

FEBRUARY 2019

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COMPLIANCE CONNECTION: Providing Relevant Issues and Hot Topics

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FEATURE ARTICLE

• \$853,000 Awarded to Patient Whose PHI Was Impermissibly Disclosed to Former Boyfriend

HIPAA Quiz

(See Page 2 for Question & Answer)

DID YOU KNOW...



HIPAA privacy rule: Myths & Facts

Myth: "HIPAA Does Not Apply to Our Specific Healthcare Provider."

Fact: HIPAA applies to any and all healthcare providers who transmit, store or handle protected health information, as long as they also engage in electronic transactions such as billing using HIPAA-established forms. HIPAA regulations apply to healthcare facilities of all sizes and purposes that engage in electronic transactions. Protected health information (PHI) — which includes a patient's name, social security number, address, etc. — is a subject to the HIPAA privacy rule. As long as you handle PHI, you need to comply with HIPAA.

This also means any of your subcontractors who can also access your patient data. Any entity this data goes through — for example, a cloud database provider — needs to be HIPAA-compliant as well.

Resource:

<https://www.qminder.com/hipaa-myths-debunked/>



\$853,000 Awarded to Patient Whose PHI Was Impermissibly Disclosed to Former Boyfriend

An 11-year lawsuit that was filed following the release of a woman's medical records to her former boyfriend has finally come to an end and a jury has ruled in favor of the plaintiff.

Emily Byrne took legal action against Avery Center for Obstetrics and Gynecology in Westport, CT, following the release of her medical records to her former boyfriend's attorneys. Emily Byrne broke up with her boyfriend, Andro Mendoza, after she discovered she was pregnant. Mendoza took legal action to obtain Byrne's medical records. His attorneys issued a subpoena to Avery Center to release Byrne's medical records and Avery Center complied.

According to Byrne's lawsuit, Mendoza viewed her medical records and used the information to try to gain custody of the baby. The information was also allegedly also used to harass and extort money from Byrne.

The lawsuit claimed that as a result of the disclosure of her medical records, Byrne suffered emotional distress, trauma, and anxiety, was harassed by exposure to civil claims in federal district court, received threats from Mendoza of criminal charges, and suffered financial losses relating to legal fees and medical bills.

The lawsuit alleged a breach of contract, negligence, negligent misrepresentation, negligent infliction of emotional distress, and that the release of Byrne's medical records constituted a violation of the Health Insurance Portability and Accountability Act (HIPAA).

The case came before the Connecticut Supreme Court twice. Avery Center attempted to get the case dismissed as there is no private cause of action in HIPAA; however, the Supreme Court ruled that a patient who suffered harm as a result of a breach of medical confidentiality had a tort remedy. The case was then remanded to the Superior Court for trial.

Read entire article:

<https://www.hipaajournal.com/853000-awarded-to-patient-whose-phi-was-impermissibly-disclosed-to-former-boyfriend/>

DID YOU KNOW...



Violations of the Privacy Rule: About Breaches

A "breach" is when information is accessed, used or disclosed inappropriately. Privacy Rule violations occur when steps aren't taken to keep information private.



10 Year Jail Term for Boston Children's Hospital Hacker

The hacker behind a Distributed Denial of Service (DDoS) attack on Boston Children's Hospital in 2014 has been handed a jail term of 10 years and must pay \$443,000 in restitution.

Martin Gottesfeld, 34, of Somerville, MA, launched attacks on the Framingham, MA, Wayside Youth and Family Support Network and Boston Children's Hospital in 2014 as a protest over the handling of a case of suspected child abuse.

In 2013, teenager Justina Pelletier was admitted to Boston Children's Hospital after a physician at Tufts Medical Center recommended she was transferred in order for her to see her longtime gastroenterologist. Justina suffered from mitochondrial disease; however, Boston Children's Hospital believed Justina's condition was psychological rather than physical.

Justina's parents tried to get their daughter transferred back to Tufts Medical Center but the hospital believed the actions of the parents and interference in their daughter's care amounted to medical abuse. In the subsequent custody case, the parents lost custody of their daughter to the state of Massachusetts. Justina spent the following 16 months in state custody.

