February 2015
MPT-2 File:
In re Community
General Hospital

Jackson, Gerard, and Burton LLP
Attorneys at Law
222 St. Germaine Ave.
Lafayette, Franklin 33065

MEMORANDUM

To: Examinee
From: Hank Jackson, Partner
Date: February 24, 2015
Re: Community General Hospital; Response to OCR Audit

Our client, Community General Hospital, is subject to the Health Insurance Portability and Accountability Act of 1996, commonly called "HIPAA," and its related regulations. Frances Paquette, the hospital CEO, sent me the attached letter from the Office of Civil Rights (OCR) of the U.S. Department of Health and Human Services outlining three cases in which allegations have been made of improper disclosures of patient health information. She is very concerned about the inquiry and fears that the government may file an enforcement action resulting in penalties and adverse publicity. She needs our assistance in responding.

Please review the accompanying materials and draft a letter responding to the OCR and persuading it that no enforcement action under HIPAA is warranted. The OCR has discretion as to whether it brings an enforcement action. Take that into account in drafting your letter: be persuasive but not confrontational. Your response should cite the specific applicable regulations and apply them to the facts of each case.

An investigative report from the hospital's medical records director is attached. To help orient you, I have also attached a short memorandum I wrote to the CEO when the federal HIPAA regulations, known as the "Privacy Rule," were put into final form in 2002. While there have been updates to the HIPAA regulations since this 2002 memorandum was drafted, I have reviewed its content in light of those changes and have confirmed that the content is unaffected by subsequent additions or clarifications to the HIPAA regulations.

U.S. Department of Health and Human Services

Office of Civil Rights
1717 Federal Way
Lafayette, Franklin 33065

February 9, 2015

Community General Hospital
600 Freemont Blvd.
Lafayette, Franklin 33065

Re: Results of Audit for Compliance with HIPAA Regulations

Dear Community General Hospital:

As a result of complaints received and a recent audit of patient health care records at your facility, we preliminarily find that disclosures of protected health information may have been made in violation of the provisions of 45 C.F.R. § 164.500 *et seq*. We found no written authorization for disclosure of the protected health information in the medical charts of three patients: Patient #1 (reporting a wound to police over the patient's objection); Patient #2 (disclosing to police suspicions about arsenic poisoning of a decedent and then releasing the decedent's entire medical record); and Patient #3 (disclosing information relating to a patient's treatment which later resulted in the patient's arrest).

You are hereby notified that unless we receive a response justifying the disclosures within 20 days of your receipt of this letter, this office will consider pursuing an enforcement action and seeking appropriate civil penalties.

Please direct your response to the undersigned at the address noted above. Thank you.

Sincerely,

Robert Fields

Robert Fields
Investigator

COMMUNITY GENERAL HOSPITAL
INTRAOFFICE MEMORANDUM

TO: Frances Paquette, CEO
FROM: Megan Larson, Medical Records Director
DATE: February 13, 2015
RE: Your request relating to Office of Civil Rights letter

As requested, I investigated the facts and circumstances relating to the patients identified in the Office of Civil Rights letter of February 9, 2015. I also reviewed the relevant health care records and interviewed hospital personnel. In each instance, the disclosure of the patient's health information was duly noted in the patient's chart. In no case does the chart contain a signed authorization from the patient or the patient's representative for release of protected health information on our usual form. My investigation discovered information beyond that which appears in the medical charts, information that would not have been available to the OCR when it conducted its audit of the charts.

Patient #1

Patient #1, an 18-year-old male, was brought to the Emergency Department on September 20, 2014, with a gunshot wound to his right calf. Patient #1 said that he was the victim of a gang dispute. The treating physician told Patient #1 that the physician would have to report the gunshot wound to the police. Patient #1 vehemently objected, saying that any report would further endanger him because a police inquiry would certainly prompt retribution from gang members.

After treating the wound, and despite the patient's objection, the treating physician called the Lafayette Police Department and reported the wound. The next day, the physician sent a written report by first-class mail to the police department. See Attachment A. The report contained no additional records.

I was told that the patient's family had filed a complaint with the OCR.

Patient #2

Patient #2, a 67-year-old man, was admitted to the hospital on November 7, 2014, and died at the hospital on November 9, 2014. On admission, the patient complained of severe headaches and diarrhea, confusion, and drowsiness. Soon after admission, the patient began vomiting, complained of stomach pain, and experienced severe convulsions. Nursing staff observed leukonychia (white fingernail pigmentation). After death, an autopsy was conducted. The pathologist concluded that the cause of death was multi-system organ failure caused by arsenic poisoning. See Attachment B, pathology report.

