

Compliance: Can't I Just Be a Doctor Any More?



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Financial Disclosures – Joe DeLoach, OD, FAAO I Have Received Honoraria From or Served as a Consultant for: (Partial Listing)

- | | | |
|-----------------|-----------------|-------------------------|
| • Vision Source | • OfficeMate | • Essilor of America |
| • Alcon | • Marco | • Pearle Vision / SNAPP |
| • Laboratories | • TSO | • Vision West |
| • Carl Zeiss | • NVision | • EyeMart Express |
| • Meditec | • Cleinman | • UHCO, RSO, UAB, |
| • Optos | • Partners | Berkley, and other |
| • Diopsys | • Vision Trends | optometry schools |
| • Kowa | • Konan | |
| • PCS | | |
| • AllDocs | | |

**Over half the state
optometric
associations**

**There are no conflicts or
disclosures related to any of
these groups**

Practice Compliance Solutions, LLC – President and CEO
Clinical Professor – University of Houston College of Optometry (opinions do not necessarily reflect the views of the University)



Drinking from a firehose...

This is an overview of about **6 hours of material in 1 hour**

- If you have questions, talk to us after
- Email us:

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Hey...aren't you the
Freddie Krueger guy???



Don't you understand we
don't want to be sad?

Here's the deal...
You have two choices

1. Comply with the law
2. Gamble

**You are over 10X more likely to have a
compliance violation filed against you
than a malpractice claim...and the
average compliance fine or lawsuit
dwarfs the average liability claim
penalty.**

WHAT ARE WE MISSING HERE?



Scary Facts 2014-2016

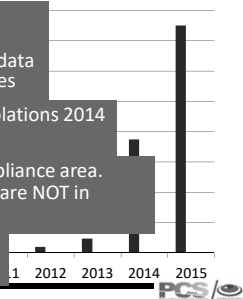
HIPAA 154,400 complaints in 2015

- 69% result in fine (OCR data)
- Estimated 60% increase in 2016 – no data due to three year court backlog on cases

OSHA - 5,162 OSHA/CDC small business violations 2014 (OSHA data)

HR – Biggest and FASTEST CHANGING compliance area. Feds estimates 77% of all small businesses are NOT in compliance

Dramatic increase in medical fraud and abuse - more on that later!



Why the increase in the regulatory action?



IT'S VERY SIMPLE!

\$4 **BILLION** cash cow – JUST HIPAA

GOVERNMENT CASH COW



Compliance the Hard Way



“Experience is something you don’t get until just after you need it”

Steven Wright

NONE of the many ODs we have helped ever thought they would get in trouble with the government

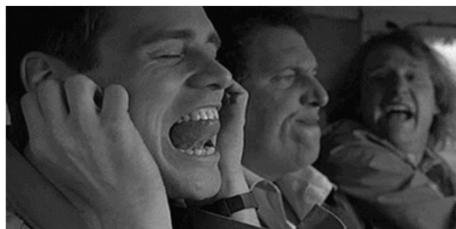
HIPAA

“One of the most worthless laws ever written”

Joe – CEO PCS



How Most Doctors See HIPAA



By national statistics (OCR & OIG), about 60% of you listening are NOT HIPAA compliant!



Original HIPAA Penalties

2015 update... \$10,000 **MINIMUM** fine for **ANY**, even minor HIPAA violation

“Reckless indifference”

That can cost you **\$250,000.00**

The \$1.5M cap is off...the courts have gone crazy with this



And its not just hospitals and big clinics?

Healthcare Information 100 | Innovation Awards | Leading Edge | Webinars | White papers | Events | Press | Advertise

HEALTHCARE

**\$750,000 fine – just for not having
updated BAA**

Two doctor small medical clinic – JUST LIKE
MOST OF YOU!

Most common investigation since 2017 –
small healthcare businesses

Why the increase in breaches?

Medscape 4/28/14

Stolen EHR Charts Sell for **UPDATE** on Black
Market **\$150!**

Credit cards are worth about a buck!

NEWS FLASH!

HIPAA is about **IDENTITY THEFT** – *not health
care information*

PCS

HIPAA Privacy Rules

Can I get a little privacy
here please? Thank you!



So...Are **YOU** HIPAA compliant?

