



OCR SETTLEMENT AND UPDATE

by Darryl A. Ross

Stolen phone containing medical records results in \$650,000.00 settlement

A former nursing home operator reached a settlement with HHS' Office of Civil Rights following the theft of a phone of a *Business Associate* that contained 412 nursing home resident records. The government's investigation revealed violations of the Health Insurance Portability and Accountability Act's Security Rule based on the failure to evaluate and manage the risk of storing PHI on mobile devices. The Office of Civil Rights' Press release stated that "Business associates must implement the protections of the HIPAA Security Rule for the electronic protected health information they create, receive, maintain, or transmit from covered entities.'.....'This includes an enterprise-wide risk analysis and corresponding risk management plan, which are the cornerstones of the HIPAA Security Rule." [Click Here for the full text of the Settlement Agreement](#)

Providing PHI To potential business partner yields \$750,000.00 settlement

An orthopedic clinic agreed to a settlement after it provided PHI of 17,300 patients to a potential business partner that did it did not have a business associate agreement with. [Click Here for the full text of the Settlement Agreement](#)

Where are the Breaches Occurring?

Covered Entity Type	Total	Percentage
Business Associate	266	17.1%
Health Plan	195	12.5%
Healthcare Clearing House	4	0.3%
Healthcare Provider	1093	70.2%

Location of Data	Total	%
Hacking/IT Incident, Unauthorized Access/Disclosure	196	12.6%
Improper Disposal	58	3.7%
Loss, Unauthorized Access/Disclosure, Unknown	138	8.9%
Other	91	5.8%
Theft	719	46.1%
Unauthorized Access/Disclosure	325	20.9%
Unknown	9	0.6%
Grand Total	1558	

Location of Breached Information	Total	%
Desktop Computer	135	8.7%
Desktop Computer, Electronic Medical Record	3	0.2%
Desktop Computer, Email, Laptop, Network Server	22	1.4%
Desktop Computer, Laptop	20	1.3%
Desktop Computer, Network Server	13	0.8%
Desktop Computer, Other Portable Electronic Device	8	0.5%
Desktop Computer, Paper/Films	7	0.4%
Electronic Medical Record	77	4.9%
Email	122	7.8%
Laptop	279	17.9%
Laptop, Other	28	1.8%
Network Server	186	11.9%
Network Server, Other	4	0.3%
Other	150	9.6%
Other Portable Electronic Device	136	8.7%
Paper/Films	368	23.6%

HIPAA Enforcement Fast Facts

132,556 - Total number of HIPAA complaints since April 2003 Compliance Date.
59% - % of complaints not eligible for case enforcement.
18% - % of investigations that required corrective action to be taken upon resolution.
8% - % of complaints where investigation determined that there as no violation.
\$36,639,300.00 - Total dollar amount of HIPAA settlements

About the author:

Darryl Ross is a Shareholder with the firm of Wroten & Associates and maintains a diverse litigation practice with experience handling all aspects of civil litigation including arbitrations, complex settlements, trials (jury and court), and appeals. Mr. Ross' practice focuses on the defense of nursing homes and residential care facilities. He has successfully handled a wide variety of health care matters for public and private entities including insurance coverage issues, product liability claims, interpretation, advice and enforcement of medical staff bylaws, as well as class action litigation.

Mr. Ross is a frequent speaker at industry conferences and forums and has given numerous Webinars for clients on a variety of issues impacting their operations. Recent presentations include How to Deal with a Challenging Resident?, What Rights Do Facilities Have When They Discovery A Sex Offender is Living in the Building?, and How to Protect the QA Process.

Mr. Ross is a member of the California Association of Healthcare Facilities Legal Committee, as well as a member of the American Youth Soccer Organization's (AYSO) National Legal Commission. Mr. Ross is also a Planning Commissioner for the City of Aliso Viejo California, as well as Regional Commissioner of AYSO Region 889 located in Aliso Viejo, California.

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