



HIPAA

HIPAA PREEMPTION LAW

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Washington, DC & Boston, Mass. & London, UK

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HIPAA For Dummies

- Civil sanctions for violation of standards
 - Except if you *did not know* &
 - Exercising *reasonable diligence* you *would not have known* of violation
- Penalty waived if violation due to *reasonable cause* & *not willful neglect*
- 30 days+ to cure & technical advice
- \$100 for each violation or \$25,000/year

HIPAA For Crooks

- ***Knowingly***: unlawful use or disclosure
- \$250,000 + 10 years in jail if with ***intent*** to sell, transfer or use health information for commercial advantage, personal gain, or malicious harm

Bad HIPAA Conspiracy

- **Could a non-person conspire with a covered entity to cause a violation of HIPAA for crooks?**
- **Defendant charged with conspiracy to violate HIPAA need not be able to violate HIPAA**

Bad HIPAA

Misprison of a Felony

- **Could a non-person, having actual knowledge of commission of a HIPAA felony, fail to notify HHS & take affirmative steps to conceal?**
- **Defendant charged with misprison of a HIPAA felony need not be able to violate HIPAA**

Bad HIPAA

Obstruction of Justice

- **Could a non-person obstruct justice by interfering with the enforcement of HIPAA?**
- **Defendant charged with obstruction of justice need not be able to violate HIPAA**

Bad HIPAA

“Knowingly”

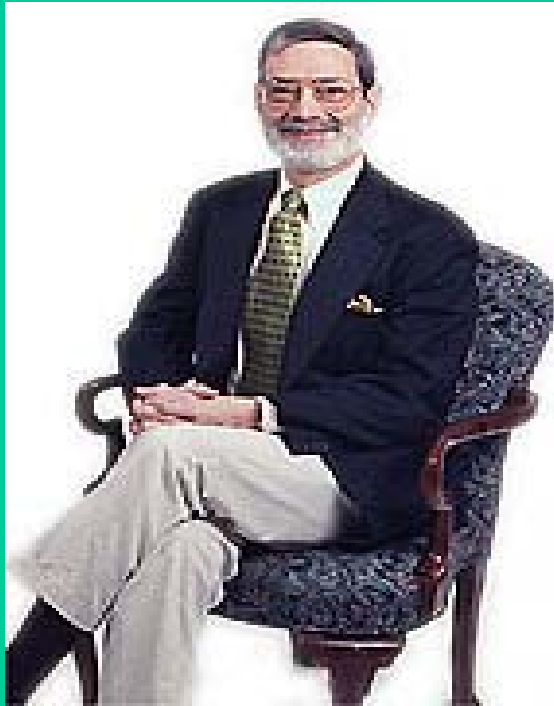
- **Has actual knowledge of actions**
- **Deliberate ignorance or reckless disregard of truth**
- **Mere intent to act instead of specific intent to violate law**
- **Not innocent mistake or negligence**

Bad HIPAA

“Intent”

- **Has actual knowledge that actions would violate HIPAA**
- **Need not intend specific result**
- **Result of actions inevitable**
- **Voluntary act or omission**

Why is this man smiling?
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