless programs, it is no longer the property of VA.
- Upon disclosure, VHA may request that the Court not make the health information part of the public record due to its sensitive nature.
- However, it is at the discretion of the Court whether to honor VHA's request.

VJO Communication with Court (LC)

- Orientation to Court Program
- Review the Role of VJO
- Review the types of information to be released
- Review how information will be released
- Discuss the use of computer in court docket
- Discuss the open-court room and information that is shared there vs. pre-court staffing
- Have veteran sign the VA Form 10-5345

Special Issues in Managing Medical Record Information in Court Settings (JDS/LC)


- Court Mentorship/Training Programs
- Large numbers of visiting staff (attorneys, judges, court coordinators)
- Observation of Pre-court Staffing and Court
- Managing VHA Medical Record Information
 - ROI for each veteran involved?
 - Use of Non-disclosure agreements?
 - De-identify Veteran data?

- Email Communications
 - Secure Emails (encrypted) – May send personally identifiable information (PII). No PII in Subject Line.
 - Unsecure emails – No PII at all. Must be de-identified per VHA Directive 1605.1 Appendix A, not just non-identifiable.
- Text Messaging
 - No PII may be sent via text messaging.

- Fax Communications

- Fax transmittals may be used when no other means exists to provide the requested information in a reasonable manner or time frame.
- The receiving fax machine must be in a secure location and reasonable steps (e.g., verifying the fax number and notifying the individual prior to faxing) have been taken to ensure the fax transmission is sent to the appropriate destination and will be secured promptly upon arrival.
- A confidentiality statement must be attached to the fax cover page when transmitting PII.
- No PII may be on the fax cover sheet.

VA Form 10-5345 Court Overprint

|  Department of Veterans Affairs | | REQUEST FOR AND AUTHORIZATION TO RELEASE HEALTH INFORMATION | |
|--|--|--|---------------|
| <p>PRIVACY ACT INFORMATION: The execution of this form does not authorize the release of information other than that specifically described below. The information requested on this form is solicited under Title 38 U.S.C. The form authorizes release of information in accordance with the Health Insurance Portability and Accountability Act, 45 CFR Parts 160 and 164; 5 U.S.C. 552a; and 38 U.S.C. 5701 and 7332 that you specify. Your disclosure of the information requested on this form is voluntary. However, if the information including the last four of your Social Security Number (SSN) and Date of Birth (used to locate records for release) is not furnished completely and accurately, VA will be unable to comply with the request. The Veterans Health Administration may not condition treatment, payment, enrollment or eligibility on signing the authorization. VA may disclose the information that you put on the form as permitted by law. VHA may make a "routine use" disclosure of the information as outlined in the Privacy Act system of records notices identified as 24VA10P3 "Patient Medical Record - VA" and in accordance with the VHA Notice of Privacy Practices. VA may also use this information to identify Veterans and persons claiming or receiving VA benefits and their records, and for other purposes authorized or required by law.</p> | | | |
| <p>TO: DEPARTMENT OF VETERANS AFFAIRS (Name and Address of VA Health Care Facility) Michael E. DeBakey VAMC 2002 Holcombe Blvd. Houston, TX 77030 and any other VHA hospital system where the Veteran has or will receive services.</p> | | | |
| LAST NAME- FIRST NAME- MIDDLE INITIAL | | LAST 4 SSN | DATE OF BIRTH |
| <p>NAME AND ADDRESS OF ORGANIZATION, INDIVIDUAL, OR TITLE OF INDIVIDUAL TO WHOM INFORMATION IS TO BE RELEASED Harris County Veterans Court (1201 Franklin, 16th Floor Court 228), all affiliated individuals, agencies, attorneys, and court evaluator -see attached listing. Veteran agrees to additional guests of the court/research investigators ___Yes or ___No.</p> | | | |
| VETERAN'S REQUEST | | | |
| <p>I request and authorize Department of Veterans Affairs to release the information specified below to the organization, or individual named on this request. I understand that the information to be released includes information regarding the following condition(s):</p> <p> <input type="checkbox"/> DRUG ABUSE <input type="checkbox"/> SICKLE CELL ANEMIA <input type="checkbox"/> ALCOHOLISM OR ALCOHOL ABUSE <input type="checkbox"/> TESTING FOR OR INFECTION WITH HUMAN IMMUNODEFICIENCY VIRUS (HIV) </p> | | | |
| DESCRIPTION OF INFORMATION REQUESTED | | | |
| <p>Check applicable box(es) and state the extent or nature of information to be provided:</p> <p> <input type="checkbox"/> HEALTH SUMMARY (Prior 2 Years) <input type="checkbox"/> INPATIENT DISCHARGE SUMMARY (Dates): _____ <input type="checkbox"/> PROGRESS NOTES: <input type="checkbox"/> SPECIFIC CLINICS (Name & Date Range): _____ <input type="checkbox"/> SPECIFIC PROVIDERS (Name & Date Range): _____ <input type="checkbox"/> DATE RANGE: _____ <input type="checkbox"/> OPERATIVE/CLINICAL PROCEDURES (Name & Date): _____ <input checked="" type="checkbox"/> LAB RESULTS: <input type="checkbox"/> SPECIFIC TESTS (Name & Date): _____ <input checked="" type="checkbox"/> DATE RANGE: All drug utox screens past and future as deemed relevant by court <input type="checkbox"/> RADIOLOGY REPORTS (Name & Date): _____ <input checked="" type="checkbox"/> LIST OF ACTIVE MEDICATIONS _____ <input checked="" type="checkbox"/> OTHER (Describe): All relevant medical record information needed for court supervision. </p> | | | |
| PURPOSE(S) OR NEED | | | |
| <p>Information is to be used by the individual for:</p> <p> <input checked="" type="checkbox"/> TREATMENT <input type="checkbox"/> BENEFITS <input checked="" type="checkbox"/> LEGAL <input type="checkbox"/> OTHER (Specify below) </p> | | | |

