

CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY  
DEPARTMENT OF PUBLIC HEALTH

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  050077	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED  06/26/2015
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NAME OF PROVIDER OR SUPPLIER <b>Scripps Mercy Hospital</b>	STREET ADDRESS, CITY, STATE, ZIP CODE <b>4077 5th Ave, San Diego, CA 92103-2105 SAN DIEGO COUNTY</b>
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	<p>The following reflects the findings of the Department of Public Health during a complaint/breach event visit:</p> <p>Complaint Intake Number: CA00405996 - Substantiated</p> <p>Representing the Department of Public Health: Surveyor ID # 21899, HFEN</p> <p>The inspection was limited to the specific facility event investigated and does not represent the findings of a full inspection of the facility.</p> <p>Health and Safety Code Section 1280.15(a) A clinic, health facility, home health agency, or hospice licensed pursuant to Section 1204, 1250, 1725, or 1745 shall prevent unlawful or unauthorized access to, and use or disclosure of, patients' medical information, as defined in subdivision (g) of Section 56.05 of the Civil Code and consistent with Section 130203. The department, after investigation, may assess an administrative penalty for a violation of this section of up to twenty-five thousand dollars (\$25,000) per patient whose medical information was unlawfully or without authorization accessed, used, or disclosed, and up to seventeen thousand five hundred dollars (\$17,500) per subsequent occurrence of unlawful or unauthorized access, use, or disclosure of that patients' medical information.</p> <p>1280.15 Health Safety Code section (a) provides that a clinic, health facility, home health agency, or hospice licensed pursuant to Section 1204, 1250,</p>		<p>MAR - 7 2016</p> <p><b>Plan of Correction:</b> The hospital provides support for compliance with policy <u>S-FW-IM-0201: Confidentiality of Information (Patient, Financial, Employee, and Other Sensitive and Proprietary Information)</u> by providing direction in the following manner:</p> <p>a) <i>What corrective actions will be accomplished for those patients found to have been affected by the deficient practice?</i></p> <ul style="list-style-type: none"> <li>• Patient 1 was informed verbally and in writing on July 16, 2014 of the unauthorized access to his health information.</li> <li>• Immediately upon identifying a possible breach of health information on July 10, 2014, an investigation was initiated.</li> <li>• The employee (C.N.A.1) was terminated on July 23, 2014, following validated access to health information without a business purpose.</li> </ul>	
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LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

By signing this document, I am acknowledging receipt of the entire citation packet. Page(s) 1 thru 8

Any deficiency statement ending with an asterisk (\*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. Except for nursing homes, the findings above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. For nursing homes, the above findings and plans of correction are disclosable 14 days following the date these documents are made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

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	<p>1725, or 1745 shall prevent unlawful or unauthorized access to, and use or disclosure of, patients' medical information, as defined in subdivision (g) of Section 56.05 of the Civil Code and consistent with Section 1280.18.</p> <p>For purposes of this section, internal paper records, electronic mail, or facsimile transmissions inadvertently misdirected within the same facility or health care system within the course of coordinating care or delivering services shall not constitute unauthorized access to, or use or disclosure of, a patient's medical information. The department, after investigation, may assess an administrative penalty for a violation of this section of up to twenty-five thousand dollars (\$25,000) per patient whose medical information was unlawfully or without authorization accessed, used, or disclosed, and up to seventeen thousand five hundred dollars (\$17,500) per subsequent occurrence of unlawful or unauthorized access, use, or disclosure of that patient's medical information. For purposes of the investigation, the department shall consider the clinic's, health facility's, agency's, or hospice's history of compliance with this section and other related state and federal statutes and regulations, the extent to which the facility detected violations and took preventative action to immediately correct and prevent past violations from recurring, and factors outside its control that restricted the facility's ability to comply with this section. The department shall have full discretion to consider all factors when determining whether to investigate and the amount of an administrative</p>		<ul style="list-style-type: none"> <li>• Immediate interview and education of MD1 (and others) occurred on July 17, 2014. <u>Responsible person:</u> Director, Risk Management <u>Date:</u> 7/16/14</li> </ul> <p>b) <i>How other patients having the potential to be affected by the same deficient practice (have been identified) and what corrective action will be taken.</i></p> <p>All patients admitted to the hospital have the potential to be affected by same practice, therefore the following has occurred.</p> <ul style="list-style-type: none"> <li>• The actions of C.N.A 1 was a willful and intentional violation of the hospital's policy. The hospital provides annual training on privacy and confidentiality, which is well understood by staff, therefore additional, broad education in response to this event is not indicated.</li> <li>• The ED computers where MD1 stated that it was possible that "someone else may have accessed Patient 1's medical record under his logon password and viewed the demographic</li> </ul>	

