

OFFICE OF THE TEXAS ATTORNEY GENERAL

TEXAS MEDICAL RECORDS PRIVACY ACT
ANNUAL REPORT¹

DECEMBER 2013



¹ This legislative report is submitted in accordance with the requirements of the Texas Medical Records Privacy Act, Tex. Health & Safety Code Ann. §§ 181.104 (West 2012)

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INTRODUCTION

The 82nd Texas Legislature significantly amended the Texas Medical Records Privacy Act (the "Act") by enacting HB 300, effective September 1, 2012.ⁱ

As amended, the Act requires that beginning in December, 2013, the Texas Office of the Attorney General ("OAG") annually submit to the Legislature a report describing the number and types of consumer complaints received by the OAG and by state agencies which regulate covered entities and the related enforcement actions taken in response to such complaints.ⁱⁱ This report is submitted in accordance with that requirement.

DATA GATHERING

The Act provides that certain specifically named agencies (the Department of State Health Services, the Texas Medical Board and the Texas Department of Insurance) as well as other state agencies which regulate covered entities, must submit to the OAG the information required to compile this report.ⁱⁱⁱ Thus, the OAG requested and obtained information from the following state agencies:

- Texas Department of Aging and Disability Services
- Texas Board of Chiropractic Examiners
- Texas State Board of Dental Examiners
- Texas Department of Family and Protective Services
- Texas Health and Human Services Commission
- Texas Department of State Health Services
- Texas Department of Insurance
- Texas Medical Board
- Texas Board of Nursing
- Texas Optometry Board
- Texas State Board of Pharmacy
- Executive Council of Physical Therapy and Occupational Therapy Examiners
- Texas State Board of Podiatric Medical Examiners
- Texas State Board of Examiners of Psychologists

With respect to Fiscal Year 2013, each agency was asked to report the following information to the OAG:

- the total number of consumer complaints received in which the consumer alleged medical privacy violation;
- the types of violations alleged in these complaints;

- the total number of enforcement or disciplinary actions taken by the agency; and
- the types of enforcement/disciplinary actions taken by each.

Each agency's individual report to the OAG is included here (Attachments 1 through 14). Attachment 15 provides information regarding complaints directly received by the OAG from outside sources. The overview which follows is a compilation of these individual reports.

OVERVIEW: COMPLAINTS RECEIVED

The agencies reported receipt of a total of 2,993 complaints. This number included all complaints received in which a consumer alleged a possible medical privacy violation without regard to the complaint's validity or ultimate substantiation, or whether the complaint made specific reference to the Act. The number of complaints reported by each agency was as follows:

| | |
|--|------------------|
| • Texas Department of Aging and Disability Services | 0 |
| • Texas Board of Chiropractic Examiners | 38 |
| • Texas State Board of Dental Examiners | 2 |
| • Texas Department of Family and Protective Services | 0 |
| • Texas Health and Human Services Commission | 2,728 |
| • Texas Department of State Health Services | 97 ^{iv} |
| • Texas Department of Insurance | 2 |
| • Texas Medical Board | 74 |
| • Texas Board of Nursing | 12 |
| • Texas Optometry Board | 9 |
| • Texas State Board of Pharmacy | 30 |
| • Executive Council of Physical Therapy and Occupational Therapy Examiners | 0 |
| • Texas State Board of Podiatric Medical Examiners | 1 |
| • Texas State Board of Examiners of Psychologists | 0 |

In addition, the OAG received 30 consumer complaints.