The Veterans Court judge, staff and attorneys; Guests/Research Investigators of the Veterans Court

Veteran must check the drug/alcohol boxes

All relevant medical record information needed for court supervision

VA Form 10-5345 Court Overprint

| | | | |
|--|--|-------------------------|---------------|
| LAST NAME- FIRST NAME- MIDDLE INITIAL | | LAST 4 SSN | DATE OF BIRTH |
| AUTHORIZATION | | | |
| <p>I certify that this request has been made freely, voluntarily and without coercion and that the information given above is accurate and complete to the best of my knowledge. I understand that I will receive a copy of this form after I sign it. I may revoke this authorization in writing, at any time except to the extent that action has already been taken to comply with it. Written revocation is effective upon receipt by the Release of Information Unit at the facility housing records. Any disclosure of information carries with it the potential for unauthorized redisclosure, and the information may not be protected by federal confidentiality rules.</p> <p>I understand that the VA health care provider's opinions and statements are not official VA decisions regarding whether I will receive other VA benefits or, if I receive VA benefits, their amount. They may, however, be considered with other evidence when these decisions are made at a VA Regional Office that specializes in benefit decisions.</p> | | | |
| EXPIRATION | | | |
| Without my express revocation, the authorization will automatically expire. | | | |
| <input type="checkbox"/> UPON SATISFACTION OF THE NEED FOR DISCLOSURE <input type="checkbox"/> ON _____ (enter a future date other than date signed by patient) <input checked="" type="checkbox"/> UNDER THE FOLLOWING CONDITION(S): Upon completion/discharge of court program and probation. | | | |
| PATIENT SIGNATURE (Sign in ink) | | DATE (mm/dd/yyyy) | |
| LEGAL REPRESENTATIVE SIGNATURE (if applicable) (Sign in ink) | | DATE (mm/dd/yyyy) | |
| PRINT NAME OF LEGAL REPRESENTATIVE | | RELATIONSHIP TO PATIENT | |
| FOR VA USE ONLY | | | |
| TYPE AND EXTENT OF MATERIAL RELEASED | | | |
| <p>VJO will provide summary of progress via written, verbal, telephonic and secured email that is required by court for monitoring of patient progress in treatment and compliance with legal conditions of Veteran Treatment Court participation, inclusive of all relevant medical record information both past and future. Information will include but not be limited to: diagnoses (medical, mental health, and substance/alcohol), relevant labs, medical diagnoses, progress in treatment programming, developmental, social, financial and military data as relevant to court/legal circumstances to the designated court team and additional guests as permitted by authorization. Information will be shared at regular intervals as needed by the Court Team to adequately assess progress of Veteran and compliance with court and probation guidelines. The authorization will expire upon Veteran discharge or successful completion of court program and probation period which may last longer than the court program. Medical record information is subject to review in open court docket.</p> | | | |
| DATE RELEASED | | RELEASED BY: | |

Specify time frame/expiration

Additional explanation of type/extent and method of release of information and Open Docket disclosures.