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	<p>penalty, if any, pursuant to this section.</p> <p>1280.18. (a) Every provider of health care shall establish and implement appropriate administrative, technical, and physical safeguards to protect the privacy of a patient's medical information. Every provider of health care shall reasonably safeguard confidential medical information from any unauthorized access or unlawful access, use, or disclosure</p> <p>Title 22 regulations</p> <p>70707.1 (b) A list of these patients' rights shall be posted in both Spanish and English in appropriate places within the hospital so that such rights may be read by patients. This list shall include but not be limited to the patients' rights to:</p> <p>(8) Confidential treatment of all communications and records pertaining to the care and the stay in the hospital. Written permission shall be obtained before the medical records can be made available to anyone not directly concerned with the care.</p> <p>The above regulations were NOT MET as evidenced by:</p> <p>Based on interview and record review, the facility failed to protect the right to privacy for 1 sampled patient (1). Patient 1's medical record was intentionally accessed by hospital personnel who were not involved in the patient's care and who did</p>		<p>information" have been modified (see c. Systemic Changes) <u>Responsible person:</u> Director, Risk Management <u>Date:</u> 1/22/15</p> <p>c) <i>What immediate measures and systemic changes will be put into place to ensure that the deficient practice does not recur?</i> <u>Immediate Measures:</u></p> <ul style="list-style-type: none"> <li>All physicians involved in potential access to Patient 1's health information received immediate education on appropriate access and expectation for logging off computers after each use.</li> <li>Annual training material on Privacy was reviewed to ensure inclusion of examples aligned with this event.</li> </ul> <p><u>Systemic Changes:</u></p> <ul style="list-style-type: none"> <li>The ED computers have been modified to include badge-swipe in-and-out access and automatic log-out after two minutes (vs 20 minutes).</li> <li>Mandatory Physician Education on Privacy</li> </ul> <p>Compliance is now incorporated into physician reappointment</p>	

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	<p>not have a business need to know the patient's confidential medical information. In addition, the Patient 1's medical record was not maintained in a manner that protected confidentiality when the patient's record was left accessible to unauthorized personnel. These deficient practices lead to the potential disclosure of the patient's confidential medical information, to unauthorized individuals and to adversely affect the patient's right to privacy and confidentiality.</p> <p>Findings: On 7/10/14, Hospital A informed the California Department of Public Health (CDPH) that a local television outlet had reported that, a "source at the hospital", had revealed that Patient 1 had been transported to the hospital for treatment. On 7/17/14, the hospital reported to CDPH, that a subsequent audit of Patient 1's electronic medical record indicated the potential unauthorized access by hospital personnel to the patient's medical record.</p> <p>Patient 1 was admitted to Hospital A's emergency department (ED) on 7/9/14. The hospital's Emergency Record, dated 7/9/14 at 11:50 A.M., indicated the patient's chief complaint. The Emergency Record had been dictated and authenticated by the patient's emergency primary medical doctor (PMD). The same record indicated that the patient was admitted to a care unit in the hospital for further treatment.</p> <p>During an interview and joint document review on 7/22/14 at 10:00 A.M., the Director of Risk Management ( DRM) stated that the hospital audit of Patient 1's electronic medical record had identified that a staff member, certified nursing</p>		<p>every two years.</p> <p><u>Responsible person:</u> Director, Risk Management <u>Date:</u> 3/1/15</p> <p>d) <i>A description of the monitoring process and positions of persons responsible for monitoring</i> All Scripps employees undergo validation of their understanding of the organization's privacy practices, which is memorialized at the time of annual training as documented on the Confidentiality and Non-Disclosure Agreement.</p> <p>All electronic health record access is monitored, and, with reasonable suspicion, an audit log can be created to investigate access without a business purpose.</p> <p>Information System Activity Review- Patient Records Access Auditing is accomplished through a standardized audit plan utilizing reports from our access logging consolidation and</p>	

