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## THE HHS HIPAA OMNIBUS RULE

### ARE PSYCHOLOGISTS READY FOR SEPTEMBER 23, 2014?

*a message from the chair*

Kristine M. Herfkens, Ph.D., ABPP

In January of 2013, the U.S. Department of Health and Human Services (HHS) strengthened the privacy and security protections of the HIPAA Privacy Rule enacted in 1996 by issuing the HIPAA Omnibus Rule (the Rule). The Rule reflects federal legislation enacted in January 2013 with a compliance deadline of September 23, 2014.

Many of those who read this newsletter may consider the Rule to be "old news." Others may put the article aside after reading the headline and the first sentence. Some may even wonder why this article is in the newsletter.

A recent board discussion, prompted by three recent examples as well as my own practice's work to come into compliance with our business, led to this article in the newsletter. The three examples were:

1. The Psychology Board recently issued an advisory statement on supervision, expanding the definition of face-to-face supervision to include real-time videoconferencing. The Board cannot possibly define the precise means for such videoconferencing as the technology and vendors constantly change. However, the Rule does offer psychologists guidelines to use in selecting a means for such communication, namely HIPAA compliance. Psychologists should determine whether the services they use are compliant. On April 24, 2014 the APA issued a Practitioner Update in the wake of several prominent news articles about Skype and HIPAA. The Update pointed out that Skype does not offer business associate agreements, audit controls, or breach notifications for healthcare providers using Skype. This effectively means that a psychologist who uses Skype for the provision of services may potentially be in violation of the HIPAA rule.
2. In the APA publication, "The HIPAA Final Rule: What You Need to Do Now," (July 2013), the point is made that psychologists may be unknowingly slipping into noncompliance by storing or communicating Protected Health Information across their various electronic devices, including mobile phones and tablets. Many practitioners may not know that patient contact information, even unaccompanied by clinical information, constitutes PHI. Even responding without encryption to a client/patient-initiated email with no specific PHI is a HIPAA violation. The APA points out that email encryption by itself is not sufficient to meet the Final Rule requirements; multiple steps are required. For example, if email is automatically downloaded to a laptop, smart phone, and tablet, potentially all three devices must be encrypted, in addition to having email encryption. Certainly, this is true if other PHI is stored on the device, such as a contact list, clinic note, etc.
3. Cloud storage of data also raises issues of compliance. On one hand, services like DropBox, Carbonite, Amazon S3, iCloud and Google may offer a convenient way to store data and transmit documents, but are they HIPAA compliant? A tool that may help answer that question is the "security assessment tool" for small and mid-sized entities that is designed to help in conducting and documenting a risk assessment. Created by the HHS Office for Civil Rights and the Office of the National Coordinator for Health IT, the tool may be found on their website: (<http://www.healthit.gov/providers-professionals/security-risk-assessment>).

## IN THIS ISSUE

The HHS HIPAA Omnibus Rule	1-3
<i>psychTIP</i>	3
Meet the New Board Member	4
Annual Report	5
Legal Proceedings	6

article continued from page 1

I believe there are a number of reasons why the topic is current and appropriate:

- The Rule is complex and challenging to implement, and questions remain unanswered if and/or how the consequences of failure to comply with the Rule will involve licensure boards.
- The Rule strengthens the 1996 HIPAA law by allowing patients better access to their medical records and making patients' records available to physicians and other healthcare providers. The law as implemented had very little teeth.
- The Rule strengthens the requirements for compliance and addresses both civil and criminal penalties for those who put protected health information at risk. Fines range from \$1,000 to \$1.5 million per violation.
- Those who do not submit electronic claims to insurance companies need to be in compliance because the Rule governs electronic transmission of information (i.e., fax and email communication, videoconferencing), and storage of information on computers and other electronic devices (i.e., cell phones, tablets, clouds, and encryption).
- The audits of HIPAA-covered entities and business associates started as a pilot in 2012, but were not funded in the 2013 budget. In 2014 ,the audits were designated as a priority and are likely to be narrow in scope. The expectation is that the audits will focus on assessing compliance with a number of HIPAA-related issues, such as privacy, security, and breach notification, while the major focuses will include whether entities have implemented security risk assessments, data encryption, and updates required by the HIPAA Omnibus Rule.

The checklist found on the next page is obviously insufficient for anyone who has not taken steps to be in compliance with the HIPAA Omnibus Rule or compliant with the HIPAA Privacy Act of 1996. It may be helpful in supporting your efforts to see how your practice or organization's HIPAA Best Practices stack up. More importantly, the checklist provides a reminder to all of us of the importance of:

- Becoming more knowledgeable of both the regulations and the privacy of personal health information.
- Being mindful of the complicated issues around technology in the practice of psychology.
- Reminding ourselves to become more educated about the regulations and the privacy of personal health information and compliance issue.

article continued on page 3

### Notice of Address Change

Please print legibly.

Full Name: \_\_\_\_\_ License Number: \_\_\_\_\_ Preferred Mailing Address:  Home  Business

Home Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Business Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Daytime Phone Number \_\_\_\_\_ \*Email Address \_\_\_\_\_

Mail address change form to NC Psychology Board, 895 State Farm Road, Suite 101, Boone, NC, 28607.