Each entity analyzed its complaints to determine the type of violations alleged by consumers and reported that the violations alleged fell into three categories:

- 29 allegations of unlawful marketing practices;^v
- 147 allegations that a covered entity had failed to provide a requested health record; and^{vi}
- 2,898 allegations that a covered entity had unlawfully disclosed PHI.^{vii}

OVERVIEW: ENFORCEMENT ACTIONS

Each of the agencies also reported the number and types of enforcement or disciplinary actions taken during the reporting period. Details regarding the specific type of action taken by each reporting agency and by the OAG are included in Attachments 1-15. Because each of the agencies has its own enforcement authority and process and scope of responsibility, the OAG - in the interest of efficiency - asked each agency to report its enforcement activity using the disciplinary and enforcement action categories which each already had in place and relied upon for other reports.^{viii}

Rather than referring disciplinary and enforcement matters to the Office of the Attorney General, the reporting agencies elected to take administrative and other measures against the subjects of these complaints. The specific number and types of enforcement and disciplinary actions reported were as follows:

| | |
|---|-----|
| Fines | 3 |
| Fine w/Remedial Education (FR) & Deferred (FRD) | 4 |
| Counseling | 530 |
| Retraining | 10 |
| Termination | 7 |
| Warning | 5 |
| Warning w/Stipulation (WS) & Deferred (WSD) | 13 |
| Remedial Plans | 6 |
| Restriction | 1 |
| Reprimand | 1 |
| Remedial Education (RE) & Deferred (RED) | 16 |
| Reprimand w/Stipulations (RS) (CS) | 1 |
| Suspend/Probate (SP) | 3 |
| Voluntary Surrender (VS) | 1 |

In addition to the administrative actions reported by the agencies, the OAG filed one medical privacy case during this reporting period: *State of Texas vs Marilyn Nobles*. In that case, which is set for trial, the State alleges that the Defendant unlawfully disposed of records containing protected health information in violation of the Texas Deceptive Trade Practices Act ("DTPA")^{ix} and the Texas Identity Theft Enforcement and Protection Act ("ITEPA").^x Also, during this reporting period the OAG had a medical privacy case pending on appeal: *Madelyn Holzman, M.D., Appellant v. the State of Texas, Appellee, COA # 13-111-00168-CV*. On November 22, 2013, the Texas Supreme Court denied appellant's petition for review.^{xi} The Holzman case, like the Nobles case filed during this reporting period and others filed and concluded by the OAG in previous years, was brought pursuant to the DTPA and ITEPA.^{xii}

ATTACHMENTS AND ADDITIONAL INFORMATION

As amended, the Act also required the OAG to maintain a website providing information concerning consumer's privacy rights regarding protected health information and a list of the state agencies which regulate covered entities under the Act, the types of entities which each

agency regulates, detailed information regarding each agency's complaint enforcement process and contact information for each of the agencies for reporting possible violations of the Act.^{xiii} In accordance with the requirements of the Act, that information has been compiled and together with this report is available at the website of the Attorney General: <https://www.oag.state.tx.us/consumer/hipaa.shtml>.

ⁱ Tex. Health & Safety Code Ann. §§ 181.001-181.207 (West 2012)

ⁱⁱ Tex. Health & Safety Code Ann. § 181.104 (West 2012)

ⁱⁱⁱ *Id.* §§ 181.103, 181.104

^{iv} DSHS recently designed a process for reporting all consumer privacy complaints received by DSHS against regulated health-related professionals and facilities across all thirteen of its programs. Program 1 was able to utilize existing allegation codes to track all consumer privacy complaints received during the reporting period and reported receipt of ninety-seven complaints. Programs 2-13 did not have new allegation codes in effect until June 2013 and data reported for those programs is for the time period June 2013 through August 31, 2013.

^v For purposes of analyzing complaints for this report, unlawful marketing practices refers to possible violations of the following sections of the Act: § 181.151 and §§ 181.152(a)-(c).

^{vi} The Act requires health care providers who utilize electronic systems capable of fulfilling such requests to provide the electronic health record of persons who request such records. The records must be provided not later than the 15th business day after the date the provider receives the person's written request and must be in electronic form unless the requestor agrees to accept records in another form. *See Id.* § 181.102(a). This requirement is subject to the exceptions found in § 181.102(b).

^{vii} For purposes of analyzing complaints for this report, unlawful disclosure of PHI refers to possible violations of the following sections of the Act: § 181.153(a) and § 181.154(a)-(c).

