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FILED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
CIVIL ACTION NO.

14-2332 G

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

WOMEN & INFANTS HOSPITAL OF RHODE
ISLAND,

Defendant.

FINAL JUDGMENT BY CONSENT OF DEFENDANT
WOMEN & INFANTS HOSPITAL OF RHODE ISLAND

The Court has reviewed the Complaint filed in this case by the Commonwealth of Massachusetts through the Attorney General's Office ("Commonwealth"), the Joint Motion for Entry of Final Judgment by Consent, and the attached Consent. The Court finds that it properly has subject matter jurisdiction of this Complaint and personal jurisdiction over Defendant Women & Infants Hospital of Rhode Island ("WIH"), and finds that the entry of this Final Judgment by Consent ("Final Judgment") is in the interests of justice.

WHEREAS, the Attorney General has concluded an investigation into the policies, procedures, and practices of WIH regarding its protection of personal information ("PI") and protected health information ("PHI") of residents of the Commonwealth;

WHEREAS, the Attorney General's investigation pertained to allegations that WIH engaged in unfair or deceptive acts or practices, including not properly protecting PI and PHI stored on unencrypted back-up computer tapes that were shipped off-site, and not properly

training its employees in timely notification of incidents involving PI and PHI resulting in delayed notification of the lost back-up computer tapes, in violation of state rules and regulations designed to protect PI and PHI, including G. L. c. 93A, as well as federal law;

WHEREAS, the HITECH Act § 13410(e) gives State Attorneys General the authority to bring civil actions on behalf of state residents for violations of the HIPAA Privacy and Security Rules, 45 C.F.R. §§ 160 and 164, to obtain damages on behalf of state residents and to enjoin further violations of these Rules, which prohibit the unauthorized disclosures of patients' PHI and establish the federal minimum standards that must be followed to protect such information;

WHEREAS, the Commonwealth filed a Complaint against WIH, which is a covered entity under HIPAA, alleging that WIH violated various standards of the HIPAA Privacy Rule, found at 45 C.F.R. § 164 Subparts A and E;

WHEREAS, WIH does not admit to the validity of any of the allegations in the Complaint or to any wrongdoing, violations of any law, or liability to the Attorney General or any other person or entity;

WHEREAS, without any admission of liability, in order to amicably resolve their differences concerning the Complaint and in order to avoid the cost and uncertainty of litigation, the parties have agreed to entry of this Final Judgment; and

WHEREAS, the parties have filed a joint motion seeking entry of this Final Judgment; Accordingly, **IT IS HEREBY ORDERED AND ADJUDGED THAT:**

The Attorney General, acting for the benefit of Massachusetts residents under its authority under Massachusetts law and HITECH, hereby agrees with WIH as follows:

I. DEFINITIONS

1. "Effective Date" shall mean the date of entry of the Final Judgment.
2. "Breach of Security" shall have the same meaning as defined in G. L. c. 93H.
3. "Unauthorized Acquisition or Use" shall mean an incident wherein WIH "knows or has reason to know that the personal information of a Massachusetts resident was acquired or used by an unauthorized person or used for an unauthorized purpose," as specified in G. L. c. 93H, § 3.
4. "Data Breach" shall mean a "breach of security" as defined in G. L. c. 93H.
5. "Data Security Incident" shall mean WIH's loss of nineteen (19) unencrypted backup tapes, containing the personal information and protected health information of Massachusetts residents, as reported to the Commonwealth on or about November 5, 2012.
6. "HIPAA Breach" shall mean a "breach" as defined under the HITECH Act § 13400.
7. "Personal Information" or "PI" shall mean that term as it is defined in G. L. c. 93H and 201 C.M.R. 17.02.
8. "Protected Health Information" or "PHI" shall mean that term as it is defined in 45 C.F.R. § 160.103.
9. "WISP" shall mean a written information security plan, as described in 201 C.M.R. 17.03.
10. "WIH" shall mean Women & Infants Hospital of Rhode Island, including its subsidiaries, officers, directors, employees, agents, representatives, or assigns.
11. To the extent there are any discrepancies, the statutory definition as of the Effective Date of this Final Judgment overrides any definitions herein.

II. PARTIES SUBJECT TO JUDGMENT

12. This Final Judgment shall extend to WIH, and shall constitute a continuing obligation, except as otherwise set forth herein. Any successor organization shall also be bound by this Final Judgment.

III. INJUNCTIVE RELIEF

13. WIH shall notify, for three (3) years from the Effective Date, the Attorney General (orally or by email) of a Data Breach reasonably believed to affect a Massachusetts resident within thirty (30) days of forming such reasonable belief, even if such belief has not been confirmed.