You may also email a change of address to [info@ncpsychologyboard.org](mailto:info@ncpsychologyboard.org) or fax to the Board office at 828 265-8611.

\*It is very important that all licensees have a current email address on file as Board correspondence is frequently sent via email.

article continued from page 2

#### HIPAA OMNIBUS RULE COMPLIANCE CHECKLIST

- Confirm appointment of a privacy official and related documentation (for covered entities only).
- Amend business associate agreements (BAAs) to include additional required provisions. Existing, compliant BAAs must be amended by **September 22, 2014**; new BAAs were required to adhere to Omnibus Rule mandated requirements by **September 23, 2013**.
- Update Notice of Privacy Practices (NPPs). Post updated Notice on website as of the effective date of any changes, but no later than Sept. 23, 2013 (for covered entities only).
- Comply with new HITECH minimum necessary requirements.
- Comply with changes to request for restriction rules (requests for restrictions on disclosures of PHI related to care paid out of pocket by an individual must be honored).
- Establish policies and procedures for providing access to PHI in electronic form and transmission of electronic PHI to third parties as may be requested by an individual.
- Comply with new marketing restrictions including policies for evaluating any subsidized communications to plan membership.
- Seek authorization prior to selling PHI for any purpose.
- Ensure that training reflects new requirements.
- Train the workforce on new requirements.
- Retain copies of previous policies, procedures and forms.
- Confirm appointment of security official and related documentation.
- Ensure implementation all required HIPAA security administrative, technical and physical safeguards.
- Ensure documentation of decisions regarding addressable security standards (if an addressable standard was not implemented, there must documentation of the plan's rationale for its approach).
- Conduct an annual security risk assessment.
- Enter into BAAs with security safeguards with any organization that provides data transmission or storage services, including cloud vendors.
- Update written security policies and procedures as necessary.
- Conduct security workforce training.
- Monitor HHS guidance regarding the most effective and appropriate technical safeguards and consider implementing.
- Implement technologies or methodologies that make PHI secure (from April 2009 these are "encryption or destruction").
- Comply with new notification rules for breach of unsecured PHI. Confirm that policies and procedures reflect the new objective test for "low probability of compromise" in accordance with Omnibus Rule standards.
- Confirm documentation of all breaches involving fewer than 500 individuals for annual reporting to HHS.

#### psychTIP

Within the last year, there has been a noticeable increase in the number of complaints filed against licensees of the Board regarding the completion of psychological evaluation reports; particularly, with respect to reports being completed in a timely manner. The North Carolina Psychology Practice Act and the APA Ethical Principles of Psychologists and Code of Conduct do not specifically set forth an exact deadline in which reports are to be completed by following an evaluation of an individual. Nonetheless, reports should be completed by a psychologist in a timely manner in order for him/her to remain in compliance with the Psychology Practice Act and Standards of the Ethical Principles of Psychologists and Code of Conduct that are related to this issue. Even though the reason(s) for a psychologist's delay, the length of the delay, and its impact on that psychologist's examinee may vary, a practice of not completing reports in a timely manner could substantially raise the risk for that psychologist to find himself/herself in violation of several possible provisions and/or standards. Therefore, psychologists are reminded to review their habits and organizational skills, and to develop a plan so that their standard of practice includes producing evaluation reports in a timely manner. The consequences of producing late psychological evaluation reports could result in harm to a client.

# WELCOME New Board Member Matthew I. Van Horn, J.D., M.B.A.



I am honored to serve as a public member of the North Carolina Psychology Board. I live and practice law in the center of Raleigh at the Van Horn Law Firm. My wife and I stay busy with our three young children.

I was raised in Chapel Hill and returned to North Carolina in 2003 after leaving North Carolina in 1990 to attend Hampden-Sydney College. I graduated from Hampden-Sydney College in 1994 with a B.A. in economics. In 1999, I graduated from The University of Tulsa, receiving a Juris Doctor and Master of Business Administration. I then moved to Washington, D.C. and practiced complex commercial litigation with a larger law firm located in the Watergate Building.

I have represented companies and individuals in Federal Courts throughout the United States and in State Courts throughout North Carolina. At the Van Horn Law Firm, I continue to represent business and individual clients in court and through other dispute resolution methods. In addition, we handle a large volume of residential and commercial real estate closings.

While attending Hampden-Sydney College and during graduate school, I had the opportunity to study and travel throughout Europe. I studied law in Bratislava, Slovakia and attended a French language/cultural immersion program on the island of Martinique.

Practicing law is a people business, where you are regularly immersed in personal and important issues being experienced by individuals. I hope to use my experiences practicing law to bring a unique perspective to the Board. Likewise, I hope my life and professional experiences will provide value to the Board, its members and the licensed professionals served by the Board.

## Continuing Education

- Licenses must be renewed by October 1, 2014. In order to renew your license, you must attest that you completed 18 hours of continuing education.
- If you were licensed to practice psychology in North Carolina **after** October 1, 2012, you **will NOT** have to obtain continuing education (CE) for the 2014 renewal cycle.
- If you were licensed to practice psychology in North Carolina **before** October 1, 2012, at any level, including as a provisional psychologist, you **must** obtain 18 hours of CE for the 2014 renewal cycle.