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	<p>assistant (CNA) 1, had accessed Patient 1's record without a business need to know. The audit was reviewed with the DRM. The DRM stated CNA 1 had not been assigned to Patient 1's care. The DRM stated that the audit had revealed that CNA 1 had accessed areas of the patient's electronic medical record, which had included the patient's name, patient summary, and document display. The audit indicated that the CNA 1 had accessed the patient's record between 6:06 P.M. and 6:08 P.M. on 7/9/14. In addition, the DRM stated that, during a witnessed interview, conducted on 7/16/14 at 11:00 A.M., CNA 1 had been shown the hospital record audit information and had admitted that she had accessed Patient 1's electronic medical record at a common shared computer outside of the patient's room. The DRM stated that CNA 1 had stated that she was "curious" and had admitted that she looked at the patient's medical record.</p> <p>A review of a letter, dated 7/16/14 and sent to Patient 1 by the facility, informed Patient 1 that the following information was accessed, without authorization, by a staff member: physician transcripts that described the patient's chief complaint, pre-hospital course, history of present illness, past medical history, medications, allergies, family history, social history, review of systems, and treatment and Emergency Department course and diagnoses.</p> <p>During an interview on 8/16/14 at 4:00 P.M., CNA 1 stated that she worked on the hospital unit where Patient 1 was admitted, on 7/9/14. CNA 1 acknowledged that she had not been assigned to the patient and learned that the patient was a VIP (very important person) from other staff members on</p>		<p>reporting software tool, FairWarning, to routinely audit access to high risk systems (containing significant amount of ePHI) including AllScripts (Clinics' Electronic Health Record) and GE Centricity (Hospitals' Electronic Medical Record). In CY2014 audits of high risk system access will include the following: Random User Audits: A specific software routine has been developed for Scripps by FairWarning to randomly generate an individual access for one user and one patient for the date(s) selected in the designated system. Each week, Corporate Compliance generates a set of such random accesses for these key systems and then works with management to confirm the appropriateness/job function of the individual user's need for the patient record access selected for review.</p> <p>The audit results will be evaluated by the Audit &amp; Compliance Committee and any need for additional</p>	

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	<p>the same unit. CNA 1 stated that 3 computers on the unit are shared by the same staff. CNA 1 stated that it was "a usual practice" for staff to remain "logged in" on the computers and that "someone else may have looked at [Patient 1's] chart" while she was logged on (signed on to the computer with a unique password).</p> <p>During an interview and joint document review on 9/23/14 at 1:00 P.M., MD 1 stated that he had been on duty in the Emergency Department (ED) on 7/9/14, the same day that Patient 1 had been admitted to the ED. MD 1 stated that he had not been involved with Patient 1's care and had not accessed the patient's record for information. MD 1 acknowledged that the electronic medical record audit indicated that he had accessed the patient's record for demographic information on 7/9/14 at 12:59 P.M. The electronic record audit indicated that demographic information, which included the patient's name, date of birth, address and phone number had been viewed. MD 1 stated that the computers in the emergency department were shared and accessible to all staff. MD 1 acknowledged the facility expectation that staff were to log off the computer after each use. However, MD 1 stated that it was not an unusual practice to "log on" to a computer, with an individual password, and then be called away from the computer without "logging out". MD 1 stated that it was possible that "someone else" may have accessed Patient 1's medical record under his logon password and viewed the demographic information.</p> <p>During a review of the hospital's policy and procedure, entitled Confidentiality of Information</p>		<p>improvements or modifications will be assessed and implemented. <u>Responsible person:</u> Director, Audit &amp; Compliance <u>Audit timeline:</u> October 1, 2014 and annually ongoing.</p>	

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	<p>(Patient, Financial, Employee, and Other Sensitive and Proprietary Information) approved 7/22/14, included "...all individuals who have access to Confidential Information (described as data that, if made available to unauthorized parties may adversely affect individuals) are prohibited from using, discussing or revealing such information in any unauthorized manner...For example, individuals may not: Allow or participate in viewing, accessing...using or disclosing Confidential Information for any purpose other than carrying out legitimate job -related responsibilities...This policy applies to [Hospital Name] entire workforce, including employees...contracted third parties...The policy also applies to medical staff members, resident, fellows and interns."</p> <p>A review of the hospital policy and procedure entitled Computer, Network, and E-mail Usage (Acceptable Use) approved 5/7/13, included "...All [Hospital Name] owned desktop computers, laptops, handheld devices and workstations used to conduct [Hospital Name] business must be secured with a password-protected screen saver with the automatic activation features set per [Hospital Name] current or by locking or logging-off when the computer/device is unattended...The following activities are strictly prohibited...using someone's already logged-on session."</p> <p>During an interview on 10/7/14 at 3:50 P.M., the DRM acknowledged the evidence that Patient 1's medical record was intentionally accessed by a hospital employee, who did not have a business need to know the patients information. In addition, the DRM acknowledged that the hospital had not implemented the policies and procedures developed</p>			

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	for the protection of confidential medical information and unauthorized computer access. The DRM was informed of the potential for an administrative penalty.				

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