

February 8, 2016

Could this be you? ALJ Upholds \$239,000 HIPAA Penalty for Lincare, Inc.

A U.S. Department of Health and Human Services (HHS) Administrative Law Judge (ALJ) has ruled that Lincare, Inc. (Lincare) will be required to pay a \$239,000 civil monetary penalty for violations of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The penalty was imposed by the HHS Office for Civil Rights (OCR) as a result of the accidental disclosure of 278 confidential patient records. It is only the second time in its history that the OCR has ordered a HIPAA-covered entity to pay civil monetary penalties for a HIPAA violation.

Lincare, doing business as United Medical, operates more than 850 medical centers throughout the United States, providing respiratory care and medical equipment to patients at its facilities and medical services at its patients' homes. The OCR's investigation of Lincare began after a spouse of a former Lincare employee notified the agency that his spouse had left behind documents containing the protected health information (PHI) of 278 patients after moving to a new residence.

The investigation by the OCR confirmed that PHI had been removed from Lincare facilities, exposed to an individual unauthorized to view PHI and that the Lincare employee had abandoned the documents. The investigation also uncovered the fact that Lincare's privacy policies did not include policies or instructions to employees for protecting PHI taken offsite or any type of logging systems for tracking PHI. Additionally, there was evidence indicating that Lincare had an unwritten policy requiring certain employees to store PHI in their vehicles for extended periods of time. The OCR noted that even after Lincare discovered the data breach and found out that the OCR was investigating the incident, it did relatively little to address the security vulnerabilities or to implement more stringent controls to prevent the exposure of PHI.

Lincare argued that the HIPAA rules had not been violated as the documents containing PHI had been stolen by the person who subsequently reported the HIPAA violation to the OCR. The ALJ stated that this argument was "unsupported" and noted that it would be even more damaging to Lincare if it was true. The OCR imposed a civil monetary penalty in the amount of \$239,000, and the ALJ upheld the penalty. Lincare has until February 19, 2016, to appeal the decision.

In a majority of cases, the OCR reaches a voluntary agreement with covered entities and a settlement is reached to resolve potential HIPAA violations. The OCR attempted to reach a voluntary resolution with Lincare but was unsuccessful. This penalty demonstrates that the OCR will pursue actions through the courts to hold HIPAA-covered entities financially liable for violating HIPAA. This is the second time a HIPAA penalty has been appealed to an ALJ, and in both instances the penalties were upheld.

Although the imposition of civil monetary penalties is rare, this case further demonstrates the importance of having comprehensive HIPAA policies and procedures in place, implementing meaningful employee training programs and systems for tracking PHI, and conducting periodic risk assessments to identify vulnerabilities.

Are your HIPAA policies and procedures adequate to protect you from penalties when the unexpected happens and when OCR comes knocking at your door? Periodic audits and risk assessments will help you identify weaknesses in your HIPAA compliance program and defend against penalties when violations occur.

This E-Alert was prepared by Josh Gilbert. If you have questions regarding access to patients' medical records and what constitutes adequate HIPAA policies, please contact Josh at 614.227.7736 or jgilbert@bricker.com; Bette Squeglia at 614.227.2396 or esqueglia@bricker.com; Chris Bennington at 513.870.6572 or cbennington@bricker.com; or any INCompliance consultant for more information.