**Immigration Enforcement and Patients’ Rights in Healthcare Facilities: Should Hospitals Serve as Sanctuaries?**

Leslie Ramos Salazar and Priyanka Khandelwal

West Texas A&M University

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| Author bio(s) | **Leslie Ramos Salazar** (PhD, Arizona State University) is an assistant professor of business communication and decision management at the Paul and Virginia Engler College of Business at West Texas A&M University. She studies issues such as health interventions, compassion, and empathy in relationships; cyberbullying; work–life balance; and student self-efficacy. She also regularly teaches business communication for health care managers, business statistics, and current issues in business communication.  **Priyanka Khandelwal**, (PhD, Texas Tech University) is a visiting assistant professor of Business Communication and Marketing at the Paul and Virginia Engler College of Business, West Texas A&M University. She has always been intrigued by social media and the ways in which it can be used not only as a subject of research but also as a tool for conducting research in health communication and administration, social media marketing, identity construction, and decision sciences. |

**Abstract**

The U.S. Immigration and Customs Enforcement (ICE) has issued a Critical Infrastructure Outreach Program that enables immigration enforcement actions on collaborative health care facilities or “sensitive locations” such as hospitals, doctors’ offices, clinics, and urgent care facilities to gain information about immigrant clients. Given these enforcements, U.S. hospitals are developing protocols for dealing with federal immigration enforcement to ensure a safe place for immigrants seeking health care. The American Medical Association (AMA) opposes the presence of ICE agents in hospitals and clinics and recommends that health care facilities develop “sanctuary hospital” policies to protect immigrant patients’ private information and to maintain community trust. Hospitals without clear policies on this issue have enabled ICE agents to deport immigrant patients and their families; however, proactive hospitals such as the Rush Medical Center, Los Angeles County and USC Medical Center, and NYC Health and Hospitals have implemented policies to protect all patients regardless of citizenship status. As such, this case study invites students to consider the ethical issues surrounding patient privacy in health care organizations and to discuss the legal rights of immigrant patients and their providers.

**Learning Outcomes**

By the end of this case study, students should be able to:

1. understand the ethical dilemmas concerning the decision to make hospitals immigration sanctuaries.
2. analyse the written communications by a proactive hospital to immigrant communities.
3. understand the rights of immigrant patients and their health care providers.
4. examine proactive health care institutions’ protocols for protecting immigrant patients’ rights.
5. understand how to talk to ICE law enforcers seeking information in health care facilities as a staff member or administrator for a hospital.

***Introduction***

According to a memo released by U.S. Immigration and Customs Enforcement (ICE) in 2011, ICE adheres to a policy of law enforcement behaviours at “sensitive locations,” which include hospitals, churches, schools, and public demonstrations (e.g., marches). Law enforcement behaviours can include arrests, interviews, searches, and surveillance of undocumented immigrants at these “sensitive locations.” The National Immigration Law Center indicates that immigration enforcement can occur in hospital settings. These arrests typically occur either inside a facility, such as in a hospital waiting room, or outside the facility in a parking lot. Ultimately, according to ICE, law enforcement agents avoid “sensitive locations” unless there is a national security threat, they are in pursuit of a felon, or it is part of a crime scene. However, violations to this policy have been reported. This case study will include news stories of violations of patient and providers’ rights, and show how three hospital centers that have proactively chosen to become “sanctuary hospitals” to protect patients’ privacy and confidentiality regarding their immigration status.

***News Stories of Arrests in Hospitals***

News narratives of immigrant patient arrests during hospital visitations showed by the media across the U.S. have triggered much fear about seeking health care services. For instance, Rosamaria Hernandez, a 10-year-old girl with cerebral palsy was detained by Border Patrol on her way to Discroll Children’s Hospital in Corpus Christi, Texas to receive gall bladder surgery (Yee & Dickerson, 2017). Her family took her to this hospital to receive specialized healthcare services because of the severity of her condition and the lack of healthcare services in Nuevo Laredo, Mexico. Following the interrogation, the emergency Border Patrol agents allowed the ambulance to continue to the hospital. However, Border Patrol agents followed the ambulance back to the hospital and waited in the waiting room to detain her after she had the surgery. Afterward, immigration agents placed her in a facility in San Antonio with migrant children from Central America.