### CE Requirements: Category A

9 Hours Minimum Required

3 hours from Category A must cover ethical and legal issues within the professional practice of psychology.

If you can answer yes to all of the following questions, an activity is considered acceptable for Category A.

Is the program sponsored or co-sponsored by the Board, the APA, an APA-approved sponsor, or by NC AHEC?

Does the program specifically identify psychologists in the target audience?

Are contact hours specified by the sponsor?

Does the program cover ethical and legal issues within the professional practice of psychology or assist you in maintaining and upgrading skills and competencies within your scope of practice?

Does the program provide a certificate upon completion?

### Category B

9 Hours Maximum Allowed

No Sponsorship Requirements  
for Category B

Category B activities must either cover ethical and legal issues within the professional practice of psychology or assist you in maintaining and upgrading skills and competencies within your scope of practice as a psychologist.

## ANNUAL REPORT AND SUPPLEMENTAL INFORMATION FROM 07/01/13-06/30/14

NUMBER OF:	DURING THE PAST FISCAL 2013-14 YEAR, THE BOARD:
Individuals who applied to the Board for Examination	223
Individuals who were refused examination	5
Individuals who took the state examination	154
Individuals who took the national examination	122
Individuals who were issued a license	191
Psychological Associate	32
Licensed Psychologist	124
Licensed Psychologist (Provisional)	35
Application forms and state laws mailed (forms are available online )	0
Visits to the Board's website ( <a href="http://www.ncpsychologyboard.org">www.ncpsychologyboard.org</a> )	37,647
Psychologists licensed in North Carolina as of 06/30/2014	4,100
Psychological Associate	1,254
Licensed Psychologist	2,783
Licensed Psychologist (Provisional)	63
Corporations and PLLCs registered	51
Official complaints received involving licensed and unlicensed activities	33
Complaints resolved	37
Complaints pending as of 06/30/2014	17
Investigations, including complaints, pending as of 06/30/2014	21
Disciplinary actions taken against licensees, or other actions taken against non-licensees, including injunctive relief (3 disciplinary; 3 remedial; 0 injunction)	6
Licenses suspended or revoked	1
Licenses terminated for any reason other than failure to pay the required renewal fee	4
Licenses terminated for failure to pay the renewal fee	NA

## OBJECTIVES FOR THE BOARD IN THE 2014-15 FISCAL YEAR INCLUDE:

- address budgetary and long-range planning issues
- adopt, amend, and repeal the Board's rules as necessary
- Implement requirement for criminal history record check
- continue IT systems and equipment upgrade
- continue development of online state exam
- continue development of online license renewal system
- continue to publish a newsletter, at least on a semiannual basis
- continue to seek fee increases to enable the Board to fulfill its statutory mandate to protect the public from unethical, incompetent, and unprofessional practice

## UPCOMING

November 6-7, 2014

February, 5-6, 2015

April 30-May 1, 2015

August 6-7, 2015

November 5-6, 2015

## North Carolina Psychology Board Advisory Statement on Face-to-Face Supervision by Electronic Means

The Board has become increasingly aware of the difficulty for a supervisee to meet in person with a supervisor for Board mandated supervision on a regular basis, especially in rural areas where traveling a great distance may be required in order to meet with a supervisor. As a result, effective immediately, the Board has broadened its interpretation of the term "face-to face" for all supervision required under Board rule, to include not only in person face-to-face supervision, where the supervisor and supervisee meet in person in the same physical location, but to also include electronic means of face-to-face interaction, without meeting in person. The face-to-face supervision must be live, interactive and visual. Video or other technology may be used so long as it is synchronous (real time) and involves verbal and visual interaction for the entire session. The face-to-face supervision must take place in such a manner as to maintain the confidentiality of the communication as it relates to the identifying information regarding patients/clients. Due to the fact that changes in technology are constantly evolving, the Board cannot provide advice regarding the specific technology to utilize.

Therefore, any real time video technology where the supervisor and supervisee can actually see each other face-to-face and verbally communicate with each other, but are not in the same room, also meets the requirements of face-to-face, as set forth in Board rules regarding supervision, so long it takes place in a confidential manner.

Please note that the Board has not changed its interpretation of the plain meaning of any other language in its rules other than broadening its interpretation of "face-to-face" in its rules regarding supervision. Supervision is still required to be individual and for the requisite hours per week or per month as set forth in rule.

When a supervisor and supervisee are deciding whether to meet in person or through electronic medium, some factors to consider are whether reports or evaluations will be reviewed and whether that can be done through use of electronic medium; whether the supervisory relationship is newly established; and/or whether there are concerns that are better addressed in person.



During the period of time from November 15, 2013 through July 31, 2014, the Board reviewed and closed 15 investigative cases involving psychologists in which it found either no evidence of probable cause of a violation or insufficient evidence to issue a statement of charges, and reviewed and closed two cases involving non-psychologists.

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