Our executive vice president knows the decedent's family, which owns a large-scale manufacturing business in Lafayette. She was also aware of considerable strife between the decedent and members of the family over ownership of the business. She reviewed the pathology report the day after the decedent's death. That same day, she invited a police detective to lunch and informed him of the patient's death, of the conclusion of the pathology report, and of her awareness of the serious conflict between the patient and other members of his family. Later that day, she told the Medical Records Department to give to the detective the entirety of the records of the patient's last two hospital stays (the most recent stay and one six months before his death), including the admission records, his progress notes, and the pathology report. The hospital provided the earlier records because the pathologist had used those records to rule out other causes for the fatal illness.

A family member learned of the disclosure to the police and is quite upset. He has filed a complaint about the disclosure to the OCR.

Patient #3

Patient #3, a 35-year-old male, was admitted to the Emergency Department on December 17, 2014, accompanied by his sister. The sister said that a neighbor had called her to the patient's apartment after hearing loud noises. The sister had found the patient emptying his cupboards and throwing plates and glassware against the wall. The sister persuaded the patient to come to the hospital with her.

An interview with the patient eventually established that he had taken PCP ("angel dust"), together with alcohol. Throughout the interview, the patient became increasingly agitated and belligerent. His speech was rapid, and his thoughts were disorganized and chaotic. He

reported being threatened by persons who his sister later stated had died years ago. By the end of the interview, the patient had focused his agitation on his employer, saying that he was angry about work conditions and constantly felt belittled and undermined at his workplace.

The patient wanted to leave the hospital. The treating physician advised him not to leave, but the patient insisted. The patient began shouting, "I hate my boss and I hate what she's done. I'm going to get her . . ." He then ran out of the hospital. The patient's sister then told the hospital staff that she thought the patient had a gun at home.

Shortly thereafter, a Franklin state trooper came into the Emergency Department on an unrelated matter. Because of a concern for the safety of others, the treating physician reported to the trooper Patient #3's name, his combative demeanor, and the threat to his employer, but not a specific cause of the patient's combative behavior. Patient #3 was later arrested on the street two blocks from his workplace, but was unarmed. The County Jail released him shortly thereafter. Patient #3's lawyer has complained to the OCR about the treating physician's disclosure of protected health information to the trooper.

Attachment A

COMMUNITY GENERAL HOSPITAL
EMERGENCY DEPARTMENT

Luke Ridley, M.D.
600 Freemont Blvd.
Lafayette, Franklin 33065

September 21, 2014

Via First-Class Mail, USPS

Chief of Police Alexander Mason
Lafayette Police Department
Municipal Building
1102 Third Avenue
Lafayette, Franklin 33065

Re: Report of gunshot wound

Dear Chief Mason:

Following up on my telephone call to you yesterday, this is to report that on September 20, 2014, I treated David Meyers of 55 Baker Street, Lafayette, Franklin 33065, at Community General Hospital in Lafayette, Franklin, for a gunshot wound to his right calf.

Sincerely,

Luke Ridley

Luke Ridley, M.D.

Community General Hospital
Pathology Report

Patient Name:	Stewart Weller	Case No.:	CGH-0-03-13231
DOB:	1/16/1947		
Sex:	Male	Collected:	11/9/2014
MRN:	51552435	Received:	11/10/2014
Provider:	Blue Cross / Blue Shield		
		Deliver to:	File

POST-MORTEM PATHOLOGY REPORT

Diagnosis:	Arsenic poisoning
Tests:	Admission and Emergency Department records Physical examination Stomach wash Blood (10 ml), hair, urine, feces

Admission and ER records:
On admission on 11/7/2014, patient complained of headaches, diarrhea, confusion, drowsiness. In the Emergency Department, patient vomited, suffered severe convulsions, and complained of stomach pain. Patient pronounced dead on 11/9/2014 at 20:43.

Physical examination (post-mortem):
Observable white fingernail pigmentation (leukonychia), including transverse white lines across fingernails (Mee's lines). Faint garlic odor around mouth. Irritation of nasal mucosa, pharynx, larynx, and bronchi. Fatty yellow liver. Lungs display excessive accumulation of serous fluid. Degenerative changes to liver. Heart displays excessive accumulation of serous fluid.

