HIPAA Violation: A Case Study

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What Can a Patient Do?
What Can a Patient Expect?

Disclaimer: This case not related in any way to the university, company or professional organization with which the author is affiliated. It reflects only her personal experience.
Description

Does a patient have any recourse when his privacy is compromised? What if an aggrieved patient follows up? What happens?
Why a Case Study?

Take a look at the patient perspective; we are all potential patients.

This is an old-fashioned, traditional case, involving loose-lipped staff.

This is more than unauthorized peeking, this is intentional disclosure.

I’ll let the documents do the “talking”
But First: Background

Privacy rule: To protect…the right of consumers to control how their personal health information is used

Includes a clear avenue of recourse if medical privacy is compromised

Enforcement: Noncompliance can trigger civil monetary penalties. Criminal violators can be fined and imprisoned

The HHS Office for Civil Rights is responsible for civil violations
Background

• Includes a clear avenue of recourse if medical privacy is compromised (http://www.hhs.gov/ocr)
Background

Enforcement: Noncompliance can trigger civil monetary penalty. Criminal violators can be fined and imprisoned

“first-ever HHS Resolution Agreement… Providence will not face a civil penalty” July 18, 2008
Background

Enforcement: Noncompliance can trigger civil monetary penalties. Criminal violators can be fined and imprisoned.

Although HHS “has the authority to levy civil fines on medical service providers for privacy violations, it has yet to do so…Of the 34,000 or so complaints received…only about 9,000 have…led to investigations” LA Times, 4/09/08
Background

Enforcement: Noncompliance can trigger civil monetary penalties. Criminal violators can be fined and imprisoned

“Jackson was indicted by a federal grand jury on a charge of obtaining individually identifiable health information for commercial advantage.” LA Times, August 5, 2008
Case Study Background

A Blue Cross nurse in the appeals department reviewed the appeal of an acquaintance (me)

The nurse gossiped to her ex, a friend of the patient

The ex wrote a sympathy note to the patient

The patient complained to Blue Cross and provided iron-clad documentation
The Patient’s Wishes

May 12, 2005

Subject: operation successful

“You are the only people who know and Sarah wants to keep it that way.”
The Smoking Gun

full so far but I'm sure that you have many plans that don't include you health. When it's convenient we'd love to know how you are doing. In the meantime know that we are in our thoughts and prayers.

Jim & Sandie

Sue,

Sandee & I crossed paths with my sis Michelle, at my daughters, Malissa's, graduation. Michelle said yes, and in fact came in late & you were coming to get it transferred to me & go on.

We hope that your past to be the way that one completely cancels. We know your life has been very
Response #1 to Complaint

August 18, 2005

“The quality of service provided to our members is of the utmost importance…your information has been forwarded to our HIPAA compliance…”

Sherri Goldin
Lead Grievance Specialist
Blue Cross of CA
October 26, 2005

"...you contend there was a HIPAA violation...by x, in the Blue Cross Appeals Department. I have researched x’s name on Blue Cross’ employee data base and was unable to locate her name...I am unable to further research this matter."

Bruce Peyton
Legal Assistant
Corporate Legal Dept
Response #4 to Complaint
Blue Cross to CA DHHS

June 13, 2006
“Blue Cross…originally responded to all of Ms. Ingersoll’s quality of care and quality of service issues (including the HIPAA issue)…”

Debbie Burgio
Regulatory Management
Blue Cross of CA
September 19, 2005

"...the concerns you raise have been submitted to the plan’s HIPAA compliance officer for investigation."

Diedre Rome
Complaint Analyst
HMO Help Center
July 26, 2006

"Blue Cross informs the Department that your concerns were previously addressed in their letter to you...lacking new...information, we cannot undertake further review..." 

Donnett Scott, Supervisor
Complaint Resolution Branch
May 29, 2007

"On October 21, 2005…HHS received a complaint alleging a violation...between April 26 and May 16, 2005…"

On February 21, 2007, OCR notified Wellpoint of the complaint…Wellpoint informed OCR that the BCC employee...had impermissibly disclosed
May 29, 2007 (cont.)

“Wellpoint has furnished OCR with BCC’s policies and procedures, which we are satisfied protect…”

Wellpoint has apologized…

OCR is closing this complaint.”

Michael F. Kruley
Regional Manager
The Apology

May 3, 2007

…”my sincerest apologies that a Blue Cross… associate disclosed some of your personal health information…”

I apologize for the delay… this matter was not taken lightly.”

Ron McGinnis
Director of Regulatory Management
Postscript

“Where we have found non-compliance, we have been able to get systemic change that benefits all individuals,” said Robinsue Frohboese, principal director of the office

LA Times 4/09/08
Postscript

“Even after the med center [UCLA] said in early April that it was cracking down on unauthorized looks at celebrity medical records, [staff] took an inappropriate look…”

The Wall Street Journal 8/05/08