

So, you Disclosed  
Disease Management  
Participation to the  
Patient's Secretary:  
Now What?

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THOUGHT LEADERS  
IN HEALTH LAW®



# Secretary Knows About Participation

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- o War Story
  - o Patient contacts DMO expressing interest and requesting info at his office
  - o Patient schedules telephonic assessment
    - o Patient reschedules and limited assessment performed
    - o Nurse sends educational information for next call
  - o Nurse follows up at appointed time
    - o Leaves message with Secretary
      - o Name and number only
    - o Talks with secretary two weeks later
      - o Who informs nurse he will call back and let DMO know if he is interested

# Or Does She?

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- o Nurse Follows Up Two Months Later
- o New Secretary
  - o Very diligent – she's new
  - o Very persistent – and apparently persuasive
- o Nurse Discloses DMO program name
  - o Discloses nature of program and specific disease
  - o Discloses program offered as part of his health plan

# Could it get worse – or Murphy's Law

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- o Secretary reports alleged violation of HIPAA to DMO
- o Enters the Supervisor –
  - o She is a nurse and she will carry out her duty to “care for the patient” - in this case the disease management nurse
- o Calls Secretary to Explain
  - o Discloses facts upon which nurse thought secretary knew



- o Disease Management Dilemma
  - o Provides the benefits inherent in controlling the high costs associated with chronic diseases and improving treatment outcomes by:
    - o Identifying chronic disease population
    - o Educating the patient on self-management
    - o Collaborating with other health care providers
    - o Measuring, evaluating and managing process and outcomes
    - o Routinely report and provide feedback
  - o Yet disclose PHI only to those authorized to know
  - o When is an authorization required?

# Treatment

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*"And, in our continuing effort to minimize surgical costs, I'll be hitting you over the head and tearing you open with my bare hands."*

