

Report on Patient Privacy Volume 18, Number 10. October 31, 2018 In 2nd Such Action, OCR Slaps Three Boston Hospitals for Roles in Medical Trauma Series

By HCCA Stuff

News producers at ABC, the broadcast network boasts, have “pioneered a new form of television—unscripted authentic medical drama,” with *NY Med* and *Save My Life: Boston Trauma*, as examples of such shows.

But to the HHS Office for Civil Rights (OCR), these programs have resulted in breaches of patients’ protected health information (PHI), punishable by millions of dollars in fines, currently payable only to OCR. The agency is six years late (and counting) in meeting a congressional deadline to issue a regulation allowing affected individuals to share in OCR’s financial penalties.

Last month OCR announced a \$999,000 settlement with a trio of Boston hospitals involved in the 2015 *Save My Life* series, an agreement that came two years after the agency collected \$2.2 million for alleged HIPAA violations stemming from *NY Med* (*RPP 5/16, p. 1*).

The three individual settlements are similar but not identical. Released Sept. 20, the agreements require payment amounts that differ among Massachusetts General Hospital (Mass General), Brigham and Women’s Hospital, and Boston Medical Center, and somewhat varying corrective action plans (CAPs). This case also stands out because OCR did not document or enumerate any instances of, in its view, inappropriate disclosures, and appears to have taken enforcement action in the absence of patient complaints. This stands in stark contrast to the *NY Med* case, which involved the on-camera death of a patient whose family was unaware that a shoot was in progress.

Moreover, the Boston hospitals strongly dispute that violations occurred—and, after the settlement was announced, Mass General and Brigham and Women’s described explicit steps they took during filming to safeguard PHI (see story below).

Most settlements are the result of breaches that are self-reported by errant covered entities or business associates. But, according to the settlement documents, it was Mass General’s own announcement on its website that filming was going to take place that prompted OCR’s investigation, which the agency later expanded to include the other hospitals after more details were reported by the *Boston Globe*. OCR appears to have begun its review in the last month of filming or shortly after shooting wrapped up.

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