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Protection of Patient Privacy and HIPAA Best Practices



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"I'M SORRY BUT DUE TO NEW HIPAA REGULATIONS ALL PATIENTS MUST WEAR MASKS."

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Recent OCR Settlements

- **July 23, 2020 - \$25,000 Settlement from Email Disclosure**
 - Metropolitan Community Health Services – failure to remediate for more than five years
- **July 27, 2020 - \$1,040,000 Settlement from Unencrypted Stolen Laptop Breach**
 - Lifespan Corp. – “systemic noncompliance” with HIPAA rules
- **September 15, 2020 - \$127,500 Settlement from Five Providers**
 - Failure to provide access to records

Indiana Civil Suits

- No private cause of action under HIPAA
- Indiana Courts have allowed civil suits to be pursued based upon disclosure of private patient information
 - Typically under the guise of negligence, invasion of privacy, intentional infliction of emotional distress, etc.

Walgreen Co. v. Hinchy (2014)

Pharmacist viewed boyfriend's ex-girlfriend's medical records and provided information regarding birth control prescription not being filled.

Were acts incidental to employment?

Did this further employer's business?

Robbins v. Trustees of Indiana Univ. (2015)

Registrar used phone to take pictures of patient's records and then put pictures on Facebook. Hospital sued for vicarious liability (responsible for employee) and direct liability (failure to properly supervise and train).

Were acts incidental to employment?

Properly trained and supervised?

Hayden v. Franciscan (2019)

Registrar used phone to take pictures of patient's records and then put pictures on Facebook. Hospital sued for vicarious liability (responsible for employee) and direct liability (failure to properly supervise and train).

Were acts incidental to employment?

Properly trained and supervised?

Stuck v. Franciscan (2019)

Employee placed comment on Facebook about a patient (teenager) arrival via Lifeline and facts about accident.
Employee on break at the time.

Were acts incidental to employment?

Properly trained and supervised?

Sodervick v. Parkview (2020)

Employee did intake for patient and texted husband about patient's sexual history (though he was having an affair). A friend of husband used phone and saw text message. Patient sued.

Were acts incidental to employment?

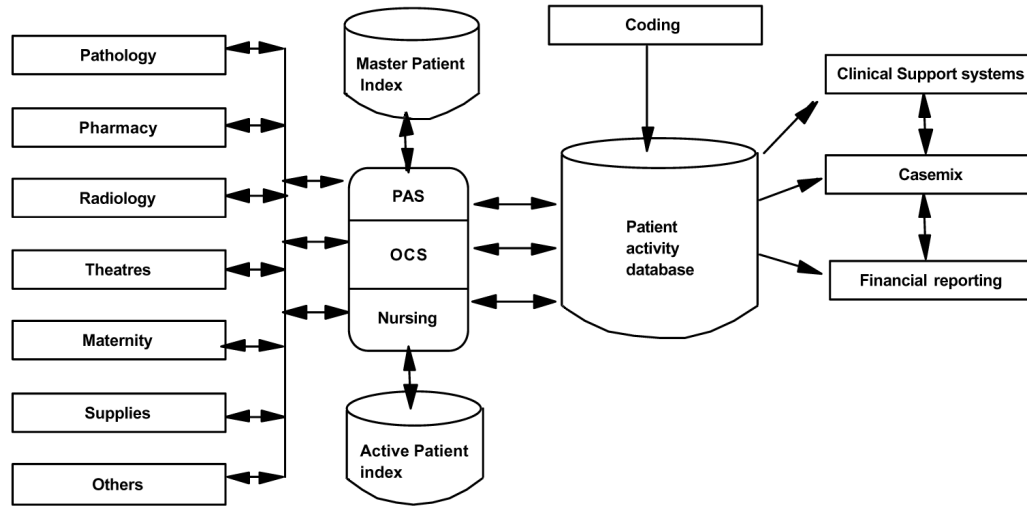
Properly trained and supervised?

What to do about it?



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Hospital Information Support System



Employment Relationship

Hiring

- Background Checks
- Criminal History
- Prior Employment – Reasons for Discharge

Initial Orientation

- Confidentiality Form
- Employee Handbook
- Policies and Procedures
- Training of new employees

Ongoing Training

- Training of existing employees
- At least annually
- Updated as needed

Retention of Employees

- Investigation into incidents
- Immediate action to prevent further harm
- Follow-up on plans

Termination

- Based upon investigation
- Intent significant component of punishment

Other Compliance Activities

Policies and Procedures

Auditing

Risk Analysis

Remediation

BAA's

- Business Associate is a person or organization (other than a member of a covered entity's workforce) that creates, receives, maintains, or transmits PHI on behalf of Covered Entity
- Must have executed BAA prior to disclosing PHI to BA
- BAAs must be updated for HITECH

BAA's

- Third party administrator (TPA) for health plan
- CPA firm whose accounting services to provider clients involve access to PHI
- Attorney whose legal services to hospital clients involve access to PHI
- Expert engaged by attorney for medical record audit
- Consultant who performs utilization reviews for hospital
- Independent medical transcriptionist for physician group

Physical Safeguards

Breach Notification

Notice of Privacy Practices and Access and Copy Requests

Questions?

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