



Break-Glass Policy vs. Legal Chain of Custody

While a medical Break-Glass policy might be necessary for medical data, it shatters the basic requirements of a legal Chain of Custody when it is related to forensic evidence collected during a sexual assault exam.

In the Health Care industry, “break-glass” refers to a quick and secure means for a medical professional who does not have access privileges to medical information to gain access, **when necessary**. Break-Glass policy is typically based on pre-staged emergency user accounts, managed and distributed in a manner that makes them available without administrative delay.

Information quoted from OVC’s website (<https://ovc.ncjrs.gov/sartkit/develop/issues-coc.html>)

“To maintain a chain of custody, you must preserve evidence from the time it is collected to the time it is presented in court. To prove the chain of custody, and ultimately show that the evidence has remained intact, prosecutors generally need service providers who can testify—

- That the evidence offered in court is the same evidence they collected or received.
- To the time and date the evidence was received or transferred to another provider.
- That there was no tampering with the item while it was in custody.”

Forensic evidence, which includes examination reports, forensic photos and video, must be sequestered away from health records in order to preserve the legal Chain of Custody. If an image is placed into an EHR/EMR system, then a Break-Glass policy can be administered, breaking the Chain of Custody. An EHR/EMR system is, by design, a controlled data distribution system. This can be especially problematic if the forensic images/video will be used in a legal setting that requires all forensic evidence to be protected through a legal Chain of Custody. If images/video are stored in an EHR/EMR system, then every user that can initiate a Break-Glass policy essentially can be considered as part of the Chain of Custody, let alone unlogged access by system administrators. Such an obvious break in the legal Chain of Custody could render the images unusable/inadmissible when challenged.

Maintaining a very clear Legal Chain of Custody is absolutely necessary for forensic evidence and more specifically, forensic images and video. Storing images in any type of record system that can be overridden by a Break-Glass policy is not a best practice and can have unfavorable results for both the patient/victim and those involved in the holding/storing of the forensic evidence.

Additional Reference - <https://archives.fbi.gov/archives/about-us/lab/forensic-science-communications/fsc/oct2000/berg.htm>