

HIPAA Violation: A Case Study

Sarah Ingersoll

Clinical Instructor, Neurology, USC

Consultant, PlanetHospital

Treasurer, American Medical Informatics Assn

HIPAA Violation: A Case Study

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>)



U.S. Department of Health and Human Services • Office for Civil Rights

**HOW TO FILE A HEALTH INFORMATION PRIVACY
COMPLAINT
WITH THE OFFICE FOR CIVIL RIGHTS**

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

HHS, Providence Health & Services Reach Resolution Agreement

Andrea Kravitz, for Briefings on HIPAA, July 18, 2008

The Department of Health and Human Services (HHS) and Providence Health & Services have entered into a Resolution Agreement that includes a payment to HHS and corrective action plan for the Seattle-based health system to settle potential HIPAA privacy and security rule violations that occurred in 2005 and 2006, according to a July 17 HHS press release.

In addition to paying the \$400,000 resolution amount to HHS, Providence has agreed to a “robust” corrective action plan to help ensure the future protection of its electronic PHI from theft or loss.

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.”

Gmail - operation successful

<http://mail.google.com/mail/?ui=2&ik=aa72e008b2&view=pt&q=...>



sarah ingsoll <badrabbits@gmail.com>

operation successful

1 message

Andy Ingersoll <api@gps.caltech.edu>
To: badrabbits@gmail.com

Thu, May 12, 2005 at 8:34 PM

Dear Ruth, Marion, Minnie, George, and John,

I just got a call from Dr. Attal, the surgeon, who said that the operation was successful and the patient is in the recovery room. She will soon be transferred to a regular room, and I can visit her around 3 PM. She might be able to leave the hospital this afternoon.

Here's what I remember about the technical details. Everything was as expected. The tumor was growing close to the muscle wall, but showed no signs of breaching the barrier. The lymph nodes seemed normal to the touch. As planned, Dr. Attal used a dye to see which nodes were in communication with the area around the tumor, and pulled two or three for biopsy. We'll get those results in a few days. Sarah had issued written instructions not to take any more than these few "sentinel nodes," and the medical team did not do a frozen section analysis during the operation.

You will probably hear from Sarah or me this evening. My guess is that she will come home. You are the only people who know, and Sarah wants to keep it that way. Ray and Marph don't know, and I don't think Jerry and Amelia know, although she may tell Jerry when he's out here next Monday through Wednesday.

Love,

GPA

The Smoking Gun

full so far but I'm sure
that you have many plans
that don't include poor health.

When it's convenient we'd
love to know how you are doing.
In the meantime know that you are
in our thoughts & prayers.

Jim & Sandie

Sandie,

Sandie & I crossed paths
with my son, Mitchell, at my
daughter, Mallissa's, graduation.
Mitchell said you had breast
cancer & that you're working to
get it through to use a
for us.

We hope that your plans
to be able to say that are
completely cancellable. 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...”

Sherrri Goldin

Lead Grievance Specialist

Blue Cross of CA



August 18, 2005

Sarah Ingersoll
1265 S. Molino Avenue
Pasadena, CA 91106

Inquiry No.: 05207221292
Member ID No.: 103A57047
Group No.: 175104H30

Dear Ms. Ingersoll,

Blue Cross of California is in receipt of your grievance, requesting assistance with your request of disciplinary action to be taken regarding the issue we recently discussed.

You are currently covered under Cal Tech Campus' HMO group health plan.

The quality of service provided to our members is of the utmost importance to us. Although you will not receive further communication from us regarding this issue, standard resolutions for confirmed quality issues may include such actions as internal monitoring and trending, or peer-review disciplinary action, on-site audits, or implementation of a corrective action plan.

In addition, your information has been forwarded to our Health Insurance Portability and Accountability Act (HIPAA) compliance officer for additional investigation.

We appreciate your taking the time to bring your concerns to our attention and regret any difficulties you may have encountered in your efforts to obtain service.