You are legally obligated to do all this and
have doctors AND STAFF that are
prepared to answer patient's questions
about their rights and your policies

NOT UPDATED = NOT COMPLIANT

Laundry List of Other Privacy Issues

Authorizations	Medical records review
Marketing	Medical records request
Minimum Necessary Rule	Request to change medical records
Incidental Disclosure Rule	Requests for disclosure documentation
Business Associates	Individual privacy accommodations requests
HIPAA Breach	

You and your staff must understand all of these issues and
they must be addressed in your Privacy Manual

HIPAA legislation totals 2712 pages of legal mumbo jumbo. You can try
to do this yourself or work with a compliance company who has already
done it!

Security Rules

Security Rule Requirements

- Appoint a Security Officer
- Conduct a risk analysis and risk management plan to determine threats or risks in your operational systems
- Complete the Organizational Requirements
- Documented policies and procedures for all applicable Security Standards – Security Manual

And that is how involved? Another 1,000
pages of legal mumbo jumbo

PCS

OCR Tenets of Security Risk Analysis and Management

- **FLEXIBILITY** – the Security Standards do not prescribe a specific policy, software and other course of action
- **SCALABILITY** – and do not hold large and small business to the same standard!
- **UNIQUE** – your risk analysis is unique to your business

Be wary of “experts” telling you that you **MUST** do certain things under the Security Rules – that is **NOT** the way the rules were written!



WHAT IS A SECURITY RISK ANALYSIS?

SECURITY IS MORE THAN COMPUTERS

SECURITY IS ABOUT YOUR OFFICE LAYOUT, LOCKS, ALARMS, FLOODS, HURRICANES, BACK UPS, LOCATION, PASSWORDS, PAPER RECORDS, EMPLOYEES, OFFICE POLICIES

COMPUTERS ARE JUST ONE COMPONENT OF THAT YES IT IS COMPLICATED BUT IT CAN BE MADE EASY, UNDERSTANDABLE AND NOT A HUGE FINANCIAL BURDEN



So How Do I Get Caught? (true of all the compliance issues)

- **Whistleblowers (90%)**
 - 1^o – unhappy patients
 - 2^o – unhappy current / former employees
 - Opportunists, **trained by the government**
- **Random audits**
 - Permanently funded in HIPAA
 - New to OSHA
- **Actions of staff**
 - Primarily due to lack of training
 - Cyber criminals recruiting and training “insiders” – your staff



The MAJOR HIPAA Issues That Result In Finding Yourself Meeting with the Feds – 2016 Data

- 1) No or incomplete compliance (“gambling doctors”)
- 2) Lost laptops / back up tapes
- 3) Inadequate / absent usernames & passwords
- 4) Employee ignorance or stupidity (*most not trained!*)
- 5) Stability (lack of) of your EMR / network
- 6) Hacks – main ones are identity theft and ransom



Summaries of New HIPAA Regs

- Breach responses – **MUST** have a plan
- Encryption in medical records
- **Legal healthcare communications**
- **Medical records release – BIG UPDATE**
- **Patient non-discrimination**
- Patient’s rights regarding YOUR use of THEIR insurance
- Marketing regulations

Don’t know ALL this? You’re still gambling!



Major Concept

Have to keep up...

HIPAA considers not updated = not compliant

\$111K for not eliminating prior employee’s UN/PW
\$750K for outdated Business Associate Agreements

In both cases, NO BREACH



Human Resources

One of the most complicated, most dangerous and potentially most financially devastating compliance issues facing doctor employers



Let's Start With What Has NOT Changed How Most Doctors See HR



By EEOC (government) statistics, at least 77% of you listening are NOT HR compliant!

WE ARE HR COMPLIANT!

Federal and State agencies

- State Employment Commission
- State Commission on Human Rights
- State Communicable Disease Prevention and Control Act
- State Workers Compensation Act
- Equal Employment Opportunity Commission
- Americans with Disabilities Act
- Department of Labor
- Wage and Hour Act
- Family Medical Leave Act
- Fair Labor Standards Act
- Occupational Safety and Health Administration
- Center for Disease Control
- Federal Privacy Act
- Immigration Reform and Control Act



HR issues you MUST understand

- Necessity of employee manual
- Legal hiring / firing
- What you CANNOT ask in an interview
- Checking credit reports
- Criminal background checks
- New Hire reporting requirements
- Discrimination laws
- Smoking laws
- Guns on property laws
- Avoiding embezzlement
- Employee poster requirements
- FLSA – salary vs hourly
- Contract labor laws
- Breaks, meals, time off requirements
- Jury leave, military leave, voting leave
- Employee surveillance
- Disability requirements
- Family Medical Leave
- Harassment – Sexual and more
- Pay requirements
- Social media regulations
- COBRA
- Legal / proper terminationsand many more...



