

California Department of Public Health

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

JUN 16 2016

L & C DIVISION SAN JOSE

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: CA070000137	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED C 03/18/2016
NAME OF PROVIDER OR SUPPLIER COMMUNITY HOSPITAL OF THE MONTEREY F		STREET ADDRESS, CITY, STATE, ZIP CODE 23625 W R HOLMAN HIGHWAY MONTEREY, CA 93940		
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A 000	Initial Comments The following reflects the findings of the California Department of Public Health during an investigation of an entity reported incident conducted on 3/18/16. For Entity Reported Incident CA00470059 regarding State Monitoring, Breach of IT system/theft/loss of medical records, a state deficiency was identified (see California Health and Safety Code, Section 1280.15(a)). Inspection was limited to the specific entity reported incident investigated and does not represent the findings of a full inspection of the hospital. Representing the California Department of Public Health: 33583, Health Facilities Evaluator Nurse. The hospital detected the Breach of Protected Health Information (PHI) of one patient on 12/3/2015. The hospital reported the Breach of PHI to the Department on 12/23/15. The hospital notified the affected patient of the Breach of PHI on 12/23/15.	A 000	Question a: What corrective action(s) will be accomplished for the patient(s) identified to have been affected by the deficient practice? Response: Following the initial investigation of the suspected unauthorized which included an interview with the employee; the employee was placed on a seven-day suspension pending further investigation and consideration of findings. Once unauthorized access was confirmed the employee was terminated. Responsible person: Privacy Officer Completion date:	December 28, 2015
A 001	Informed Medical Breach Health and Safety Code Section 1280.15(b)(2) Subject to subdivision (c), a clinic, health facility, home health agency, or hospice shall also report any unlawful or unauthorized access to, or use or disclosure of, a patient's medical information to the affected patient or the patient's representative at the last known address, or by an alternative means or at an alternative location as specified by the patient or the patient's representative in writing pursuant to Section 164.522(b) of Title 45 of the Code of Federal Regulations, no later than	A 001	Question b: How other patients having the potential to be affected by the same deficient practice be identified, and what corrective action will be taken. Response: No additional patients were identified during the course of this investigation. Responsible Person: Privacy Officer Completion date:	December 18, 2015

Licensing and Certification Division
LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE



TITLE

CEO

(X6) DATE

6/16/16
PLC accepted
M.E.

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A 001	Continued From page 1 15 business days after the unlawful or unauthorized access, use, or disclosure has been detected by the clinic, health facility, home health agency, or hospice. Notice may be provided by email only if the patient has previously agreed in writing to electronic notice by email. The CDPH verified that the facility informed the affected patient(s) or the patient's representative(s) of the unlawful or unauthorized access, use or disclosure of the patient's medical information.	A 001.	Question c: What immediate measures and systemic changes will be put into place to ensure that the deficient practice does not recur? Response: Staff have been re-educated on the methodology for looking up a patient(s) scheduled for surgery in the electronic medical record in January and February of 2016. Education emphasized the necessity to have the correct spelling of patient(s) name and medical record number.	
A 170	1280.15(a) Health & Safety Code 1280 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 Section 56.05 of the Civil Code and consistent with Section 1280.18. 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	A 170	Physicians were re-educated to have patient name and medical record number readily available Responsible Person: Main Operating Room/Post Anesthesia Care Unit management Completion date:	March 31, 2016



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A 170	<p>Continued From page 2</p> <p>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 penalty, if any, pursuant to this section.</p> <p>This Statute is not met as evidenced by: Based on interview and record review, the hospital failed to prevent the unauthorized disclosure of protected health information (PHI) for one patient (Patient 1), when the electronic medical records of Patient 1 was willfully accessed without authorization and viewed by a hospital employee. This failure resulted in the disclosure of Patient 1's PHI to an unauthorized individual.</p> <p>Findings:</p> <p>The California Department of Public Health received a faxed report on 12/23/15, which indicated on 12/3/15, the hospital detected hospital employee A (HE A) had accessed Patient 1's emergency department medical record without authorization on 11/20/15.</p>	A 170	<p>Question d:</p> <p>A description of the monitoring process and positions of persons responsible for monitoring. How the facility plans to monitor its performance to ensure corrections are achieved and sustained. The plan of correction must be implemented, corrective action evaluated for its effectiveness, and it must be integrated into the quality assurance system.</p> <p>Response: Privacy officer conducts ongoing routine and random audits of medical record access. Actual or suspected are investigated and logged. Aggregated data are reported on a quarterly basis to the Compliance Committee.</p> <p>Responsible Person: Privacy Officer</p> <p>Completion date:</p>	Ongoing



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A 170	Continued From page 3 During an interview on 3/18/16 at 9:27 a.m. with the director of risk management and privacy (DRMP), she stated on 11/20/15 at 10:28 p.m., HE A accessed Patient 1's emergency department (ED) medical record after he was discharged home from the ED earlier that day at 10:13 p.m. She said she interviewed HE A, who said she looked at Patient 1's ED medical record to prepare to care for him. The DRMP stated HE A had no reason to look at Patient 1's ED medical record because he was not scheduled to be admitted for surgery and there were no plans for him to be sent to the post-anesthesia care unit (PACU), where HE A worked. During record review on 3/18/16 at 9:27 a.m. with the DRMP of the audit, the DRMP confirmed on 11/20/15, HE A used a hospital computer to access Patient 1's medical diagnosis, allergies, and physician's orders. The "Unauthorized Use or Disclosure of Protected Health Information" form "Meetings and Investigation" section entry for "12.18.15 meeting @ 07:30" indicated "...she [HE A] stated she found out the patient had been discharged after reviewing the orders but could not explain why she would then continue to review the patient information section or the patient allergies." During an interview on 4/4/16 at 3 p.m. with Patient 1, he stated he did not give HE A permission to access to his medical records. Review of the hospital's 3/2012 policy "CONFIDENTIALITY OF PATIENT AND HOSPITAL BUSINESS INFORMATION" indicated "All employees... are responsible for upholding hospital privacy, confidentiality, ethics, and information security policies and procedures,	A 170		



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A 170	Continued From page 4 including those contained in the notice of privacy practices... Everyone is expected to treat patient and hospital information in a respectful, professional, and confidential manner. Such information should never be viewed or discussed with another for reasons of personal interest or for reasons outside the employee's responsibilities."	A 170		

Handwritten signature