Similarly, Sara Beltrán Hernández, a 26-year-old asylum seeker and undocumented mother from El Salvador, was waiting for emergency brain tumor surgery when she was forcefully removed from her bed at Huguley Hospital in Fort Worth, Texas by ICE agents who took her away in a wheelchair (Dart, 2017). The agents placed her in the Prairieland Detention Center of Texas for 400 days with no family visitation rights, despite the fact that she was still suffering symptoms such as nose bleeds and headaches (Dart, 2017). Lawyers of immigrant patients who have dealt with these arrests by ICE argue that human rights violations have occurred, indicating that immigrant patients with serious health problems in health care facilities should be treated with compassion and not like dangerous criminals.

***Hospitals and Policies***

Despite criticism arising from such cases, many hospitals lack clear policies to protect immigrant patients’ private information. Health care administrators and staff often do not know the rights of immigrant patients, or how to communicate with ICE officers when they enter their facilities. The American Medical Association (AMA), the largest physician organization in the United States, has taken a stance to protect the information of undocumented patients by developing policies that should be adhered to by physicians (American Medical Association, 2017). Policies include the protecting immigrant refugee families, increasing refugee access to health insurance, and ensuring the privacy of medical records of immigrant patients. Hospital administrators across the United States must take an ethical stance on this issue. Their choices are to collaborate as a partner with ICE and provide patients’ information without resistance, or to protect patients’ information and ensure that patients’ rights are not being violated. An understanding of the rights of patients and providers is essential when dealing with ICE’s law enforcement procedures.

***Rights of Undocumented Patients in the U.S.***

Undocumented patients in the United States are often unaware of their rights when entering healthcare facilities. The Fourth Amendment of the U.S. Constitution protects immigrants against *unreasonable search and seizure* except at border locations. For instance, a law enforcement officer may not search an undocumented person in the lobby of a hospital unless there is reasonable cause or a warrant. Patients may be relatively ‘safe’ in private rooms such as operating rooms, recovery rooms etc., however, they may still be vulnerable in public areas of health care facilities, such as halls, lobby, and parking lots.

The Constitution’s Fifth Amendment protects the *right to due process of law* in an immigration court in front of a judge, especially in deportation cases. Asylum seekers also have the right to a hearing (Public Broadcasting System, 2018). After being arrested, an immigrant has the rights to remain silent, to get an immigration attorney, and to have their case assessed in court (Public Broadcasting System, 2018).

When accessing health care services, immigrant patients also have the right to receive health care treatment, especially during emergency visits. In the U.S., no patient, regardless of immigration status or ability to pay, can be denied emergency care. While at the hospital, immigrants should not be asked to indicate their immigration or citizenship status. If this question is asked, immigrant patients have the right to remain silent. Because undocumented patients do not have a Social Security Number (SSN) or an Identification Card (ID), they often feel that they cannot access health care services; however, an ID or SSN are not required during medical treatment visits. Other health care services are available to help undocumented patients without health insurance receive treatments. During and after treatment, patients’ information and immigration status should also remain confidential and private to adhere to the Health Insurance Portability and Accountability Act (HIPAA), which serves to protect all patients’ medical records and control how health information is disclosed to third parties (Outreach-Partners, 2017).

***Rights during Encounters with ICE in Hospital Facility***

When encountering ICE officials in health facilities, patients also have rights. If law enforcement officers ask questions to elicit self-disclosure of immigration status, the patient can refuse to answer any questions until an attorney is present, including especially inquisitive ones such as “Where were you born?” or “What is your hometown?” Patients have the right to remain silentduring the entire interrogation process and may simply say, “I wish to remain silent.” Given potential language barriers, patients may request an interpreter.