Please be advised that the following information must be provided to you pursuant to law:

If you are a member of a group health plan governed by the Employee Retirement Income Security Act (ERISA), you may have the right to bring a civil action in federal court under ERISA Section 502(a)(9)(B). This right can be exercised when all required reviews of your claim(s) have been completed, the appeal process has been completed, your claim(s) was not approved, and you disagree with the outcome of the resolution.

You may voluntarily request a second appeal. A panel composed of individuals who have not participated in any of the previous decisions or a subordinate of the original decision-maker will review the voluntary appeal. The voluntary panel will allow you or

Response #3 to Complaint

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



October 26, 2005

Sarah Ingersoll
1263 South El Molino Avenue
Pasadena, CA 91106

**Re: Request for Arbitration
Certificate No.: 103-A5-7047**

Dear Ms. Ingersoll:

I have completed research into your request for arbitration concerning your request to receive services from out of network provider. Blue Cross' position concerning this matter is set forth below.

Membership records show that you are enrolled in the Blue Cross HMO Plan - California Care as a dependant under Andrew Ingersoll's coverage through his employer, California Institute of Technology. The benefits, terms, exclusions and limitations of the coverage are set forth in the Combined Evidence of Coverage and Disclosure Form ("Evidence of Coverage").

Under the Blue Cross HMO Plan, the Evidence of Coverage explains the procedures on how to obtain care. The Primary Care Physician for the Medical Group is responsible for authorizing all the care you receive. Membership records show that you are assigned to HealthCare Partners Medical Group. The Primary Care Physician is the first person you should consult for medical care. The physician is responsible for providing you with primary medical care and for determining when you need referral care. Your Medical Group will then schedule an appointment for you to arrange for appropriate care. When you need special care which cannot be provided by your Primary Care Physician or your Medical Group, your Primary Care Physician will arrange to send you to specialist for special care through a referral from HealthCare Partners Medical Group. If HealthCare Partners approves the referral from the Primary Care Physician, HealthCare Partners will authorize the treatment on an "Authorization for Referral Services" form which specifies exactly what treatment or services are authorized.

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



Legal Department

June 29, 2006

Sarah Ingersoll
1283 South El Molino Avenue
Pasadena, CA 91106

Re: **Sarah Ingersoll**
Certificate No.: 103-A5-7047

Dear Ms. Ingersoll:

This letter addresses your June 7, 2006 letter requesting a response to your letter dated April 18, 2006.

The concerns you raised in the April 18, 2006 letter were addressed to the Department of Managed Health Care by Debbie Burgio, of Blue Cross' Regulatory Management Department, by letter dated June 13, 2006, a copy of which is enclosed with this letter and is incorporated herein by reference.

You should also be receiving a response from the Department of Managed Health Care.

I trust this letter and enclosure addresses your June 7, 2006 request for a response.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Peyton".

Bruce Peyton
Legal Assistant
Legal Department

Enclosure
BPI:eb

N:\LEGAL\06\06\MULTI\A50612\NG06029114

21555 Oxnard Street, Woodland Hills, CA 91367-4622 Fax: 818.221.1505
http://www.bluecrossca.com
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DHS Complaint Response #1

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



Arnold Schwarzenegger, Governor
State of California
Business, Transportation and Housing Agency
999 Ninth Street, Suite 500
Sacramento, CA 95814-2125
(916) HMO 2219 Voice
(916) 224-2695 Fax
hohlm@dmhc.ca.gov e-mail
www.dmhc.ca.gov

September 19, 2005

Sarah Ingersoll
1265 South El Molino
Pasadena, CA 91106

Patient: Sarah Ingersoll
DMHC#: 268696 - S11001
Health Plan: Blue Cross of California Individual Plan

Dear Sarah Ingersoll:

Thank you for submitting your complaint to the HMO Help Center at the Department of Managed Health Care. The Department regulates HMOs and other health plans in California. Your grievance concerns the difficulty you experienced while accessing care through your health plan.

