

\$750,000 settlement highlights the need for HIPAA business associate agreements

Raleigh Orthopaedic Clinic, P.A. of North Carolina (Raleigh Orthopaedic) has agreed to pay \$750,000 to settle charges that it potentially violated the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule by handing over protected health information (PHI) for approximately 17,300 patients to a potential business partner without first executing a business associate agreement. HIPAA covered entities cannot disclose PHI to unauthorized persons, and the lack of a business associate agreement left this sensitive health information without safeguards and vulnerable to misuse or improper disclosure. Raleigh Orthopaedic is a provider group practice that operates clinics and an orthopaedic surgery center in the Raleigh, North Carolina area.

OCR initiated its investigation of Raleigh Orthopaedic following receipt of a breach report on April 30, 2013. OCR's investigation indicated that Raleigh Orthopaedic released the x-ray films and related protected health information of 17,300 patients to an entity that promised to transfer the images to electronic media in exchange for harvesting the silver from the x-ray films. Raleigh Orthopaedic failed to execute a business associate agreement with this entity prior to turning over the x-rays (and PHI).

"HIPAA's obligation on covered entities to obtain business associate agreements is more than a mere check-the-box paperwork exercise," said Jocelyn Samuels, Director of the U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR). "It is critical for entities to know to whom they are handing PHI and to obtain assurances that the information will be protected."

In addition to the \$750,000 payment, Raleigh Orthopaedic is required to revise its policies and procedures to: establish a process for assessing whether entities are business associates; designate a responsible individual to ensure business associate agreements are in place prior to disclosing PHI to a business associate; create a standard template business associate agreement; establish a standard process for maintaining documentation of a business associate agreements for at least six (6) years beyond the date of termination of a business associate relationship; and limit disclosures of PHI to any business associate to the minimum necessary to accomplish the purpose for which the business associate was hired.

The Resolution Agreement and Corrective Action Plan can be found on the HHS website at: <http://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/agreements/raleigh-orthopaedic-clinic/index.html>

HHS offers model business associate agreement language at: <http://www.hhs.gov/hipaa/for-professionals/covered-entities/sample-business-associate-agreement-provisions/index.html>.

To learn more about non-discrimination and health information privacy laws, your civil rights, and privacy rights in health care and human service settings, and to find information on filing a complaint, visit us at www.hhs.gov/ocr.

FOR IMMEDIATE RELEASE**April 21, 2016****Contact: HHS Press Office****202-690-6343****media@hhs.gov**

Unauthorized Filming for “NY Med” Results in \$2.2 Million Settlement with New York Presbyterian Hospital

Today, the Department of Health and Human Services, Office for Civil Rights (OCR) announced that it has reached a \$2.2 million settlement with New York Presbyterian Hospital (NYP) for the egregious disclosure of two patients’ protected health information (PHI) to film crews and staff during the filming of “NY Med,” an ABC television series, without first obtaining authorization from the patients. In particular, OCR found that NYP allowed the ABC crew to film someone who was dying and another person in significant distress, even after a medical professional urged the crew to stop.

“This case sends an important message that OCR will not permit covered entities to compromise their patients’ privacy by allowing news or television crews to film the patients without their authorization,” said Jocelyn Samuels, OCR’s Director. “We take seriously all complaints filed by individuals, and will seek the necessary remedies to ensure that patients’ privacy is fully protected.”

By allowing individuals receiving urgent medical care to be filmed without their authorization by members of the media, NYP’s actions blatantly violate the HIPAA Rules, which were specifically designed to prohibit the disclosure of individual’s PHI, including images, in circumstances such as these.

OCR also found that NYP failed to safeguard protected health information and allowed ABC film crews virtually unfettered access to its health care facility, effectively creating an environment where PHI could not be protected from impermissible disclosure to the ABC film crew and staff. In addition to the \$2.2 million, OCR will monitor NYP for two years as part of this settlement agreement, helping ensure that NYP will remain compliant with its HIPAA obligations while it continues to provide care for patients.

For further information on the application of the HIPAA Rules in situations involving media access to protected health information, please see OCR’s new FAQ on this subject: <http://www.hhs.gov/hipaa/for-professionals/faq/2023/film-and-media/index.html>.

The Resolution Agreement and Corrective Action Plan can be found on the HHS website at:
<http://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/agreements/new-york-presbyterian-hospital/index.html>.

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