



Knowing Your Rights and Responsibilities

Introduction

The potential for increased enforcement of federal immigration regulations has raised concerns among health care providers and their patients about individual rights and responsibilities. It is essential that all physicians, but especially family physicians and other primary care physicians, know their rights and responsibilities before responding to enforcement actions by immigration officials and interactions with law enforcement that could result in immigration consequences.

California SB54: Sanctuary State Law

The premise of SB 54 is that local and state law enforcement authorities may not use resources, including personnel or facilities, to investigate or arrest people for federal immigration enforcement purposes. The law builds on a 2013 state law called the California Trust Act, which prohibited local agencies from holding potentially deportable immigrants for US Immigration and Customs Enforcement (ICE) unless those detainees had been convicted of serious or violent felonies, or misdemeanors that could be classified as felonies.

In addition, under SB 54, law enforcement in California can't:

- Ask someone about their immigration status or detain them solely because of their status.
- Hold someone in jail past their release date at ICE's request.
- Assist in arrests based on civil immigration warrants.
- Provide release dates or other information about a detainee unless that information is available to the public or the individual has a criminal conviction for one of the excepted crimes or has a qualifying criminal charge and has had a probable cause finding as to that charge.
- Provide office space for federal immigration authorities to use in local jail facilities.
- Cooperate with ICE in cases where an individual has been arrested, detained, or convicted for an offense that is a misdemeanor but was a felony prior to the passage of Prop. 47, which reduced penalties for some crimes in California.

Law enforcement can:

- Respond to notification and transfer requests from ICE when the individual has been convicted or charged with certain crimes specified by state law.
- Respond to notification requests if release dates and times are already publicly available.
- Permit ICE agents to interview someone in jail and prison if certain requirements are met.
- Participate in a joint law enforcement task force as long as the primary purpose is not immigration enforcement.

General Considerations

The National immigration Law Center identifies the following considerations:

Fourth Amendment: Immigration officials' power to enforce immigration law is limited by our constitutional protection against *unreasonable search and seizure*. Under the Fourth Amendment to the U.S. Constitution, the reasonableness of a search depends on whether a person has a *reasonable expectation of privacy* in the area searched, i.e., At the time of the search, was it the person's subjective, actual expectation that the place or things searched were private, and was that expectation objectively reasonable, i.e., would it be generally recognized by society? Your patients thus may be more vulnerable to immigration enforcement actions when they are in areas of your facility that are open to the public than when they're in areas that are considered private.

Disclosure of information: Health care providers have no legal obligation to inquire into or report to federal immigration authorities about a patient's immigration status. In fact, the Health Insurance Portability and Accountability Act (HIPAA) privacy rule generally prohibits the use or disclosure of patient information without the patient's consent except when required by law. Under other exceptions, including when information is requested by law enforcement officials for law enforcement purposes, personal health information may be shared, but its release is generally not required.

Warrants and consent: Health care providers *may refuse* to provide information about patients to law enforcement officials *unless* the request for information is pursuant to a warrant or other court order for a specifically identified individual. They may otherwise enter if they are "authorized" to do so by a pre-designated staff member of the health facility.

"Probable cause." Health care providers *may refuse to consent to a warrantless search of the facility's private areas*. Nevertheless, officers may search private areas and seize items found there if they have "probable cause" to believe that the search may reveal that unlawful activity is occurring, has occurred, or will occur. An officer has "probable cause" if the facts and circumstances justify a reasonable person's conclusion that people or things connected with unlawful activity will likely be found in a particular place.

Warrant—what to check for: If immigration authorities or other law enforcement officials present a warrant or other court order, the authorized person—a predesignated health center staff member—should *review the warrant* to ensure that:

- it is a valid judicial warrant
- it is signed by a judge or magistrate judge
- it states the address of the specific premises to be searched
- it is being executed during the time period specified on the warrant, if any

Scope of the warrant: The designated staff member should pay close attention and object if officials go beyond the scope of their authority to search or seize objects as specified in the warrant. For example, if the warrant states that officials may search the emergency room, they may not use this warrant to then search private patient examination rooms.

Sensitive locations: Immigration officials consider hospitals and other health care facilities to be “sensitive locations.” Long standing practice has been to avoid immigration enforcement actions at such locations, though there have been reports of such practices changing. Officers may also look at anything that is in “plain view” in a public area. An object is in “plain view” if it is obvious to the senses. For example, an immigration official may visually inspect anything—including papers and files—that are clearly visible from the visitors’ side of the reception desk. Unless they have a warrant, however, they may not move an object in plain view to expose other portions of it or what is under it. The plain view doctrine extends to sounds within “plain hearing” as well. Therefore, speech officers overhear with their unassisted ears while standing in a public area—even if what they overhear comes from a private area—is also considered to be in plain view.

Right to remain silent: While immigration enforcement at health care facilities is limited by the “sensitive locations” guidance described previously, immigration agents may enter a public area of a health care facility without a warrant or the facility’s consent and may question any person present. These people have a right to remain silent.

Know Your Responsibilities and Protect Your, and Your Patients', Rights

You Should:

1. Establish a written policy designating private areas in your practice
2. Beware of what's in "public view"
3. Avoid collecting immigration status information in charts and EHRs
4. Provide educational materials for your staff, patients and their caregivers
5. Refer patients to: [Information for Patients - "Know Your Rights"](#), the CPCA webpage includes information on general issues, the Muslim Ban, Sanctuary State protections and more, in multiple languages.
6. Be ready to consult a lawyer
7. Designate an authorized staffer to manage immigration questions and concerns
8. Don't consent; and document any encounter
9. Review any warrant carefully before proceeding
10. Like a fire drill, practice your responses
11. Reassure your patients that you will protect their rights

Summary

It is physician's prerogative to decide to what extent he/she wants to investigate patient's immigration status. A physician has no legal obligation to call a lawyer, let alone law enforcement. However, he/she does have a moral obligation to:

1. Assess and treat the patient if she is acutely ill (in extremis);
2. Accept her as a patient regardless of her background or status as a citizen of the United States; and
3. Respect the patient's confidentiality as she would that of any other patient.

Resources

- SB 54 [Pamphlet](#)
- ["Health Care Providers and Immigration Enforcement: Know Your Rights, Know Your Patients' Rights" - National Immigration Law Center \(Accessed September 2018\)](#) (Registration Required)
- ["Health Care Providers and Immigration Enforcement: Know Your Rights, Know Your Patients' Rights" - National Immigration Law Center \(2017\)](#)
- ["How Should Clinician Treat Patients Who Might Be Undocumented" - AMA Journal of Ethics \(2016\)](#)
- [Guidance for Managers](#) "If Federal immigration agents visit a Public Health Site"
- <https://healthtoolkit.nilc.org/health-care-providers-and-immigration-enforcement-know-your-rights-know-your-patients-rights/>

California Academy of Family Physicians and CAFP Foundation | San Francisco Marin Medical Society
Alameda Contra Costa Medical Association | Sonoma County Medical Society
California, American Academy of Pediatrics | Osteopathic Physicians and Surgeons of California

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