Because of the possibility of language barriers, the American Civil Liberties Union (ACLU) recommends that all undocumented individuals have access to a free Know Your Rights! (KYR) card, which can be downloaded online, or obtained from non-profit agencies that focus on immigration advocacy (National Immigration Law Center, 2017). This card, which states that the person chooses to remain silent and refuses to answer questions without the presence of a lawyer, should be carried by undocumented individuals at all times. The card also reminds officers that, after being detained, undocumented individuals have the right to contact an attorney, and may choose not to sign any documents prior to seeing them.

***Rights of Providers***

Health care providers also have rights when treating undocumented immigrants. Under HIPAA, health care facilities have the right to protect the confidentiality of undocumented patients’ information. The only exceptions would be legally- required reports, such as in cases of accidents, crimes, or the possibility of child or adult abuse. Obtaining patients’ information without their consent requires a court order, warrant, subpoena, or summons (Outreach-Partners, 2017). This does not include warrants signed only by ICE agents.

To further protect patient privacy, health care providers can avoid requesting patient disclosure of immigration information. Healthcare administrators can also declare their health center to be a “sanctuary location” or a “safe place,” which indicates that they have additional policies and procedures protecting the information of undocumented immigrant patients (National Immigration Law Center, 2017). For example, sanctuary hospitals do not release patient information without a warrant.

Such “sanctuary locations” have the right to develop a safe culture. For instance, hospitals may establish “safe zones” that are considered private so that law enforcement cannot interrogate undocumented immigrants without a warrant in spaces such as examination rooms. Facilities may train staff about their own rights and those of their patients to ensure that information is protected. Hospital administrators may designate an authorized staffer to handle contacts with law enforcement officers, and may also consult with lawyers when feeling uncertain about an issue.

***Hospital Facility and Education to Patients***

Hospital facilities can also educate their patients by providing educational pamphlets, videos, posters, and KYR cards to ensure that everyone understands their rights. Doing so may empower patients to access health care services earlier to treat contagious diseases such as the measles, tuberculosis, influenza, chickenpox, hepatitis A, and HIV before they spread throughout the community, which may be more cost-effective in the long-run.

Providers who encounter law enforcement agents within a health care facility must also be aware of their rights. A provider must first determine if there is a judicial warrant; if the officer cannot provide one, the provider can refuse entry into a safe space. If the officer does provide a warrant signed by a judge, the provider must confirm the identity of the person and the facility address.

Also, each warrant has a time period and a scope indicating the search location within the health facility. If the warrant has expired, providers are entitled to request an updated warrant; if the scope of the warrant indicates searches of patient examination rooms, officers do not have the right to search other locations, such as emergency rooms. When agents are seeking patients’ health information, providers must provide only those records requested in the judicial document, not all of the patient’s information.

Table 1.

*The Laws and Rights of Patients and Providers*

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| **Laws** | **Patients’ Rights** | **Doctors’ Rights** |
| 4th Amendment | Protection against unreasonable search and seizure | Warrant or subpoena required to provide patient information |
| 5th Amendment | Right to due process of law  Right to remain silent  Right to get an immigration attorney | Right to educate patients about their legal rights |
| HIPAA | Right to privacy of citizenship status  Right to privacy of information  Right to have confidentiality in medical records | Right to protect confidentiality of patients |

***Policies of Sanctuary Healthcare Systems***

Despite the stricter immigration enforcement policies of the Trump Administration, several hospitals have developed policies and procedures that allow them to serve as sanctuary hospitals and put immigrant patients at ease. Developing immigrant patients’ trust in the health care system is challenging; however, hospitals with clear policies in place are becoming well-known across the nation. Three medical centers that have proactively protected patients’ rights include Rush University Medical Center, Los Angeles County and USC Medical Center, and NYC Health and Hospitals.