Gottesfeld took issue with the treatment of Justina. Operating as a hacker under the banner of the hacking group Anonymous, Gottesfeld launched DDoS attacks on the medical facilities. An attack was launched on the Wayside Youth and Family Support Network in March 2014, where Justina was a resident after her discharge from hospital. In April 2014, Gottesfeld attacked Boston Children's Hospital. The attack caused significant disruption to day-to-day operations at the hospital over a period of two weeks.

Read entire article:

<https://www.hipaajournal.com/10-year-jail-term-for-boston-childrens-hospital-hacker/>

HIPAAQuiz

You need to call a person at home to set up a follow-up appointment. The answering machine picks up. Should you leave the message in detail or just ask the person to call back?

Answer: If you need to leave a message for a patient, provide a brief message asking the person to call back. Do not reveal details, such as test results or other health information.

What is Texas HB 300?

The Health Insurance Portability and Accountability Act (HIPAA) is a federal law that sets minimum privacy and security standards for healthcare organizations.

HIPAA naturally covers healthcare organizations based in Texas, but they also must comply with state laws. Texas has some of the most stringent laws in the United States as far as health data is concerned which were compiled in Texas House Bill 300 (Texas HB 300). While House and Senate bills are renumbered for each legislative session (for example, there is a current "House Bill 300" in the Texas legislature right now), these legislative changes are still called "House Bill 300."

Texas HB 300 amended four laws in Texas: The Texas Health Code (Chapters 181 and 182), the Texas Business and Commerce Code (Sections 521 and 522), the Texas Government Code (Chapter 531), and the Texas Insurance Code (Chapter 602) and introduced tougher privacy protections for health data than HIPAA.

Who is Required to Comply with Texas HB 300?

Compliance with Texas HB 300 is mandatory for all covered entities that are based in Texas or do business with Texas residents. Covered entities under Texas HB 300 differ from covered entities as defined in HIPAA.

Texas HB 300 expanded the HIPAA definition of covered entity (healthcare providers, health plans, and healthcare clearing houses) to include any entity or individual that possesses, obtains, assembles, collects, analyzes, evaluates, stores, or transmits protected health information in any form.

Texas HB 300 therefore applies to all healthcare organizations, including those that are not covered by HIPAA, and also lawyers, schools, universities, researchers, accountants, Internet service providers, IT service providers, government agencies, and individuals who maintain a website that collects, stores, or interacts with PHI.

Texas HB 300 Exemptions

The only entities not required to comply with Texas HB 300 are:

- Certain Not-for-profit agencies that pay for healthcare services or prescription drugs
- Workers' compensation insurance
- Employee benefit plans
- Crime Victim agencies
- Financial and Educational entities covered by other privacy laws.

Read entire article:

<https://www.hipaajournal.com/what-is-texas-hb-300/>

LINK 1

Massachusetts Attorney General Issues \$75,000 HIPAA Violation Fine to McLean Hospital

<https://www.hipaajournal.com/massachusetts-attorney-general-issues-75000-hipaa-violation-fine-to-mclean-hospital/>

LINK 2

Credit Card Numbers Exposed in BJC Healthcare Breach

<https://www.hipaajournal.com/credit-card-numbers-exposed-in-bjc-healthcare-breach/>

THUMBS UP!!!

Thumbs Up To ALL Departments For Implementing

Awareness of HIPAA, PII, PHI, ePHI & Social Media



- Main Campus
- West Campus
- Legends Park
- 501a Locations

A closer look at Protected Health Information (PHI)....

Remember, PHI is any health information an organization has or gets from another organization that could be used to identify a specific individual.

A medical record is an obvious example of PHI.
Another example is:

- ▶ a prescription label with the patient's name and the name of the drug.

A medical record is an obvious example of PHI.
Another example is:

- ▶ an X-ray and a doctor's notes about a patient.

A medical record is an obvious example of PHI.
Another example is:

- ▶ a letter giving patient test results.

Do you have exciting or interesting Compliance News to report?

Email an article or news link to:

Regenia Blackmon
Compliance Auditor
Regenia.Blackmon@midlandhealth.org

