



DEPARTMENT OF HEALTH & HUMAN SERVICES

Voice - (415) 437-8310, (800) 368-1019
TDD - (415) 437-8311, (800) 537-7697
(FAX) - (415) 437-8329
<http://www.hhs.gov/ocr/>

OFFICE OF THE SECRETARY

Office for Civil Rights, Region IX
90 7th Street, Suite 4-100
San Francisco, California 94103

May 31, 2011

(b)(6),(b)(7)(C)

Our Reference number: 11-124255

Dear (b)(6),(b)(7)(C)

On February 22, 2011, the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) received your complaint alleging a violation of the Federal Standards for Privacy of Individually Identifiable Health Information and/or the Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Parts 160 and 164, Subparts A, C, and E, the Privacy and Security Rules). Specifically, the complaint alleges that Veterans Health Administration (the covered entity) does not adequately safeguard patients' health information by allowing such information to be overheard by others. More specifically, you allege that in-patients can overhear other patients' protected health information in the medical-surgical ward when the medical team conducts its rounds discussing each patient's case.

OCR enforces the Privacy and Security Rules, and also enforces Federal civil rights laws which prohibit discrimination in the delivery of health and human services because of race, color, national origin, disability, age, and under certain circumstances, sex and religion.

The Privacy Rule requires covered entities to apply reasonable safeguards when making permissible disclosures of patient protected health information, and to have in place appropriate administrative, technical and physical safeguards to protect the privacy of patient protected health information. This standard requires that covered entities make reasonable efforts to prevent uses and disclosures not permitted by the Privacy Rule. 45 C.F.R. §164.530(c). The Privacy Rule however, does not provide specific rules on how a covered entity safeguards protected health information. Additionally, the Privacy Rule recognizes that oral communications often must occur freely and quickly in treatment settings. Thus, covered entities are free to engage in communications as required for quick, effective, and high quality health care. Overheard communications in these settings may be unavoidable and the Privacy Rule allows for these incidental disclosures.

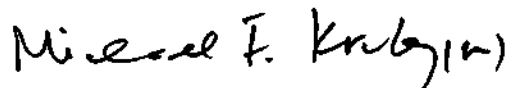
Based upon our review of your correspondence, OCR has advised the covered entity of the concerns described in your complaint. The facility has been provided with technical assistance on appropriate safeguards and prevention of impermissible disclosures of patient protected health information under the Privacy Rule. Your name was not disclosed to the covered entity during this process since we did not have your permission to release that information. If in the future,

the covered entity fails or refuses to take steps to address this concern based upon the technical assistance provided by OCR, we may need to contact you in connection with a formal investigation. It has been our experience, however, that health care providers are generally responsive to privacy concerns raised in this context.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If you have any questions or require technical assistance, please contact the office at (415) 437-8310.

Sincerely,

A handwritten signature in black ink that reads "Michael F. Kruley". The signature is written in a cursive style with a stylized "K" and "y".

Michael F. Kruley
Regional Manager



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San Francisco, California 94103

May 31, 2011

Andrea Wilson
VHA Privacy Implementation Coordinator
VHA Privacy Office (19F2)
OI Central Office
810 Vermont Avenue, NW
Washington, DC 20420

Our Reference number: 11-124255

Dear Ms. Wilson:

On February 22, 2011, the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) received a complaint alleging a violation of the Federal Standards for Privacy of Individually Identifiable Health Information and/or the Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Parts 160 and 164, Subparts A, C, and E, the Privacy and Security Rules). Specifically, the complaint alleges that Veterans Health Administration, Sierra-Nevada Health Care System in Reno, NV does not adequately safeguard patients' health information by allowing such information to be overheard by others. More specifically, the complaint alleges that in-patients can overhear other patients' protected health information in the medical-surgical ward when the medical team conducts its rounds discussing each patient's case.

OCR enforces the Privacy and Security Rules, and also enforces Federal civil rights laws which prohibit discrimination in the delivery of health and human services because of race, color, national origin, disability, age, and under certain circumstances, sex and religion.

The Privacy Rule recognizes that health care providers must be able to communicate quickly and effectively to ensure appropriate treatment. Thus covered entities are free to engage in communications as required for quick, effective, and high quality health care. Overheard communications in these settings may be unavoidable and the Privacy Rule allows for these incidental disclosures. Covered entities such as hospitals or doctors' offices are, however, required to have in place appropriate administrative, technical and physical safeguards to protect the privacy of patient protected health information. 45 C.F.R. §164.530(c). In addition, covered entities must reasonably restrict how much health information is used or disclosed, and disclose only the minimal necessary to achieve the purpose of the disclosure. 45 C.F.R. §164.502(b). Covered entities must also limit who within the entity has access to protected health information. 45 C.F.R. §164.530(a).

The Privacy Rule does not provide specific rules on how a covered entity safeguards protected

health information, as you and your staff are in the best position to identify and tailor safeguards that are appropriate to the circumstances. Covered entities are not required to create private rooms, soundproof rooms or encrypt telephone systems. Rather, covered entities are expected to implement reasonable safeguards. Possible safeguards may include, limiting conversations with patients in public areas such as waiting rooms, moving a patient from a public area to a more private area before engaging in a discussion involving patient protected health information, and/or lowering voices when communicating in an area where conversations can be overheard. These examples of possible safeguards are not intended to be exhaustive. For additional examples and general information about Privacy Rule safeguards please visit the *Frequently Asked Questions* page of our website, www.hhs.gov/ocr/privacy.

It is not our intention to undertake a formal investigation of this matter at this time. We ask however that your Privacy Officer examine this issue to ensure that the facility is fully complying with its internal privacy policies and practices, and, if necessary, to take corrective action to reinforce your practices as they relate to this incident.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If you have any questions or require technical assistance, please contact the office at (415) 437-8310.

Sincerely,

Handwritten signature of Michael F. Kruley in black ink.

Michael F. Kruley
Regional Manager