^{viii} See Texas Health Professions Council, Annual Report, February 1, 2012-Appendix A-Disciplinary Data reports for agencies including the following: Board of Nursing, Board of Pharmacy, Texas Medical Board, Texas Optometry Board, Board of Dental Examiners, Board of Chiropractic Examiners, Board of Podiatric Examiners and Board of Examiners of Psychologists and Executive Council of Physical Therapy and Occupational Therapy Examiners. See http://www.hpc.texas.gov/wp-content/uploads/2013/02/HPC_2012_%20Annual_%20Report.pdf last accessed November 22, 2013.

^{ix} Tex. Bus. & Com. Code Ann. §§ 17.01-17.926 (West 2012)

^x Tex. Bus. & Com. Code Ann. §§ 521.001-521.151 (West 2012)

^{xi} In response to the State's enforcement suit, Holzman filed a motion to dismiss contending that the Texas Medical Liability Act precluded the State's enforcement action. The trial court denied Holzman's motion and Holzman appealed.

^{xii} These other cases include: *State of Texas vs. Select Medical Corporation, Cause No 08001021154, In the 286th District Court of Hockley County; State of Texas v Treatment Associates of Victoria, Cause No. C16438; In the 285th District Court of Bexar County, Texas; and In the Matter of Fred Gonzalez d/b/a Ayuda Medical Case Managements, Cause No 2012-C1-08592, In the 57th District Court of Bexar County.*

^{xiii} Tex. Health & Safety Code Ann. §§ 181.103 (West 2012)

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

| | |
|-----------------------------------|--|
| Agency | Texas Department of Aging and Disability Services |
| Submitted By | Karen McCluskey |
| Reporting Period | FY 2013 |
| Date of Report Submission | 11/8/2013 |
| Total Number of Complaints | 0 |

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 0 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 0 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 0

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| None | |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

| | |
|-----------------------------------|--|
| Agency | Texas Board of Chiropractic Examiners |
| Submitted By | Bryan Snood |
| Reporting Period | FY 2013 |
| Date of Report Submission | 11/13/2013 |
| Total Number of Complaints | 38 |

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 25 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 1 |
| Unlawful Marketing | 12 |

Total Number of Enforcement/Disciplinary Action Taken: 2

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| Fine | 2 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

| | |
|-----------------------------------|---------------------------------------|
| Agency | Texas State Board of Dental Examiners |
| Submitted By | Lisa Jones |
| Reporting Period | FY 2013 |
| Date of Report Submission | 11/1/2013 |
| Total Number of Complaints | 2 |

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 0 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 2 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 0

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| None | 0 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

| | |
|-----------------------------------|---|
| Agency | Texas Department of Family and Protective Services |
| Submitted By | Jose Martinez |
| Reporting Period | FY 2013 |
| Date of Report Submission | 11/14/2013 |
| Total Number of Complaints | 0 |

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 0 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 0 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 0

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| None | |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

| | |
|-----------------------------------|---|
| Agency | Texas Health and Human Services Commission |
| Submitted By | Janet Clayton |
| Reporting Period | FY 2013 |
| Date of Report Submission | 11/21/2013 |
| Total Number of Complaints | 2728 |

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 0 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 2728 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 547

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| Counseling | 530 |
| Retraining | 10 |
| Termination | 7 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

| | |
|-----------------------------------|---|
| Agency | Texas Department of State Health Services Program 2-13 |
| Submitted By | Stephen Mills |
| Reporting Period | 7/1/13 – 8/31/13 |
| Date of Report Submission | 11/21/2013 |
| Total Number of Complaints | 0 |

| | |
|-----------------------------------|--|
| Agency | Texas Department of State Health Services Program 1 |
| Submitted By | Jeri Bailey |
| Reporting Period | FY 2013 |
| Date of Report Submission | 11/12/2013 |
| Total Number of Complaints | 97 |

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 40 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 61 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 5

