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Government brings HIPAA criminal charges against drug company employees

Drug company Warner Chilcott, now a part of Botox maker Allergan Plc, has agreed to plead guilty to felony healthcare fraud and pay \$125 million to resolve charges that it paid kickbacks to doctors to induce them to prescribe several of its drugs. While such settlements have become somewhat routine, this case is noteworthy because the Department of Justice also brought HIPAA criminal charges against several employees of Warner Chilcott for activities related to the kickback scheme.

The settlement resolves charges that from 2009 to 2013, Warner Chilcott illegally marketed seven drugs by making payments or offering perks such as expensive restaurant meals to persuade doctors to prescribe the drugs. Warner Chilcott has agreed to pay a \$22.94 million criminal fine and admit to paying kickbacks, improperly inducing insurers to pay for prescriptions, and making unsubstantiated claims about its drugs. It also agreed to pay \$102.06 million to the U.S. government and individual states to resolve civil charges that it caused false claims to be submitted to government healthcare programs.

The HIPAA criminal charges stemmed from unauthorized access to patient records by Warner Chilcott employees. District managers allegedly encouraged their sales representatives to review patient records and “flag” records with brochures about the company’s drug in order to remind physicians to prescribe the drug. Further, at least one district manager allegedly directed sales representatives to fill out prior authorizations for the drugs if physicians refused to do so themselves. Sales representatives also allegedly took patient records home in order to complete those prior authorizations. At least one district manager received a \$60,000 bonus from Warner Chilcott that resulted, in part, from this “prior authorization” scheme.

Landon Eckles, a Warner Chilcott district manager who allegedly engaged in the conduct described above, was charged with one count of wrongful disclosure of protected health information in violation of the criminal provisions of HIPAA. The statute provides for a sentence of up to 10 years in prison, three years of supervised release, a fine of up to \$250,000, and exclusion from federal health care programs. Sentences are based upon the U.S. Sentencing Guidelines and other statutory factors. In addition to Mr. Eckles, three other district managers and a physician who permitted Warner Chilcott employees to access patient records pleaded guilty or agreed to plead guilty to criminal HIPAA violations.

Hospitals and medical practices should exercise caution in granting access to patients’ medical records to third parties, such as drug company representatives, for purposes of marketing. Understanding the

difference between lawful access for treatment purposes, which is permitted under HIPAA, and an unlawful access or disclosure that may subject a provider to penalties under HIPAA is critical.

This E-Alert was prepared by Josh Gilbert. He can be reached at 614.227.7736 or jjgilbert@bricker.com. If you have questions regarding access to patients' medical records and what constitutes marketing activity for HIPAA purposes, please contact Josh or any [INCompliance consultant](#) for more information.