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Protecting Yourself from the Actions of Your Business Associates

By Vera Chenault

Earlier this year, the Office for Civil Rights (OCR), the federal agency that enforces HIPAA, announced a \$1.55 million settlement agreement with a Minnesota hospital, when a laptop was stolen from a contractor's employee. While incidents such as theft cannot always be prevented, multi million dollar fines can. OCR found that the hospital did not have the required contracts in place and did not conduct a risk assessment of the contractor who had lost the data, and those unavoidable violations of HIPAA resulted in the large settlement agreement with OCR.



Business Associates are vendors and contractors whose work for a HIPAA Covered Entity, such as a physician practice, involves the handling of patient information. Examples of Business Associates include electronic medical record software companies, shredding services, and attorneys. Companies that may incidentally come across patient information, but do not directly handle it as part of the work they are doing, such as cleaning services and the post office, are not considered Business Associates under HIPAA. The past year has seen the largest number of HIPAA settlement agreements with OCR. Several of those settlement agreements as well as several large fines were the result of mishandling of patient information by Business Associates. Both Business Associates and the Covered Entities who provided them with the information have been held liable for breaches of patient privacy.

From the outset, HIPAA required that medical providers obtain Business Associate Agreements with their Business Associates. These contracts have bound the Business Associates to protect the privacy and security of patient information. However, with recent changes to the HIPAA regulations and its breach notification requirements, it is important (and required) that Business Associate Agreements are regularly reviewed and updated.

Because of regulatory changes, and because of recent enforcement actions by OCR, it is important that medical practices review their contracts, relationships, and operating procedures when it comes to Business Associates. Identifying who your Business Associates are is the first task. These will include, but are not limited to, businesses that store and transmit patient information, such as cloud storage services, EMRs, and email

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How are you rewarding doctors for innovating?

Physician employment contracts include many things. Few say anything about how doctor employees will be rewarded for innovating.

That is unfortunate since to sustain an innovation focus in a business, organizations must change their evaluation and compensation structures. Few, if any, organizations have well-defined criteria to evaluate work associated with innovation.

The mixed message is that sick care and academic employers want innovation but, at same time, they are opaque, vague or silent about how they will reward people who do it.

Here are some ways to turn expectancy theory of motivation into practice:

1. Be clear about your definition of innovation and your strategic priorities

2. Agree on how you will measure it and when

3. Make innovation part of your employee development, promotion and tenure process

4. Don't confuse newness with innovation, and with individual contributions v team success.

5. Reward those who innovate with what they value. Some want things other than money.

6. Be transparent about your innovation reward system, defining IP ownership issues, downstream revenue sharing agreements and spin out support options

7. Eliminate annual performance reviews

8. Be sure there is a clear link between achieving innovation benchmarks and timelines and the likelihood that

performers will be rewarded

9. Minimize the time between performance and rewards

10. Showcase champions and high performers to make them your best "salespeople"

You need to lead innovators, not manage innovation. That means rewarding them for the right things, with the right incentives, at the right time.

Arlen Meyers, MD, MBA is the President and CEO of the Society of Physician



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Interview with Dr. James Hagler



Little Rock High School. He gave me a job at Baptist Hospital as an IV technician. I loved the challenges of medicine and the ability to help people.

Why did you choose your specialty?

OB/GYN was my favorite subject in Medical School and they were my highest grades on the National Boards. I was also fortunate to be assigned by the Army as head of the OB/GYN Department for the 1st Army at their headquarters in Ft. Jay in New York.

Who are the people who influenced you the most in your professional life and why?

Mr. John Gilbreath gave me an

opportunity to see the practice of medicine; Dr. Willis Brown was a great teacher at UAMS as well as Dr. Garth Jarvis at the University of Texas; and Dr. Howard Armstrong and Dr. Deane Wallace who helped me get established in Little Rock.

What advice would you give a medical student in school right now?

Medicine is a very demanding profession. Be prepared to make sacrifices in order to practice good medicine. Continue to keep up with all the newest procedures, medications and government regulations. Enjoy the challenge that is medicine.

What motivated you to choose medicine as a career?

Mr. John Gilbreath, administrator at Baptist Hospital, was my Sunday school teacher my senior year at

Dr. Betty Ann Lowe Inducted into Arkansas Women's Hall of Fame

March 23, 1934 – March 5, 2013

On August 25, 2016 former PCMS member Dr. Betty Ann Lowe was inducted into the Arkansas Women's Hall of Fame. She was the first woman to graduate top of her class at UAMS, was medical director of Arkansas Children's Hospital, namesake of the Betty Ann Lowe, MD Distinguished Chair in Pediatric Education and the first Arkansan and second woman to become president of the American Academy of Pediatrics.