14. WIH shall continue to develop, implement, maintain, and adhere to a WISP, as required under Massachusetts law.

15. WIH shall continue to review its security measures at least annually, in a risk assessment, as required by HIPAA and Massachusetts law.

16. WIH shall continue to train its workforce at least annually on proper data security as required by HIPAA and Massachusetts law. Said training shall include instruction on the proper disposal, transport, and tracking of electronic media containing PI or PHI and on the timely reporting of Data Breaches and HIPAA Breaches. Said training shall also include instruction on the proper disposal and transport of paper containing PI or PHI and on the timely reporting of Data Breaches and HIPAA Breaches.

17. WIH shall maintain an up-to-date inventory of the locations, custodians, and general description of content of all unencrypted electronic media containing PI and PHI.

18. WIH shall maintain an up-to-date inventory of the locations and custodians of paper patient charts containing PI or PHI.

19. Within sixty (60) days of the Effective Date, WIH shall encrypt, erase, or destroy, to the extent technically feasible, all PI and PHI in its possession that is contained on WIH-issued unencrypted portable devices. Unencrypted portable devices shall include only the following: WIH-issued laptops, thumb drives, CD's, and USB drives.

20. When using a third-party to dispose of electronic media containing PI or PHI, WIH shall, within thirty (30) days of disposal, obtain Certificates of Destruction specifying the contents of the disposal.

21. When using a third-party to dispose of paper patient charts containing PI or PHI, WIH shall specify the department or location from where such paper patient charts were obtained.

IV. OTHER RELIEF

22. WIH shall produce its most recent WISP to the Commonwealth within fourteen (14) days after the date of entry of the Final Judgment.

23. WIH shall:

- a. within ninety (90) days of the Effective Date, engage an independent third-party firm to conduct a one-time review and audit of WIH's compliance with the Federal Standards for Privacy of Individually Identifiable Health Information (45 C.F.R. §§ 160 and 164) and 201 CMR 17.00, including WIH's WISP and WIH's compliance with its WISP. The review and audit shall be completed within one hundred and eighty (180) days from the Effective Date of this Final Judgment;
- b. within one hundred and eighty (180) days of the completion of this required compliance review, WIH shall, in consultation with the Commonwealth, take all those recommended corrective measures that it

deems reasonable, technically feasible, and non-cost prohibitive. To the extent further action is required to bring WIH into compliance with state and federal law, WIH shall work with the independent auditor to arrive at a reasonable, technically feasible, and not cost prohibitive measure.

- c. report to the Commonwealth the results of the compliance review and the corrective actions WIH takes as result of the compliance review, which corrective measures the Commonwealth shall maintain as confidential, as permitted by law.

24. Within ten (10) days after the entry of this Final Judgment by Consent, WIH shall cause a true and correct copy of the injunctive terms contained herein to be given to every person who on the date of entry of this Final Judgment is an officer, a member of the board of directors, or privacy officer of WIH.

25. WIH shall comply with all reasonable inquiries and requests from the Office of the Attorney General regarding implementation of the terms contained within this Final Judgment.

V. PAYMENT

26. Pursuant to G. L. c. 93A, judgment is entered against WIH in the amount of \$150,000.

27. Within twenty (20) business days after the Effective Date, WIH shall pay a total sum of \$150,000 to the Office of the Attorney General, and such total payment shall comprise: (i) \$110,000 to the Commonwealth as civil penalties, (ii) \$25,000 as attorney's fees and costs; and (iii) \$15,000, pursuant to G. L. c. 12 § 4A, as a contribution to a fund to be used at the sole discretion of the Attorney General, to promote education on cyber security or data privacy liability, or further investigation/litigation in the area of PI and PHI data protection.

28. Payment shall be made by or on behalf of WIH by certified or cashier's check made payable to the "Commonwealth of Massachusetts" and delivered to Shannon Choy-Seymour, Assistant Attorney General, Health Care Division, One Ashburton Place, 18th Floor, Boston, Massachusetts 02108.

VI. NOTICES

29. All notices and documents required by this Final Judgment shall be provided in writing to the parties as follows:

A. If to the Attorney General:

Shannon Choy-Seymour (BBO# 663245)
Assistant Attorney General
Health Care Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 727-2200, ext. 2918
Shannon.Choy-Seymour@state.ma.us

B. If to Women & Infants Hospital of Rhode Island:

Baker & Hostetler LLP
Theodore J. Kobus III
Deborah Renner
45 Rockefeller Plaza, 14th Floor
New York, NY 10111
(212) 271-1504
tkobus@bakerlaw.com

VII. WAIVERS

30. WIH waives the requirement of G. L. c. 93A, § 4, requiring five days written notice to the defendant, prior to the Commonwealth commencing an action under G. L. c. 93A, with respect to entry of this Final Judgment.