*Rush University Medical Center*

Rush University Medical Center (RUMC) is an academic healthcare system located in Chicago, Illinois. In 2017, it included 1,462 medical staff, 2,040 professional nurses, and 706 residents and fellows, and had 31,500 patient admissions and 71,288 emergency room visits (Rush University Medical Center, 2017). RUMC has taken a proactive approach to treating undocumented patients by developing an immigration hospital policy and training program for all staff (Schencker, 2018). The policy ensures that undocumented patients’ legal status remains confidential at all times. In order to comply with this policy, completion of online training is required of all employees. This training guides employees on how to communicate with law enforcement officials when they enter the hospital in search of immigrant patients and how to protect immigrant patients’ privacy and confidentiality. It ensures that, before receiving permission to interact with undocumented patients, law enforcement must provide a warrant that is signed by a judge. Because law enforcement agents sometimes present warrants signed only by ICE, staff is also trained in how to ask them to leave.

*Los Angeles County and USC Medical Center*

The Los Angeles County and USC (LAC+USC) Medical Center is one of the largest public hospitals in the U.S. This teaching hospital serves ten million residents in Southern California. Hospital staff members include more than 1,500 physicians from the USC Keck School of Medicine, 900 interns and residents, and 3,000 nurses (LAC+USC, n.d.). The hospital typically receives an average of 800,000 emergency and outpatient visits and more than 46,000 inpatient admissions each year; more than 75% of patients come from low-income backgrounds and 66% do not have medical insurance (Cousineau & Tranquada, 2007).

This healthcare system’s stance on immigration is to make health-related spaces such as clinics, ambulances, and hospitals safe zones for undocumented immigrants. On November 14, 2017, physicians and healthcare providers rallied outside of the L.A. County –USC Medical Center in a protest to protect immigrant patients in Los Angeles, demonstrating staff willingness to fight for patients’ privacy rights. The protest outside the hospital received a great deal of social media and news media attention as the staff held signs that said, “care for all Californians,” “make it clear immigrants are welcome here,” and “keep families together.” Under the “safe” culture they have developed in their healthcare system, immigrants may enter their hospitals without fear of deportation. Hospital physicians and staff feel a sense of commitment to care, treat, and protect immigrants from law enforcement authorities. Additionally, the Keck School of Medicine of USC has advanced the Immigrant Health Initiative, which was created by faculty and leaders across USC schools to overcome health disparities. At this hospital, all employees have pledge to protect the privacy of undocumented immigrants, have received training on how to talk to law enforcement officials, and understand the rights of undocumented immigrant patients.

*NYC Health and Hospitals*

NYC Health and Hospitals, the largest public healthcare system in the United States, provides health care services to over a million New Yorkers across seventy regions each year. The system includes 11 acute care hospitals, 5 long-term care facilities, and several health clinics, which have all achieved four- to five-star ratings for providing high quality care to diverse populations. NYC Health and Hospitals trains all of its health care managers, doctors, nurses, and staff to respect the privacy of immigrant patients’ citizenship status and to maintain confidentiality; otherwise, staff can risk losing their jobs.

Additionally, NYC Health and Hospitals posts patients’ bill of rights on their website, such as the right to “privacy while in the hospital and confidentiality of all information and records regarding your care,” and indicates that all patients “receive considerate and respectful care in a clean and safe environment free of unnecessary restraints,” and “receive treatment without discrimination as to race, color, religion, sex, national origin, disability, sexual orientation, source of payment, or age” (NYC Health + Hospitals, 2018).

***Open Letter to Immigrants Seeking Health Care***

On September 2018, immigrants from New York received an open letter from the CEO of NYC Health + Hospitals and the commissioner of the Mayor’s Office of Immigrant Affairs. The letter reaffirmed the system’s commitment to protecting immigrant patients’ privacy and confidentiality about their immigration status so they can continue to seek healthcare services without fear of deportation. The letter is available to the public via their website in 14 different languages (Lessard, 2017).

Do not be afraid to go to the doctor, the clinic, the hospital, or the emergency room. All immigrants can get medical care in New York City, regardless of immigration status or ability to pay. We want you to seek care in any setting without fear.