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| Warning | 5 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

| | |
|-----------------------------------|----------------------------|
| Agency | Texas Department Insurance |
| Submitted By | Jeri Bailey |
| Reporting Period | FY 2013 |
| Date of Report Submission | 11/15/2013 |
| Total Number of Complaints | 2 |

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 0 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 2 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 0

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| None | |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

| | |
|-----------------------------------|---------------------|
| Agency | Texas Medical Board |
| Submitted By | Sonia Aurelius |
| Reporting Period | FY 2013 |
| Date of Report Submission | 11/19/2013 |
| Total Number of Complaints | 74 |

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 46 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 33 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 8

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| Remedial Plans | 6 |
| Restriction | 1 |
| Reprimand | 1 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

| | |
|-----------------------------------|------------------------|
| Agency | Texas Board of Nursing |
| Submitted By | Skylar Caddell |
| Reporting Period | FY 2013 |
| Date of Report Submission | 11/20/2013 |
| Total Number of Complaints | 12 |

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 1 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 11 |
| Unlawful Marketing | 1 |

Total Number of Enforcement/Disciplinary Action Taken: 38

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| Fine w/Remedial Education (FR) & Deferred (FRD) | 4 |
| Remedial Education (RE) & Deferred (RED) | 16 |
| Reprimand w/Stipulations (RS) (CS) | 1 |
| Suspend/Probate (SP) | 3 |
| Voluntary Surrender (VS) | 1 |
| Warning w/Stipulation (WS) & Deferred (WSD) | 13 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

| | |
|-----------------------------------|-----------------------|
| Agency | Texas Optometry Board |
| Submitted By | Chris Kloeris |
| Reporting Period | FY 2013 |
| Date of Report Submission | 11/18/2013 |
| Total Number of Complaints | 9 |

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 3 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 9 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 0

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| Administrative Penalties | 0 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

| | |
|-----------------------------------|-------------------------|
| Agency | Texas Board of Pharmacy |
| Submitted By | Debra Beall |
| Reporting Period | FY 2013 |
| Date of Report Submission | 11/21/2013 |
| Total Number of Complaints | 30 |

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 1 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 29 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 1

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| Fine | 1 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

| | |
|-----------------------------------|---|
| Agency | Executive Council of Physical Therapy and Occupational Therapy |
| Submitted By | John Maline |
| Reporting Period | FY 2013 |
| Date of Report Submission | 11/1/2013 |
| Total Number of Complaints | 0 |

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 25 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 1 |
| Unlawful Marketing | 12 |

Total Number of Enforcement/Disciplinary Action Taken: 0

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| None | |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

| | |
|-----------------------------------|--|
| Agency | Texas Department of Podiatric Medical Examiners |
| Submitted By | Hemant Makan |
| Reporting Period | FY 2013 |
| Date of Report Submission | 11/5/2013 |
| Total Number of Complaints | 1 |

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 0 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 1 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 0

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| None | |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

| | |
|-----------------------------------|--|
| Agency | Texas State Board of Examiners of Psychologists |
| Submitted By | Brenda Skiff |
| Reporting Period | FY 2013 |
| Date of Report Submission | 11/18/2013 |
| Total Number of Complaints | 0 |

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 0 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 0 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 0

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| None | 0 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

| | |
|-----------------------------------|------------------------|
| Agency | Texas Attorney General |
| Submitted By | Mary Vinson |
| Reporting Period | FY 2013 |
| Date of Report Submission | 11/21/2013 |
| Total Number of Complaints | 30 |

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 6 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 20 |
| Unlawful Marketing | 4 |

Total Number of Enforcement/Disciplinary Action Taken: 1

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| Litigation or enforcement lawsuits | 1 |

Comments

During this reporting period the Attorney General had a medical privacy case pending on appeal: *Madelyn Holzman, M.D., Appellant v. the State of Texas, Appellee, COA # 13-111-00168-CV*. On November 22, 2013, the Texas Supreme Court denied appellant's petition for review.