Managing Media Requests

- Patient Interviews
 - No authorization required
 - VA Form 10-3203a only if on VA premises
- VHA Staff Interviews
 - Follow VHA Directive 1078, if filmed or recorded.
- VHA Authorization for release to Media
- Special Considerations
 - Filming in Court Room



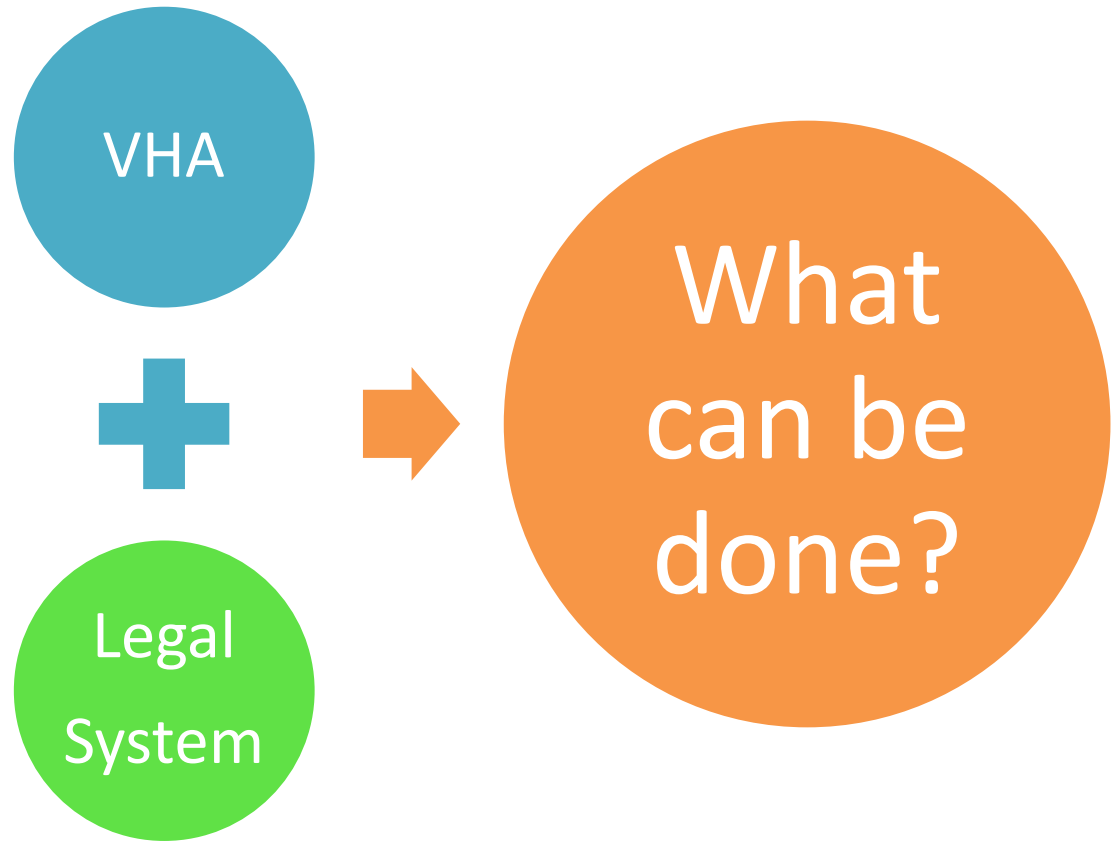
Consent for Use of Picture and Voice

- Always work closely with Public Affairs Office on media requests for interviews with Veterans and staff.
- Follow VHA Directive 1078, if interviews, filming or recording performed on VA premises.
- Utilize VHA Form 10-3203a for both employees and Veterans.
- Form available online at:
<http://vaww.va.gov/vaforms/medical/pdf/vha-10-3203a-fill.pdf>
- Orient Veteran prior to filming.

- NOTE: VHA Directive 1078 does not apply to interviews, filming or recordings done in Courtroom or other non-VA locations.

Other Requests to VHA and VJO from Legal System and How to Manage **(All)**

- Will you come and testify?
- Can you say something to convince the judge to let my client out of jail and into treatment?
- I need a copy of the whole medical record will you get that for me?
- We want to court order the veteran to VA treatment, can we do that to get him out of jail faster?



The Ties that Bind – Double Binds in ROI Situations (JDS/LC)

- “I don’t want you to talk to that Judge anymore”
- “You can tell my probation officer everything, except...”
- “My son relapsed this weekend but don’t tell him I called you...”
- “I didn’t realize you were going to tell the court about that...”

Summary of Court Disclosures

(SG)

Release of Information Do's

- Consent from Veteran is golden
- When in doubt, DO NOT RELEASE.
- If obtaining an authorization is not possible, obtain a court order
- If there is information implicating 7332, get a 7332 compliant court order
- Redact information or de-identify data whenever possible

Release of Information Don'ts

- Do not assume consent is not necessary, always obtain consent.
- Do not seek medical records or benefits information without speaking to the appropriate Privacy / Release of Information official.
- Do not share information with anyone for whom a signed, written authorization was not provided.

Questions and Discussion from Participants