



QUARTERLY REPORT

HELPING YOU KEEP YOUR DENTAL PRACTICE SAFE

WINTER 2015

The costs of being a victim

Last fall, a small local doctor's office was robbed. During the lunch hour, while staff members were in the back office, a thief walked into the doctor's copy room and stole a laptop containing protected health information (PHI). Eight months and \$20,000 later, the good doctor narrowly avoided a possible \$1.5 million governmental fine.

In the healthcare compliance system, the U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) is both the referee and governing body.

Once the OCR received a report that the doctor's laptop was stolen, they came marching in to conduct an inquiry. The OCR asked for:

- A formal written description of the event;
- Evidence of corrective action taken by the doctor's office;
- Documentation of mitigation steps taken;
- A copy of the doctor's policies and procedures to safeguard PHI;
- Copies of any risk analyses assessing potential threats and vulnerabilities to the office's PHI;
- Documentation showing the office had implemented security measures sufficient to reduce risks;
- Documentation showing the office had implemented a mechanism to encrypt and decrypt electronic PHI;
- Confirmation of whether the theft was reported to the OCR's web portal; and
- Many other weighty requests.

Unfortunately, the doctor only had a hand-me-down notice of privacy policies that staffers routinely gave to new patients. That was it. Nothing else. Risk Analysis? Encryption?

Mitigation? Security measures? OCR web portal? The doctor had no idea what any of that meant.

Consequently, the doctor had to retain legal counsel and an information security expert to build and implement – retroactively – new policies, procedures and practices that were compliant with HIPAA's privacy rule, breach notification rule, and security rule. These professionals also assisted the doctor with the careful response and communications to the OCR. Thankfully, the doctor's retroactive (and very expensive) efforts helped him avoid the fine. The OCR is typically not so lenient. He also narrowly avoided having to notify more than a few thousand patients, which would have been a significant expense and likely embarrassment. The national average for notification and credit monitoring is \$214 per patient.

The OCR has very publicly announced that it is picking up its audit program and will begin a new round of audits starting soon. Healthcare professionals need to be prepared by not only understanding, but by meeting privacy, security and breach notification requirements. Pleading ignorance is not a defense when the OCR calls.

The doctor in this account could have completely avoided all the time, expense, and financial risk had he:

1. Spent a few hours to implement written privacy, security and breach notification policies and procedures; and
2. Implemented some simple security measures, such as encryption.

DBIC recognizes the seriousness of compliance and the OCR. As a result, we have prepared and are

making available, for free, a template of policies and procedures for you to use in your practice. We can also refer you to professionals who will provide tips and actionable items to help you win compliance and protect your practice. Please contact us at 800-452-0504 for more information.

This article was written by Shawn M. Lindsay, JD, CIPP/US, an attorney and certified information privacy professional at Harris Berne Christensen LLP. He can be reached at 503-968-1475 or shawn@hbclawyers.com.

RISK MANAGEMENT TIP

New DEA hydrocodone restrictions

Effective October 6, 2014, hydrocodone combination products were reclassified by the U.S. Drug Enforcement Administration (DEA) and are now subject to tighter restrictions.

Previously, combination products containing hydrocodone and specified amounts of other substances such as acetaminophen or aspirin were classified under the less restrictive Schedule III. Now, products with the greatest potential for harm and abuse, including opioids such as Vicodin, Lorcet, Lortab, and Norco, are classified as Schedule II substances.

If you have any questions about being properly credentialed with the DEA to prescribe these drugs for your patients, contact Drug Registrant Information at 800-882-9539 or email registration questions to DEA. Registration.Help@usdoj.gov.



Closed Claim Review

The patient presented for a crown seat on #19. She had a slight cold and a mild cough. When the doctor attempted to place the crown, the patient had an untimely cough, knocking the crown into the back of her throat. The patient was adamant that she had swallowed the crown. The dentist called us, and we stressed that the patient must be sent to an urgent care or primary care physician for chest X-rays to confirm that the crown was not aspirated. The patient agreed to the chest X-ray, which showed no foreign objects and indicated the crown was indeed swallowed and would pass with time.

A patient who swallows a foreign object needs to be sent for chest X-rays to determine whether or not the object was aspirated, regardless of how certain the patient is that he or she has swallowed the object.

The patient's out-of-pocket expenses (after health insurance benefits) for this accident arising out of dental services may be covered under the Professional Liability – First Aid coverage up to \$5,000. If the patient had indeed aspirated the crown, requiring a bronchoscopy, the First Aid coverage would still apply for out-of-pocket expenses up to \$5,000.

If you have any questions, please contact our Claims Department at 503-952-5275.

Have you heard about our Referral and New Client Program?

Refer a friend or colleague to DBIC or request a quote from us and you'll receive the following perks!

- A Starbucks gift card
- Entry in DBIC's quarterly drawing to win lunch for your staff
- Entry in the grand prize drawing for two tickets to a 2014 – 2015 Trail Blazers game hosted in the Moda Center Suite

Congratulations to our first quarterly drawing winner for lunch – Dr. Jeffery Spathas and staff!

For more information, call 503-952-5275 or 800-452-0504 or visit dentistsbenefits.com.



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HELPING YOU KEEP
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An Oregon company formed by dentists for dentists

DBIC provides personal service from our underwriters, claims specialists and risk managers, as well as risk management programs created specifically for dental practices.

We're the leading insurer of dentists in Oregon and are endorsed by the Oregon Dental Association (ODA).

We offer:

- ✓ Professional Liability
- ✓ Businessowners
- ✓ General Liability
- ✓ Earthquake/Flood*
- ✓ Cyber Security*
- ✓ Workers Compensation*
- ✓ Employment Practices Liability*
- ✓ Life*
- ✓ Disability*
- ✓ Medical*

*Coverages brokered through DBC