

2023 Health Law Conference

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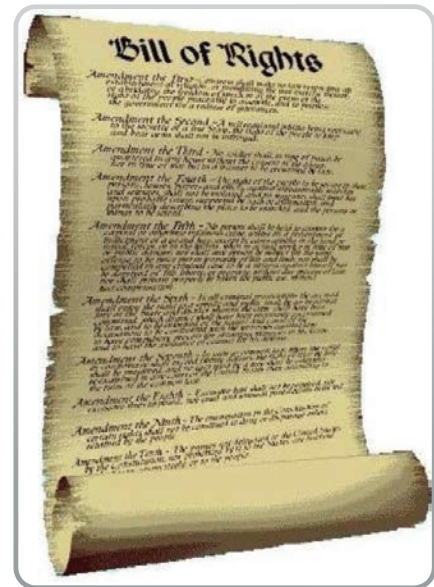
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Search of Patients and Visitors in Healthcare Settings

As a governmental entity, Hospital Districts are subject to the Fourth Amendment:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."



Fourth Amendment – The Rabbit Hole of Reasonableness

- **Searches Must Be "Reasonable"** - "[T]he central issue is whether the warrantless search of [patient's] bags was reasonable under the Fourth Amendment. . . . The relevant test is whether under all the circumstances the search was reasonable." *Wilson v. State*, 99 S.W.3d 767, 770 (Tex. App. 2003)
- **What is Reasonable?** The validity of a particular search is judged by **balancing the individual's expectation of privacy and the government's legitimate interests.**" *Wilson*, 99 S.W.3d at 767 (citing *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602(1989)).
- **In What Things Does a Patient Have an Expectation of Privacy?:** Things in which a patient has:
 - (1) an actual, subjective expectation of privacy; and
 - (2) and in which such a subjective expectation of privacy is "that society accepts as reasonable." *See Wilson*.

Fourth Amendment – The Rabbit Hole of Reasonableness

- Sometimes the reasonable expectation of privacy is diminished.
- **Emergency care** is one such situation in which privacy expectations are diminished!
- Hospitals can also carry out “**inventory searches.**”
- They are constitutional when carried out in accordance with **standard procedures** *and* to the limited **extent necessary** for the care-taking function. *South Dakota v. Opperman*, 428 U.S. 364, 373 (1976).
- Three distinct needs that underlie inventory searches making them a necessary exception to the warrant requirement. These are to:
 - (1) protect the owner's property,
 - (2) police against claims, and
 - (3) protect against potential danger.

Fourth Amendment – “Special Needs”?

- Governmental entities can carry out searches without warrants or individualized suspicion if they have a **special need unrelated to law enforcement**. *Ferguson v. City of Charleston*, 532 U.S. 67, 79 (2001)
 - Hospitals presumably have special needs in ensuring **patient care, patient safety, and the safety of Workforce Members**.
- Even if not subject to Fourth Amendment – good practice to follow standards and TAC has specific requirements for search of mental health patients

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Title search: Operational Issues for Hospitals

First appeared as part of the conference materials for the
34th Annual Health Law Conference session
"Operational Issues for Hospitals"