NYC Health+ Hospitals runs the public hospitals and neighborhood health centers in New York City. We respect you and want to help you get the health care you deserve. When you visit our health care facilities, we do not collect information about your immigration status and we never release patient information without authorization by the patient or without being required to do so by law. Our staff will keep it private and confidential. Our health centers and hospitals have a long and proud history of caring for everyone. Our commitment is strong. It has not changed.

We promise all immigrants:

THE CITY OF NEW YORK HAS A POLICY TO PROTECT IMMIGRATION STATUS AND OTHER CONFDENTIAL INFORMATION, NYC HEALTH+ HOSPITALS WILL HONOR YOUR RIGHT TO PRIVACY.

NYC Health + Hospitals public hospitals and health centers are located in neighborhoods all over New York City and provide services in different languages. We provide free interpretation services in 200 languages, 24 hours a day, 7 days a week, and offer translated patient education materials in the top 13 languages preferred by our patients. Our doctors, nurses, and other health care workers care about you. Many of them are immigrants or children of immigrants. They all want to serve you with respect and will work to protect your privacy.

There are different options available to help you get the health care you need. All children and pregnant women can get health insurance – even if you do not have legal status. NYC Health + Hospitals staff can help you get the insurance you need. NYC Health + Hospitals will help you even if you do not have insurance and cannot pay a lot of money for health care. This is true for all types of health care services, including emergency care, doctor’s visits, medications, long-term care, and hospital stays. To help find out how much you can pay, our staff will ask you for some information about how much you earn and how many people are in your family. You will need to show your home address, some proof of identity, and your date of birth. We want you to get the care you need today, before you get sick, and before it becomes an emergency.

NYC Health + Hospitals has also partnered with IDNYC, the City’s municipal identification card available to all which is an accepted form of identification for patients that can be used during the check-in and registration process.

Our policy is clear, NYC Health + Hospitals employees cannot give your information to ANYONE else without authorization by the patient or without being required to do so by law. All of our employees know that if they break this promise they can lose their job. We understand that this is the only way that we can keep your trust.

In addition, other City services are available to you, including food, education, legal services, public safety, and more. We encourage immigrant New Yorkers to seek out important City services that are available to them and their families.

Call 311 for a list of all public hospitals and health centers to find out more information about resources like IDNYC, or to send a message to NYC Health + Hospitals or the Mayor’s Office of Immigrant Affairs.

It is our mission to empower every New Yorker – without exception – to live the healthiest life possible.

Dr. Mitchell Katz, President and CEO of NYC Health + Hospitals

Bitta Mostofi, Commissioner, Mayor’s Office of Immigrant Affairs

Since the letter was released, NYC Health + Hospitals has become a leader of “sanctuary hospitals” and has provided a proactive example of communicating the safety of undocumented patients. Many other health care centers have followed in their footsteps and have developed policies to protect patients’ rights and confidentiality. Hospital centers are slowly regaining the trust of the immigrant public by continuing to ameliorate their fears of deportation.

***Conclusion***

Because the political climate continues to be hostile toward undocumented individuals via news media and social media reports, immigrant patients continue to avoid health care facilities and medical appointments across the country. As a result, illnesses are often not treated early, but after it is too late. Hospital systems can get reimbursed for emergency visits for undocumented patients without insurance; however, it can also be challenging to get full reimbursement (Hermer, 2008). For this reason, health care facilities must make ethical decisions when working with undocumented patients. Do the costs of providing care to undocumented patients override the commitment to saving their lives?

**Discussion Questions**

1. From your perspective, should all hospitals become “sanctuary hospitals?” Why or why not?
2. What are the costs and benefits of operating sanctuary hospitals?
3. How can hospital systems develop policies that protect the privacy and confidentiality of undocumented patients?
4. What are the strengths and weaknesses of the letter provided by Dr. Katz and Mr. Mostofi to the undocumented community?
5. As a health care provider or staff member, how would you communicate patients’ rights in your health care facility?
6. If you were a hospital administrator, how would you train your staff to interact with ICE law enforcement agents seeking the private information of undocumented patients?
7. Apart from the issues mentioned in the case, what are other potential barriers to serving undocumented patients?

**Further Resources**

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