

## HIPAA VS. PATRIOT ACT

--By Harry Wong, MD, Psychiatrist

All of us are acutely aware that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) took effect on April 14, 2003. Developed by the Department of Health and Human Services, 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.”<sup>1</sup>

What is 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”<sup>2</sup> (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 is that a FBI agent does not need to demonstrate probable cause to the judge that the person under investigation is engaged in criminal activity. The agent only needs to state that “records concerned are sought for an authorized investigation.” Furthermore, a gag order prevents the holder of the record from telling anyone about any transfer of records.

Many citizens and organizations are alarmed by these loss of civil liberties. The American Library Association has taken a strong stance against the provisions of Section 215. In a resolution adopted by the ALA Council on January 29, 2003:

“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.”<sup>3</sup>

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

The patient's right to privacy has always been the cornerstone of the physician-patient relationship. Without it, patients may not seek medical care or provide enough information to obtain successful diagnosis and treatment. The disclosure and misuse of personal health information would have a chilling effect on this relationship.

Privacy is even more critical for effective mental health treatment. The 1999 Surgeon General's Report on Mental Health

1 <http://www.hhs.gov/news/facts/privacy.html> (accessed 4/25/04)

2 [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_cong\\_public\\_laws&docid=f:publ056.107.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ056.107.pdf) (accessed 4/25/04)

3

<http://www.ala.org/Template.cfm?Section=ifresolutions&Template=/ContentManagement/ContentDisplay.cfm&ContentID=11891> (accessed 4/25/04)