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Appeals Court Voids MD Anderson's \$4.3M HIPAA Penalty

By Theresa Defino

A federal appeals court in New Orleans has thrown out the \$4.348 million penalty the HHS Office for Civil Rights (OCR) imposed in 2017^[1] against the University of Texas MD Anderson Cancer Center for three breaches of research patient data that occurred more than eight years ago.

MD Anderson may not be the only HIPAA covered entity (CE) to benefit from the Jan. 14 decision by the U.S. Court of Appeals for the Fifth Circuit, as the ruling^[2] strikes at the heart of the basis on which OCR has historically undertaken many of its enforcement actions.

“The opinion is an important decision for all covered entities and provides additional guidance on HIPAA requirements and enforcement that had before been unavailable to health care providers,” Scott McBride, one of MD Anderson’s attorneys, told *Report on Patient Privacy*, RMC’s sister publication. “The decision will impact the OCR’s investigation and enforcement actions and hopefully lead to a more transparent and consistent process going forward for the entire health care industry.”

The panel of three justices agreed with MD Anderson’s argument that inadvertent or accidental losses and thefts don’t actually count as inappropriate or unallowable disclosures because they are passive. The appeals court also said that encryption doesn’t have to be on every single device for an entity to be deemed in compliance. MD Anderson showed it had an encryption program, but the three missing devices were not encrypted.

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