

**Gender Diversity in Electronic**

**Health Records:**

**The Silicon Sword of Damocles**

**2023 TransPride YOUniting Health & Wellness Conference  
October 6**

# The Silicon Sword of Damocles

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## The Silicon Sword of Damocles



“Since this life delights you,” an annoyed Dionysius replied, “do you wish to taste it yourself and make a trial of my good fortune?”

# EHR Misrepresentation and Nonconsensual Recording of Presumed Status

Patient Name Admin Sex: Female

## Continuity of Care Document

Summarization of Episode Note | 07/18/2023 to 07/18/2023

Please check the statement which best describes you.  
 I am a farm worker.  I am not a farm worker.

Please check the statement which best describes your veteran status.  
 I am a veteran.  I am not a veteran.

Please check your sex at birth.  
 Female  Male

Please check your preferred language.  
 English  Chinese  
 Spanish  Tagalog

## Social History

Social History Type	Response
Birth Sex	Male

Phone:

Fax:

## PATIENT INFORMATION

DOB:

Gender: U ?

## AUTHORITY

a, CA

## Problem List

Condition	Confirmation
Asthma	Confirmed
Hypertension	Confirmed
Transgender	Confirmed

# Nonconsensual, Inappropriate, & Misgendered 3rd-party Disclosure of Trans/Nonbinary Status

**LabCorp**

Specimen ID: [REDACTED]  
Control ID: [REDACTED]

[REDACTED]

**Patient Details**  
DOB: [REDACTED]  
Age(y/m/d): 062 [REDACTED]  
Gender: M SSN: \*\*\*-\*\*- [REDACTED]  
Patient ID: [REDACTED]

**Specimen D**  
Date collecte  
Date receive  
Date entered  
Date reporte

**General Comments & Additional Information**  
Alternate Control Number: [REDACTED]  
Total Volume: Not Provided

**Ordered Items**  
UA/M w/rfx Culture, Routine; [REDACTED]

TESTS      RESULT

[REDACTED] RX # \_\_\_\_\_

Patient Name [REDACTED]  
Address [REDACTED]  
Gender M DOB [REDACTED] Insurance Plan [REDACTED]

**Rx**

Quantity \_\_\_\_\_  
Generic All \_\_\_\_\_  
 1-24  
Patient Ins 1 Twice

Patient Name [REDACTED]  
Address [REDACTED]  
Gender M DOB [REDACTED]

**Rx**  
[REDACTED] 20 MG OR TABS

Quantity **Five (5)**  
Generic Allowed **YES**  
 1-24      Diag \_\_\_\_\_

# “UMMC Exchanges One Million Patient Records...”



This...

NEWS (USA)

# Republican AGs demand Biden administration allow them to keep access to out-of-state medical records

*The Republicans say that they need out-of-state medical records to enforce state bans on abortion and gender-affirming care.*

By John Russell Tuesday, July 18, 2023



## LATEST STORIES



# Some EHR/Intake Policy Issues (1)

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- Explicit release consent for SOGI disclosures.
- SOGI information not disclosed by patients at intake, should not be presumed and recorded by staff without consent
- SOGI information that is disclosed by patients, should not be deliberately misgendered/mis-recorded by staff



## Some EHR/Intake Policy Issues (2)

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- Nonbinary and intersex inclusion in all relevant data fields
- Segregation of SOGI information in database with appropriately restricted access and third-party disclosure. (Cures Act discussion)
- Voluntary SOGI disclosures, with "Choose not to disclose" options for all data fields.

## Some EHR/Intake Policy Issues (3)

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- Default, generic "Name" data field that reflects affirming name
- References to "legal name" replaced by "Name for Billing Purposes."
- Default, generic "Sex" data field that reflects affirming status
- References to "birth sex" replaced by respectful organ inventory practices

## Some EHR/Intake Policy Issues (4)

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- References to "legal sex" replaced by "Sex for Billing Purposes"
- Expedited and transparent process for correcting SOGI errors in EHR and third-party disclosures
- Accommodation for extraordinary privacy and safety concerns with SOGI data for TGD patients and families

# The Kahuna: EPIC EHR SOGI Page

The screenshot displays the EPIC EHR interface for the SOGI (Sexual Orientation and Gender Identity) section. The top navigation bar includes 'Summary', 'Chart Review', 'Results', 'Work List', 'MAR', 'Flowsheets', 'Avatar', 'Intake/Out...', 'Notes', 'Education', 'Care Plan', 'Orders', 'Charges', and 'Navigators' (circled in red). The left sidebar lists various medical categories, with 'SOGI' circled in red. The main content area is titled 'Gender Identity and Sexual Orientation' (circled in red) and contains several sections: 'Sexuality' with buttons for 'Lesbian or Gay', 'Straight', 'Bisexual', 'Something else', and 'Don't know'; 'Legal Information' with fields for 'Legal first name' and 'Legal last name'; 'Gender Identity' with buttons for 'Female', 'Male', 'Transgender Female', 'Transgender Male', and 'Other'; and 'Patient's sex assigned at birth' with buttons for 'Female', 'Male', 'Unknown', and 'Not recorded on birth certificate'. A 'Choose not to disclose' option is available for several sections. The 'Patient's pronouns' section includes buttons for 'she/her/hers', 'he/him/his', 'they/their/theirs', 'patient's name', 'decline to answer', and 'not listed'. The 'Steps patient has taken to transition' section includes buttons for 'presentation aligned with gender identity', 'preferred name aligned with gender identity', 'legal name aligned with gender identity', 'legal sex aligned with gender identity', and 'medical or surgical interventions'. The 'Patient's future plans to transition' section includes a '100%' button. Red 'X' marks are placed over the 'Legal Information' and 'Gender Identity' sections, and a red circle highlights the 'SOGI' label in the sidebar.

# CURES ACT Info Blocking Exceptions

## CURES ACT FINAL RULE

### Information Blocking Exceptions

**Section 4004 of the 21<sup>st</sup> Century Cures Act (Cures Act) defines practices that constitute information blocking *and* authorizes the Secretary of Health and Human Services (HHS) to identify reasonable and necessary activities that do not constitute information blocking (referred to as “exceptions”).**

On behalf of HHS, ONC has defined **eight** exceptions that offer actors (i.e., health care providers, health IT developers, health information networks (HINs) and health information exchanges (HIEs)) *certainty* that, when their practices with respect to accessing, exchanging, or using electronic health information (EHI) meet the conditions of one or more exceptions, such practices will not be considered information blocking.

An actor's practice that does not meet the conditions of an exception will not automatically constitute information blocking. Instead such practices will be evaluated on a case-by-case basis to determine whether information blocking has occurred.

We have finalized **eight** exceptions that are divided into two categories:

- Exceptions that involve not fulfilling requests to access, exchange, or use EHI; and
- Exceptions that involve procedures for fulfilling requests to access, exchange, or use EHI.

#### Exceptions that involve not fulfilling requests to access, exchange, or use EHI

Preventing Harm Exception

Privacy Exception

Security Exception

Infeasibility Exception

Health IT Performance Exception

#### Exceptions that involve procedures for fulfilling requests to access, exchange, or use EHI

Content and Manner Exception

Fees Exception

Licensing Exception

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