# Is it Treatment, HCO or Marketing?

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- o Treatment

- o Focused on specific individual

- o Nurse consultation

- o Patient self-management coaching

- o Drug Compliance Reminders

- o Other activities that engage patient in direct health care improvement

- o And who sends the materials

- o Health care provider or

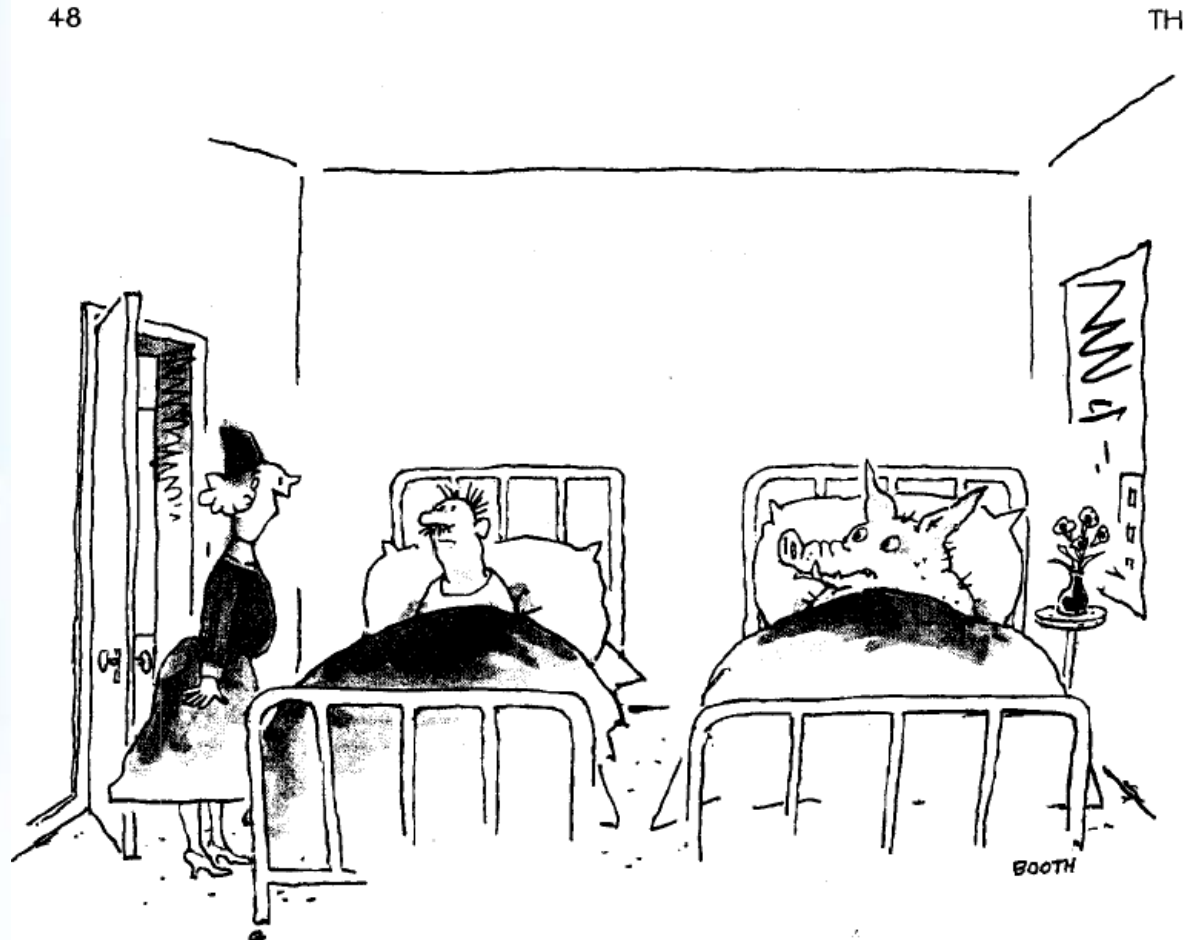
- o Health plan

- o Where does the nurse come in?



# Health Care Operations

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*"Good news, Mr. Herndon. We worked out the budget, and we have a kidney."*



# Is it Treatment, HCO or Marketing?

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- o Can a Health Plan provide Treatment?
  - o Unclear in the Rules
  - o Individualized communications with patients are protected under treatment
    - o If occur on behalf of provider and not plan
  - o Providing educational materials may be either treatment or HCO
    - o “It Depends” – Lawyer’s favorite response
  - o Health plans provide HCO activity when they conduct population-based case management program

# Is it Treatment, HCO or Marketing?

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- o Health Care Operations
  - o QA and improvement
    - o Outcomes evaluation and clinical guideline development
  - o Population-based activities
    - o Relating to improving health or reducing costs
  - o Protocol development
  - o Case management and care coordination
  - o Contacting providers/patients about treatment alternatives
- o No authorization required



# Marketing

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SMITH

“It looks to me the human species is advancing. Your baby was born with three USB Ports.”

# Is it Treatment, HCO or Marketing?

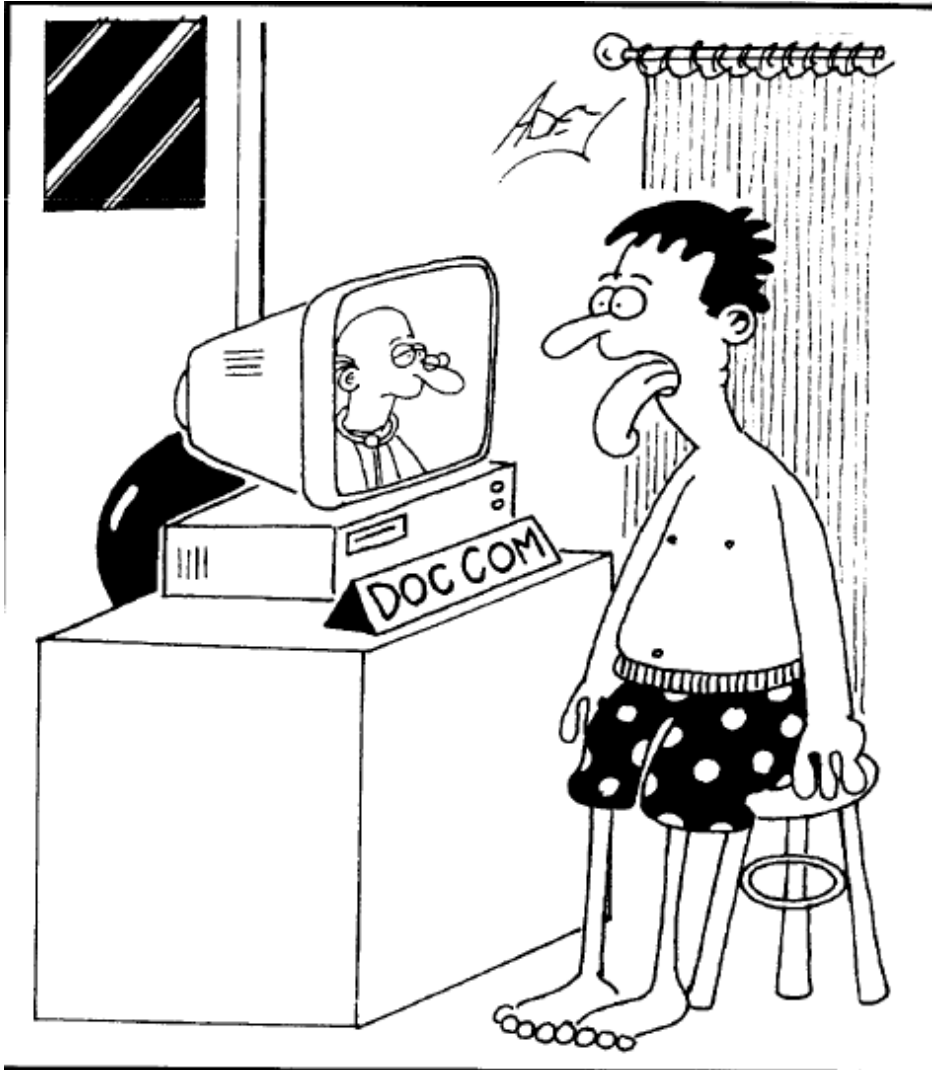
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## o Marketing