31. WIH waives all rights of appeal and also waives the requirements of Rule 52 of the Massachusetts Rules of Civil Procedure, with respect to entry of this Final Judgment.

VIII. MISCELLANEOUS

32.

a. By entry of this Final Judgment, the Commonwealth releases and forever discharges WIH and its, subsidiaries, officers, directors, employees, agents, representatives, or assigns from the following: all civil claims, causes of action, *parens patriae* claims, damages, restitution, fines, costs, attorney's fees, remedies, and/or penalties that were or could have been asserted against WIH by the Commonwealth under G. L. c. 93A, G. L. c. 93H, 201 C.M.R. 17, or HIPAA/HITECH, or the Genetic Information Nondiscrimination Act of 2008, or for common law claims concerning unfair, deceptive, or fraudulent trade practices, other than claims that could be asserted under Paragraph 32.b below, resulting from the Data Security Incident, up to and including the present date (collectively, the "Released Claims").

b. Notwithstanding any term of this Final Judgment, specifically reserved and excluded from the Released Claims as to any entity or person, including WIH, are any and all of the following, as related to the alleged breach herein:

- i. Any criminal liability that any person or entity, including WIH, has or may have to the Commonwealth;
- ii. Any civil or administrative liability that any person or entity, including WIH, has or may have to the Commonwealth, under any statute, regulation, or rule not expressly covered by the release in Paragraph 32.a.

33. Nothing in this Final Judgment shall be construed as relieving WIH of its duty to comply with all applicable federal, state, and local laws, regulations, rules, and permits.

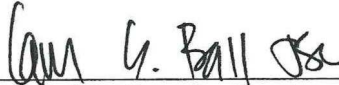
34. Consent to this Final Judgment does not constitute an approval by the Commonwealth of any of WIH's business acts and practices.

35. Except for purposes of enforcement of this Final Judgment by Consent by the Commonwealth, no part of the Complaint or this Final Judgment by Consent shall be admitted into evidence against WIH or any of its parent corporations, subsidiaries, officers, directors, employees, predecessors, successors, and assigns. No part of the Complaint or the Final Judgment by Consent shall be treated or construed as an admission of liability or wrongdoing by WIH or any of its subsidiaries, officers, directors, employees, agents, representatives, or assigns. WIH may, to the extent permitted by law, use this Final Judgment with respect to any action or other proceeding arising from or connected in any way to the alleged Data Security Incident.

36. Any violation of this Final Judgment by Consent is punishable by civil contempt proceedings, or as otherwise provided by law.

37. This Final Judgment becomes effective upon entry by the Court, and all periods of time described herein commence as of that date.

APPROVED AND ORDERED:


Justice of the Superior Court

Dated: 7/22, 2014

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**CONSENT TO JUDGMENT OF
WOMEN & INFANTS HOSPITAL OF RHODE ISLAND**

1. The Defendant, Women & Infants Hospital of Rhode Island ("WIH"), admits to the continuing jurisdiction and venue of the Suffolk Superior Court, and hereby consents to the entry of the Final Judgment in the form attached hereto. In so consenting, WIH certifies that it has read and understands each of the sections, paragraphs, and subparagraphs in the Final Judgment.

2. WIH waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.

3. WIH understands that the obligations set forth in the Final Judgment apply to WIH and its subsidiaries, officers, directors, employees, agents, representatives, and assigns.

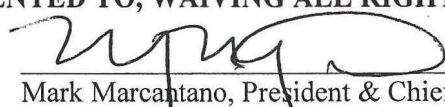
4. WIH states that it understands that any violation of this Final Judgment may result in sanctions against it under G. L. c. 93A, § 4, and/or a finding of contempt of court.

5. WIH states that it is represented by legal counsel, and that Mark Marcantano, President and Chief Operating Officer of WIH, has personally read and understands each numbered paragraph in the Final Judgment by Consent.

6. The undersigned, Mark Marcantano, represents that he is duly authorized to execute this Consent to Judgment on behalf of WIH and to bind WIH to all of its provisions, and that on behalf of WIH he voluntarily enters into this Final Judgment by Consent.

7. Except for purposes of its enforcement, this Consent shall not constitute evidence against WIH.

ASSENTED TO, WAIVING ALL RIGHTS OF APPEAL

BY: 
Mark Marcantano, President & Chief Operating Officer
Women & Infants Hospital of Rhode Island

Dated: 7/17/14