Three most important HR issues

1. ALL these laws are written to “protect and serve” your employee – NOT YOU. We are in the age of “Minimal Employer Rights”
2. HR laws are Federal AND State
3. Your employees likely know more about HR laws than you do. And what they do not know **attorneys** are willing to teach them



Docs That Didn't Play by the Rules

All of these are from 2016!

- A.B., TX **\$108,000** - FLSA violation
- C.S., FL **\$58,500** - Wrongful termination
- D.H., MS **\$293,400** - Contract labor violation
- R.P., IL **\$112,300** - Hiring discrimination suit
- T.B., OH **\$185,324** – FLSA violation
- E.S., TX **\$163,390** - FLSA violation
- L.S., PA **\$694,000 & Bankrupt** - Harassment



That will never happen to me...

- The great employer myth *"my staff loves me – they would never hurt me"* ... then life happens
- Every one of these cases was the result of "qui tam" action – a Whistleblower. **FOUR OF SEVEN WERE THE OFFICE MANAGER!**



Most Important Slide on HR

- You **MUST** have a complete, state law specific employee manual – and you have to keep up with the frequent changes (*HR is fastest changing compliance area in small business law*)
- Policies must be enforced fairly, consistently and without discrimination
- If you delegate HR responsibilities, that person **MUST** know what they are doing (*and they should be glad they don't work in California!*)



JUST IN: January 18, 2018

EEOC issues directive to "go after" small healthcare businesses.

WHY?

QUOTE: *The research indicates ignoring HR laws makes them a "big, fat, juicy target", "low hanging fruit", "like shooting fish in a barrel"*



Most Significant NEW HR Issues

- Lack of employee manual (policies)
- **Discrimination**
- Harassment – *"me too"*
- Improper employee classification
- Contract labor
- I-9 regulations
- OTHER NEW STUFF!!!!



MISC New Issues in the Cooker

- Criminal history, credit check, salary history, non-competes – all on their way out
- Mandatory sexual harassment training for supervisors
- Mandatory Sick Pay laws

All of these becoming common across the country!



Having fun yet?

The government is!



HAZARD (OSHA/CDC)



Let's Start With What Has NOT Changed



By PCS survey, at least 90% of you listening are NOT OSHA/CDC compliant!

The Hazard Players

- **Office of Health and Safety Administration (OSHA)**
 - maintaining a **safe working environment** for your employees and your patients
- **Center for Disease Control (CDC)**
 - preventing **spread of infection**
- **Clinical Laboratory Improvement Amendments**
 - ensuring **quality of lab test results**



Hazard Requirements

- Must have written policies that comply with OSHA safety and CDC Universal Precaution standards
- Must have documented evidence that your staff is trained on Federal and YOUR policies in these two areas (*trained AND TESTED*)
- Must now meet the extensive requirements of the Globally Harmonized System – the completely re-written OSHA (effective 6/1/2015 - oops)



Optometrists have to comply with OSHA, CDC and CLIA?

Non-compliance penalties can include

- fines in excess of \$10,000 - \$50,000 - **\$129,336 for "reckless indifference"** or "repeat" violations
- civil law suites AND criminal charges
- **termination of your third party payor contracts** including VSP and EyeMed (it's in your provider contract!).

QUESTION: *Are you a potential felon?*




ANOTHER QUESTION

Of all the State and Federal laws, which one can do the most damage to your practice and pocketbook?

