

This is Going on Your Permanent Record: HIPAA and the Right To Be Forgotten

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To many American technology observers, courts in Japan and the European Union could be setting a controversial precedent in a series of rulings regarding the “the right to be forgotten.”

Courts in these jurisdictions have ruled against Google and Yahoo and in favor of individuals that want the ability to request that search engines remove search results that link to unsavory—true or alleged—past behaviors. In early October, a Japanese court ruled that Google must remove search results that tied a man to perceived associations with criminal organizations. The individual said Google results associated with his name violated his privacy and his “right to be forgotten,” according to the Associated Press.

Similarly, CTV News recently reported that a European Union official has proposed to codify “the right to be forgotten” for citizens who “demand the removal of ‘personal data’ from the Internet if there’s no legitimate reason for keeping the material online.” As quoted in the *New Yorker*, Jennifer Granick, the director of civil liberties at the Stanford Center for Internet and Society, said “Europeans think of the right to privacy as a fundamental human right, in the way that we think of freedom of expression or the right to counsel... When it comes to privacy, the United States’ approach has been to provide protection for certain categories of information that are deemed sensitive and then impose some obligation not to disclose unless certain conditions are met.” One of those categories is health information, though healthcare organizations won’t honor a patient’s request “to be forgotten” when it comes to their medical records. As a general rule, HIM departments will refuse a patient’s request to delete their records. Doing so would put the organization at risk should the records be requested by a court of law, HIM experts say, or should a patient suffer injury at the hands of a provider due to the missing records.

Indeed, HIPAA is intended to make it very difficult for a patient’s health information to become available without their consent. But there are instances when health information can be released without patient consent. Releases to health plans for payment or insurance investigations, for example, are out of patients’ hands. Courts can order the release of records. Also, law enforcement can access an individual’s protected health information (PHI) if it’s relevant to an investigation, though they must do so through the proper channels. For example, if there is a bioterrorism threat or an emergency, covered entities can be compelled by law enforcement to release relevant portions of a health record.

While recent updates to HIPAA through the HITECH-HIPAA Omnibus Final Rule allow individuals to request that procedures paid for out-of-pocket remain undisclosed to their health plan, the same update allowed healthcare providers to freely release the records of patients 50 years after they die without consent. While the “right to be forgotten” may further define the lines of an individual’s privacy around the world, US residents can (hopefully) rest assured that their health information isn’t released unless it has to be.

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