- o Communication about a product or service
  - o Purpose is to encourage recipients to purchase or use the product or service
- o Managing treatment/coordinating care or
  - o Encourage purchase of product
- o Care coordination and case management
  - o Not Marketing
- o Identify at-risk population or
  - o Promote services
- o Requires authorization

# At Home Communications

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# Use and Disclosure of PHI

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- o Communicating with Patients
  - o Includes at home, work or other
  - o Includes phone, mail or other
- o Reasonable Safeguards
  - o Minimal necessary
    - o Begs the question
  - o Need to Know
    - o Who will have access?
  - o Answering machines
    - o Is there a restriction?



# How Much is Too Much

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- o Rules require reasonable safeguards
  - o Message machines may include secretaries
- o Patients can request restrictions
  - o Both on alternative means or locations for communications
  - o Closed envelopes vs. postcards
  - o P.O. box vs. home
  - o Calls at office vs. home
- o Failure to comply
  - o Can lead to severe sanctions

# The Friends and Family Plan

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- o Privacy Rules permits sharing PHI with
  - o spouses, family members, friends or other persons identified by patient
- o Patient must agree
  - o or at least not object
- o Recognizes circumstances may allow reasonable inference
  - o Based on professional judgment
  - o Best interests of patient



# Incidental Uses and Disclosure

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- o Occurs as a by-product of another permissible or required use or disclosure
  - o Reasonable safeguards and minimum necessary standards must be met
- o Secondary use or disclosure cannot reasonably be prevented
  - o Is limited in nature and occurs as a result of another permitted use or disclosure
- o Not permitted if a by-product of an underlying use or disclosure which violates the Privacy Rule



# So was there a HIPAA violation?

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- o 1<sup>st</sup> follow up call?
  - o Leaves name and number only
- o 2<sup>nd</sup> follow up call?
  - o Secretary informs nurse patient will call back and let her know if patient interested?
- o 3<sup>rd</sup> follow up call?
  - o Informs secretary of DMO name and disease specific education information

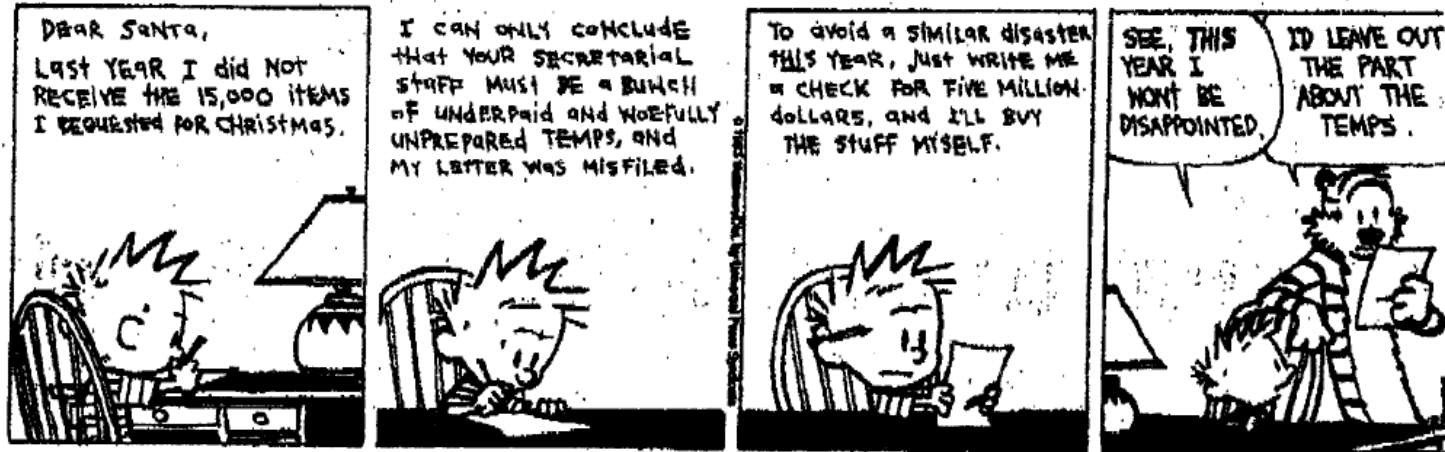
# Secretarial Communications

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The Atlanta Journal / The Atlanta Constitution

COMIC!

## CALVIN AND HOBBS



# DMO Protections

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- o Appoint Chief Privacy Officer
  - o To whom you report potential violations
  - o Avoid the Supervisor Add On
- o Establish Policies and Procedures
  - o Clearly define minimally necessary
  - o Assure safeguards on alternative communications/locations are in place
- o Provide Education – Frequently
  - o Make sure nurses are included
  - o Use examples and role play
- o Never Assume