Blood, hair, urine, feces:
Toxic levels of arsenic compounds, more than 12 times expected from normal environmental exposure, and most likely ingested as arsenic trioxide.

Conclusion:	Death resulting from multi-organ system failure caused by acute arsenic poisoning.

Charlotte Maxsimic

November 10, 2014

Charlotte Maxsimic, M.D.
CGH Pathology

Jackson, Gerard, and Burton LLP
Attorneys at Law
222 St. Germaine Ave.
Lafayette, Franklin 33065

MEMORANDUM

To: Frances Paquette, CEO, Community General Hospital
From: Hank Jackson, Partner
Date: August 30, 2002
Re: Federal HIPAA Regulations, or the "Privacy Rule"

You asked me to review the new federal HIPAA regulations and to provide you with an introduction to them as they relate to the privacy of health information held by Community General Hospital. This memo is a very brief summary of what is known as the "Privacy Rule" and what can happen if the Hospital does not comply with the Privacy Rule's provisions.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 201 et seq., required creation of published standards and regulations for the exchange, privacy, and security of patient health information. The regulations were published in final form on August 14, 2002. Community General Hospital is a "covered entity" under the regulations.

The regulations govern the circumstances under which a covered entity may disclose to others information in any form or medium, whether electronic, paper, or oral, that can be individually identifiable with a patient. "Individually identifiable" health information means that the information identifies the individual or provides a reasonable basis to believe that it can be used to identify the individual. The Privacy Rule refers to such information as "protected health information" (PHI).

A covered entity may not disclose PHI, except either (1) as permitted or required by the Privacy Rule or (2) as authorized by the identified individual (or personal representative) in writing. PHI includes information, including demographic data, that relates to

- the individual's past, present, or future physical or mental health or condition;
- the provision of health care to the individual; or
- the past, present, or future payment for the provision of health care to the individual.

As a general proposition, Community General should not disclose PHI to outside persons unless permitted by the regulations or upon a patient's written authorization. Community General may, of course, disclose PHI internally to the individual. Community General may also use and disclose PHI internally without written authorization for purposes of its own treatment, payment, and health care operations. Other permitted disclosures include certain public interest and benefit activities and certain carefully defined research, public health, and health care operations.

The Privacy Rule also permits use and disclosure of PHI without an individual's authorization for several national priority purposes. Some of these national priority purposes permit disclosures to public health authorities responsible for protecting public health and safety, or to agencies responsible for auditing and investigating the health care system and public benefits programs. Still others relate to disclosures required in judicial or administrative proceedings, or to disclosures concerning decedents to coroners, pathologists, medical examiners, and funeral home directors.

Finally, several of these national priority purposes relate to disclosures required by law or for purposes of law enforcement or public safety. They permit a covered entity to disclose PHI without individual authorization under the following circumstances:

- As required by law (including by statute, regulation, or court order).
- For law enforcement purposes, in six carefully defined circumstances, including:

  (1) as required by law or by administrative requests;

  (2) to identify or locate a suspect, fugitive, material witness, or missing person;

  (3) to respond to a law enforcement official's request for information about a victim or suspected victim of a crime;

  (4) to alert law enforcement to a person's death, if the covered entity suspects that criminal activity caused the death;

  (5) when a covered entity believes that PHI is evidence of a crime that occurred on its premises; and

  (6) in a medical emergency not occurring on its premises, when necessary to inform law enforcement about the commission and nature of a crime, the location of the crime or crime victims, and the perpetrator of the crime.

- Where the covered entity believes that disclosure is necessary to prevent or lessen a serious and imminent threat to a person or the public, when such disclosure is made to someone it believes can prevent or lessen the threat (including the target of the threat).

In most cases, when the Privacy Rule *permits* Community General to disclose PHI, it requires Community General to make reasonable efforts to limit the information that it discloses to the "minimum necessary" to accomplish the intended purpose of the disclosure. While the "minimum necessary" standard applies to many uses and disclosures, there are situations (specified in the HIPAA regulations) in which covered entities are not subject to this "minimum necessary" limitation.

The U.S. Department of Health and Human Services Office for Civil Rights (OCR) is responsible for administering and enforcing compliance with the Privacy Rule and may conduct complaint investigations, review compliance, and impose substantial civil money penalties for violations of the Privacy Rule.