



HIPAA vs. Patriot Act



By Harry Wang, MD

ALL OF US ARE ACUTELY AWARE that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) took effect last April 14, affecting health plans, doctors, hospitals, and other health care providers. The new standards "provide patients with access to their medical records and more control over how their personal health information is used and disclosed. They represent a uniform, federal floor of privacy protections for consumers across the country."¹

Not commonly known, however, is that Section 215 of the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act"² (USA Patriot Act), hurriedly passed by Congress on October 25, 2001, allows the FBI to obtain "tangible things (including books, records, papers, documents, and other items) for investigation to protect against international terrorism or clandestine intelligence activities." This includes medical, psychiatric, and other health care records. Most troubling, an FBI agent need not demonstrate probable cause to a judge that the person under investigation is engaged in criminal activity — only that "records concerned are sought for an authorized investigation."

Many citizens and organizations are alarmed by the loss of civil liberties. On January 29, 2003, the ALA Council passed a resolution stating: "The American Library Association (ALA) opposes any use of governmental power to suppress the free and open exchange of knowledge and information or to intimidate individuals exercising free inquiry... ALA considers that sections of the USA Patriot Act are a present danger to the constitutional rights and privacy rights of library users."³

Some libraries have posted notices informing library patrons that government agents can request records of borrowed books and that library workers are prohibited from notifying patrons if this occurs. Others are purging borrowing records.

On November 13, 2003, the Sacramento City Council voted 8-1 on a resolution opposing the Patriot Act, becoming the 209th community to do so. The resolution directs city employees to not take actions that would violate the constitution. Library signs will be posted. It also asks Senators Feinstein and Boxer and Representative Matsui to monitor anti-terrorism tactics and to work to repeal provisions of the USA Patriot Act that infringe on the constitutional rights of citizens.

Is the loss of civil liberties necessary for the "War on Terrorism"? The United States government has a responsibility to protect citizens from future attacks, but it is unclear how the Patriot Act accomplishes this. Is the degradation of constitutional rights worth the benefits of the unlawful searches? Who will be able to monitor FBI activities to answer these questions?

The attack on the World Trade Center was tragic for our country. However, I suggest that the United States would be more effective in "fighting terrorism" if our leaders considered its root causes — social and economic inequities in the world, the long history of US military activities around the world and support of oppressive regimes, US support of

multinational corporations that have exploited countries before and after wars, disregard for the rights of indigenous populations, and, specifically in the Middle East, a one-sided US approach to the Palestinian-Israeli conflict. If the United States does not address these issues and continues its militaristic, unilateral responses, it could very well create yet another generation of peoples that hate the US.

Furthermore, recent US actions could make us even more of a "terrorist target" — and also increase the chance that the US will use its own nuclear arsenal. For example, does the unprecedented Bush policy of "preemptive war" reduce the risk that weapons of mass destruction (WMD) will be used, or does it encourage countries or groups to develop WMD to be used in retaliation to US attacks? What if US intelligence is faulty (where are the WMD in Iraq?), or if civilians are killed (8,000-9,000 in Iraq, so far)?⁴ Our unilateral approach has angered both friendly and unfriendly states and, unfortunately, sets a precedent that other countries may follow.

It is also difficult to understand how the new US policy of first-strike option use of nuclear arms, development of the "mini-nuke" bunkerbuster, and a push for a ballistic missile defense system creates more security for our citizens. Refusal to ratify the Comprehensive Test Ban Treaty, withdrawal from the ABM Treaty, and refusal to strengthen the Biological Weapons convention has led to worldwide concerns about the intentions of the US government.

Many physicians around the world are increasingly alarmed about actions of the United States. In a May 10, 2003 *Lancet* commentary, the authors state: "A series of decisions by the current US Administration, in widely differing sectors, are causing increasing concern among the global public-health community. Together, these decisions can perhaps best be thought of as manifestations of American exceptionalism, in which international laws and standards of behavior apply only to other countries."⁵

What does all of this mean to physicians in practice? How do we reconcile the contradictory privacy features of HIPPA and the Patriot Act? In addition to informing patients about HIPPA regulations, we should consider notifying them about Section 215 of the Patriot Act (as Sacramento librarians will be doing). Patients with questions can be referred to Attorney General John Ashcroft, Department of Justice, Washington, D.C. 20530 (AskDOJ@usdoj.gov) and/or to their elected representatives in Congress.

As physicians, we strive to promote health through education, prevention and treatment. The devastating health effects of war should force us all to add the prevention of international violence to other public health endeavors. We all need to educate ourselves on the causes of this violence with as broad a view as possible. If this is not addressed, not only will civilians continue to suffer the consequences of war, but precious resources will be spent on the military (including bio-terrorism preparedness), diverting critical funding from public health needs. One could also consider supporting "SMART Security," a platform that addresses these issues.⁶

The Patriot Act carries other potential consequences for physicians, who might themselves become targets of clandestine government surveillance. Physicians for Social Responsibility (PSR), the U.S. affiliate of International Physicians for the Prevention of Nuclear War, winner of the 1985 Nobel Peace Prize, was considered by the FBI to be a subversive organization during the Reagan Administration. Interest in PSR waned following the dissolution of the Soviet Union and the apparent diminution of the threat of nuclear war. During the past two years, there has been a resurgence of interest in PSR and area physicians, other health care professionals, and citizens have reformed a Sacramento Chapter.⁷

Members of PSR/Sacramento have been outspoken critics of the Bush Administration's doctrine of "pre-emptive war" and of the diversion of resources away from health and humanitarian needs to unprecedented military spending. It is conceivable that under the Patriot Act, PSR members may again find themselves on the FBI's list of "subversives."

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