Our staff thoroughly reviewed the issues listed in your complaint. We did not find a violation of the California health plan law regarding these issues. The information we received showed the following:

- The health plan has taken appropriate steps in response to the quality of care concerns you raised regarding the provider and nurse identified in your grievance. Specifically, the concerns you raised have been submitted to the plan's quality improvement program for investigation and to their Health Insurance Portability and Accountability Act (HIPAA) compliance officer for investigation. Your grievance has been resolved appropriately.

Health plans must maintain a quality improvement program and are responsible for the overall quality of care provided to members. In general, however, health plans are not responsible for the professional practice of individual providers.

If you would like to file a complaint against the particular physician you have identified, you should contact the California Medical Board, 1426 Howe Avenue, Sacramento, CA 95825, (800) 633-2322, (916) 445-6122 ext. 2935. Please contact the Board of Registered Nursing, Attn: Complaint Intake, P.O. Box 944210, Sacramento, CA 94244-2100, (916) 445-5198, if you wish to file a complaint against the particular nurse in your complaint. www.rn.ca.gov. Complaint forms are available online.

This letter is our final decision concerning your complaint. This means we have completed our review and have closed your file. We may use the information in your complaint in our ongoing regulation of health plans. If you need further assistance, you may wish to contact your own private attorney.

If you have any questions, please call us toll-free at (888) 466-2319. You may also visit our website at www.dmhc.ca.gov. Our website has additional information regarding the Department and patients' rights in California.

Sincerely,

Diedre Rome
Diedre Rome
Complaint Analyst
HMO Help Center

cc: Blue Cross of California

DHS Complaint Response #2

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



Arnold Schwarzenegger, Governor
State of California
Deputy, Transportation and Housing Agency
Department of Managed Health Care
380 North Street, Suite 500
Pasadena, CA 91106-2727
916-229-4301 - Phone
916-229-5251 - Fax
dhscom@dnhc.ca.gov

July 26, 2006

Sarah Ingersoll
1263 South El Molino
Pasadena, CA 91106

Health Plan: Blue Cross of California
DMHC Complaint#: 268696 - STD01

Dear Sara Ingersoll:

Thank you for taking the time to provide the Department of Managed Health Care with additional details regarding your concerns involving Blue Cross of California.

The Department of Managed Health Care reviews complaints to determine whether a health plan has complied with its responsibilities under the Knox-Keene Health Care Service Plan Act of 1975, the body of law that regulates California health plans. Please note that we regulate HMOs and other health plans, not individual physicians, hospitals, health care facilities, medical groups, or other health care providers. We lack the authority to determine liability, if any, or to directly impose penalties or award monetary damages.

A thorough review of your file has determined that Blue Cross's response to your complaint is consistent with its responsibilities under the Knox-Keene Health Care Service Plan Act of 1975, the body of law regulating California health plans.

The details of the plan's Quality Management/Peer Review of your quality of care issues, specifically concerning untimely referral, are confidential. Corrective or disciplinary actions are taken when appropriate. However, the outcome of the review will not be disclosed to you.

A copy of your recent inquiry was forwarded to Blue Cross regarding the lack of response to your letter dated April 18, 2006. Blue Cross informs the Department that your concerns were previously addressed in their letters to you dated August 23, 2005, and October 26, 2005.

In light of the above, and lacking new and relevant information, we cannot undertake further review of your case at this time. The fact that you have submitted a complaint for review does not prevent you from pursuing, nor is it a substitute for, any other formal or informal legal proceedings or remedies that may be available to you.