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2016 PCMS Carolyn Clayton Scholarship Awarded

The 2016 PCMS Carolyn Clayton Scholarship was awarded on August 2, 2016 to Chrystal Lau. Ms. Lau, a native of Little Rock, AR, graduated from Stanford in 2015. She has also been involved in Impact Abroad, a program that offers students a



L-R: Dr. Monica Dellimore and Chrystal Lau

global perspective on public service, and H.E.L.P which provides comprehensive health education to Bay area middle schools through science-based curricula and interactive teaching methods. Ms. Lau is the 4th recipient of the scholarship.



2016 UAMS Freshman Class

EXEMPT

DOL Issues Final Overtime Rule

The U.S. Department of Labor has issued the final version of a much-anticipated overtime exemption rule, raising the minimum salary threshold required to qualify for the Fair Labor Standards Act's "white collar" exemption to **\$47,476** per year.

The final rule was proposed in June 2015 and will broaden federal overtime pay regulations to include more than 4 million more people. The rule will take effect on **Dec. 1, 2016**.

A proposed version of the rule that was issued last year had set the threshold at an estimated \$50,440 per year, but the DOL lowered that figure by about \$3,000 in the final version. The salary threshold will be automatically updated every **three years** to ensure it stays at the 40th percentile benchmark.

Under previous regulations, employees had to meet certain tests related to job duties and be paid at least \$455 per week - or \$23,660 annually - on a salary basis to be exempt from minimum wage and overtime requirements under the Fair Labor Standards Act exemptions for executive, administrative, professional, outside sales and computer employees.

But the final rule calls for raising that salary level, last updated in 2004, to equal the 40th percentile of weekly earnings for full-time, salaried workers in the nation's lowest income region, bringing the salary to a projected level of \$913 per week. **That is more than double the current threshold under the FLSA white collar exemptions.**

This final rule will have serious implications for all employers, including colleges and universities, nonprofit organizations

and small business owners. The most problematic change is a dramatic increase in the amount employees can earn and be considered exempt from overtime pay from \$23,660 to \$47,476. This will be extraordinarily problematic for many employers to implement.

Information provided by Cross Gunter Witherspoon & Galchus



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calendar of events

2014 LUNCH & LEARN **September 28, 2016**

LUNCH & LEARN



Learn to be Lean

Anne Pontius, SVMIC

This presentation introduces the quality improvement methodology of Lean. The goal of Lean is to eliminate or minimize non-value added steps to create efficient processes and procedures. Attendees will learn how to identify the eight forms of waste that contribute to practice inefficiency and excessive cost. A Value Stream Mapping tool will be

presented to show how to identify value and non-value added steps in processes.

October 13, 2016

2016 HIPAA Compliance Conference

Arkansas Realtors Association Building

This annual conference will have a summary of the privacy rule, discussion of financial penalties and the obligations covered entities may have that extend far outside its own security perimeter. Join your colleagues and experts in the field for the information packed few hours.



*Rebecca Tutton,
JD, RN, Arkansas
Mutual Insurance*



*Stephen Yarberry
Baptist Health
System*

2014 LUNCH & LEARN **October 19, 2016**

LUNCH & LEARN

Advantages of Joining a Group Purchasing Organization (GPO)

We will discuss the advantages of being part of a GPO, and answer the following questions: Is a GPO Free? Does the GPO ship products? We will also discuss the savings to any practice on items you are already purchasing.



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Protecting Yourself from the Actions of Your Business Associates

service providers if you transmit patient information via email; business service providers such as accountants, attorneys, IT technicians, and billing companies. It is also useful to review existing Business Associate Agreements, to determine whether the Business Associate agreement with those companies are still current. If not, terminating the Business Associate Agreement and obtaining assurance that no patient information was retained may be appropriate.

Once Business Associates have been identified, it is important to ensure a HIPAA compliant relationship exists beyond merely obtaining an updated Business Associate Agreement. This includes reviewing procedures to ensure limited access, ensuring secure transmission of patient information, and conducting a risk assessment of the Business Associate. For example, in the case of breach detection and notification, a review may include ensuring the Business Associate has adequate monitoring in place to timely identify a breach, that contact information is up to date to ensure you are notified of a breach, and that you and the Business Associate have an agreement about who will bear the cost of a breach. These are on going processes that should be continued until the relationship with the Business Associate ends.

This article is for educational and information purposes only and not intended to provide legal advice. For questions or help with HIPAA compliance, Vera Chenault may be reached at Chenault@verachenault.com or (501) 436-9822.



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