BIGGEST ISSUE: OSHA can **padlock your door** and not remove it until you can demonstrate complete compliance



U.S. Department of Labor
Occupational Safety and Health Administration
Department, 301 Davis Office
Washington, DC 20540
Suite 201
PO Box 3744
Pawcatuck, CT 06259
Phone: (860) 795-5801 Fax: (860) 795-7493 T3C
E: OSHA-OSHA@hhs.gov



December 17, 2014

[Redacted]

RE: OSHA Complaint No. 001707 post, 001


On December 17, 2014 the Occupational Safety and Health Administration (OSHA) received a notice of self-cited violations based on your workmate. We notified you, by email, of this alleged hazard on 11/17/2014. The specific notice of the alleged hazard is as follows:

- 1. Employer does not have a fully implemented blindsight package program requiring employees to participate in activities that are limited to OSHA's 6.
- 2. Employer does not have a fully implemented blindsight package program requiring employees to participate in activities that are limited to OSHA's 6.
- 3. Employer does not have a fully implemented blindsight package program requiring employees to participate in activities that are limited to OSHA's 6.


On December 17, 2014, you responded to the hazard, as alleged.

On December 17, 2014, you responded to the hazard, as alleged, by stating that you and your associate have been trained, but suggest that you continuously investigate the alleged hazard and have been successful in eliminating the hazard. You stated that you have eliminated the hazard, as alleged, and you have eliminated the hazard, as alleged, and you have eliminated the hazard, as alleged.

12/17/14 – one year after we lectured on this topic with this doctor in attendance



2013 – Our first encounter with OSHA and why we made it part of the essentials package




How Is OSHA / CDC Gonna Git ya?

Most Common Causes of Inspections



- ✓ Employee compliant (34%)
- ✓ “Turned in” by attorney or care facility (26%)
- ✓ Targeted / random (22%)
- ✓ Referral from other Federal agency (18%) –

WHAT???



2015 Daugherty Ruling

- *Paraphrase* – OSHA has given private health care providers a free ride too long – in 2016 we are going after them.
- They learned from HIPAA – ongoing random audit project
- And they have recruited the public to help!



Whistleblower
Investigations
Manual

OSHA

This is an OSHA INSTRUCTION
MANUAL for the public!
(including YOUR patients)


**Don't think they are
serious? This is for
YOUR employees and
patients!
You are willing to ignore
this?**

PCS

OSHA in a nutshell....

One of the biggest
PITAs you will
encounter with a bite
that is much worse
than the roar


OR BETTER...



TOILET PAPER ONLY!
THIS TOILET PREVENTS FLUSHING OF WIPES


¡ÚNICO PAPEL AUSENTO EN ESTE ENCAJADO PARA QUE SE DESCARGAR EN TOILETAS

CAUTION



DO NOT PUT HAND IN TOILET!
IT CONTAINS A SHARP DEVICE THAT CAN CAUSE INJURY

NO PONGA LA MANO EN LA TOILET PARA EVITAR LESIONES EN LA MANO




You would do this why?

Yes we know...

Much of this is really stupid

**BUT IT IS
THE LAW!**



Fraud and Abuse

One that DOES make sense...but evidently not to some doctors



Fraud & Abuse This is NOT Stupid

- There are **five Federal fraud and abuse laws** – can you name them?
- **You swear, under conviction of perjury, you know them every time you file an insurance claim!**



Ever read what you sign?

- *"In submitting this claim for payment from federal funds, I certify that 1) the information on this form is true, accurate and complete 2) I have familiarized myself with all laws, regulations and program instructions available from the Medicare contractor 3) I have provided or can provide sufficient information required to allow the government to make an informed eligibility and payment decision 4) this claim complies with all Medicare program instructions and..."*

lists all five Federal F/A laws you can't name!



And...

"My signature is to certify that the foregoing information is true and accurate. I understand that any false claims or statements or concealment of a material fact may be prosecuted under applicable Federal and Stark laws."

Good luck saying you did not know better



Five Main Fraud and Abuse Laws

1. False Claims Act
2. Anti-Kickback Statute
3. Provider Self-Referral Law
4. Exclusion Statute
5. Civil Monetary Penalties Law

If you don't know what these laws say, you need to do some personal homework or get some help



And optometry is doing a good job here?

CERT just moved optometry in to the top 20% most fraudulent and abusive specialties in healthcare

HOW and WHY?

- Coding "experts"
- Blogs
- Industry
- Greed

We already talked about this!



Best advice...

- ✓ Have a professional auditor conduct a “training audit” of your medical records and billing patterns.
- ✓ Make all “experts” show you documentation of their rules, advice and coding tips and “tricks”
- ✓ Stay off the blogs



How ya feeling about Compliance?



Come talk to us!
We're here to help!



www.practicecompliancesolutions.com