OCR Response, p 1

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



DEPARTMENT OF HEALTH & HUMAN SERVICES
Voice: (415) 477-8344, (800) 568-1019
TDD: (415) 477-8344, (800) 537-7697
HAX: (415) 477-8329
<http://www.hhs.gov/ocr>

OFFICE OF THE SECRETARY
Office for Civil Rights, Region IX
90 7th Street, Suite 4-100
San Francisco, CA 94103

May 29, 2007

Ms. Sarah Egersoll
1265 South El Molino Ave
Pacifica, CA 94106

Ms. Wilma Kidd, Director, Privacy Compliance
Wellpoint, Inc.
2015 Staples Mill Rd.
Richmond, VA 23231

OCR Reference Number: 06-43952

Dear Ms. Egersoll and Ms. Kidd:

On October 21, 2005, the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) received a complaint alleging a violation of the Federal standards for privacy of individually identifiable health information (the "Privacy Rule", 45 C.F.R. Parts 160 and 164, Subparts A and E). Specifically, the complainant, Ms. Sarah Egersoll, alleged that between April 26 and May 16, 2005, Blue Cross of California (BCC) impermissibly disclosed her protected health information (PHI) when a BCC employee (who was an old acquaintance of Ms. Egersoll's) told a third party (the employee's ex-husband) about Ms. Egersoll's health condition, without a valid reason and without Ms. Egersoll's authorization, which could reflect a violation of 45 C.F.R. §§ 164.502(a).

OCR enforces the Privacy Rule and also enforces federal civil rights laws which prohibit discrimination in the delivery of health and human services because of race, color, national origin, disability, age, and under certain circumstances, sex and religion.

BCC is a subsidiary of Wellpoint Health Systems (Wellpoint). OCR's investigation of this complaint includes a review of Ms. Egersoll's allegations, discussions with Ms. Wilma Kidd, Wellpoint's privacy official, and her staff, and a review of documentation supplied by Wellpoint.

On February 21, 2007, OCR notified Wellpoint of the complaint. On April 17, 2007, Wellpoint responded to OCR's notification letter. Wellpoint informed OCR that BCC's Grievance and Appeal Department originally responded to Ms. Egersoll about her complaint in a letter to her dated August 18, 2005, which they subsequently provided to OCR. Wellpoint informed OCR that the BCC employee whom Ms. Egersoll complained had impermissibly disclosed her PHI had admitted doing so and that BCC had sanctioned the employee for violating its HIPAA privacy policy by terminating her employment.

OCR Response page 2

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

Scratchers v. Blue Cross
May 29, 2007
Page 22

Wellpoint has furnished OCR with BCC's policies and procedures, which we are satisfied protect against impermissible disclosure of PHI. Wellpoint has assured OCR that BCC staff was retained on complying with the Privacy Rule. Wellpoint also apologized to Ms. Ingersoll concerning this matter. Ms. Ingersoll has acknowledged receiving the apology.

All matters raised by this complaint at the time it was filed have now been resolved through the voluntary compliance actions of Blue Cross. Therefore, OCR is closing this complaint.

OCR's determinations, as stated in this letter, apply only to the allegations in this complaint that were reviewed by OCR.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case, upon request by the public. In the event OCR receives such a request we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If you have any questions regarding this matter, please contact me at 415-437-8310, or you may contact She E. Fisetzer, Senior Equal Opportunity Specialist, at 415-437-8326. Thank you for bringing this matter to our attention.

Sincerely,



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



May 3, 2007

Sarah Ingersoll
1263 S. Molino Avenue
Pasadena, CA 91106

Member ID# 103A57047
Group # 175104f001

Dear Ms. Ingersoll:

The purpose of this letter is to convey to you my sincerest apologies that a Blue Cross of California associate disclosed some of your personal health information in emr to a third party in August 2005.

I apologize for the delay of this response but please give me an opportunity to explain that this matter was not taken lightly. Even though I can not share with you the disciplinary actions that we took with the associate that disclosed your information, I can assure you that we took the appropriate actions for such a serious breach of a member's confidentiality. In addition, my staff was retrained on our CoMorate Policy & Procedures on handling members Personal Health Information.

Ms. Ingersoll, once again we truly apologize for this violation of your privacy and the delay of this letter. If you have any further questions regarding this matter, please contact me at 818-234-3125.

Sincerely,


cx;i@e114@

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