

California Department of Public Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: CA070000150	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED C 05/27/2015
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NAME OF PROVIDER OR SUPPLIER
KAISER FOUNDATION HOSPITAL-SAN JOSE

STREET ADDRESS, CITY, STATE, ZIP CODE
**250 HOSPITAL PARKWAY
SAN JOSE, CA 95119**

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A 001	<p>Informed Medical Breach</p> <p>Health and Safety Code Section 1280.15 (b)(2). "A clinic, health facility, 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, no later than five business days after the unlawful or unauthorized access, use, or disclosure has been detected by the clinic, health facility, agency, or hospice."</p> <p>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.</p>	A 001	<p>Preparation and execution of this Plan of Correction does not constitute admission of agreement by Kaiser Foundation Hospital – San Jose of the truth of the facts alleged or conclusions set forth in this statement of deficiencies.</p> <p>All exhibits referenced in the Plan of Correction are available on site at the hospital.</p> <p>1280.15(a) Health & Safety Code 1280</p> <p>Immediate Action: UA A was placed on paid investigatory leave on 3/26/2015. After a thorough investigation, the employee was managed in accordance with the Hospital's Human Resources policies.</p>	<p>Stamp: CALIFORNIA DEPARTMENT OF PUBLIC HEALTH JUL 27 2015 L&L DIVISION SAN JOSE</p>
A 000	<p>Initial Comment</p> <p>The following reflects the findings of the California Department of Public Health during an investigation of an entity reported incident conducted on 5/21/15.</p> <p>For Entity Reported Incident CA00435091, regarding State Monitoring, Intentional Breach of Protected Health Information (PHI) by a health care worker, one State deficiency was identified (see California Health and Safety Code, Section 1280.15(a)).</p> <p>Inspection was limited to the specific entity reported incident investigated and does not represent the findings of a full inspection of the hospital.</p> <p>Representing the California Department of Public</p>	A 000		

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

TITLE

(X6) DATE

Jane Chavez, Sr Vice President Area Mgr 7/21/15

STATE FORM

ZE7611

If continuation sheet 1 of 5

5/21/15 POC accepted, update to immediate action of H&S Risk & Patient Safety - JH

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A 000	Continued From page 1 Health: 32398, Health Facilities Evaluator Nurse. The hospital detected the Breach of PHI on 2/24/15. The hospital reported the Breach of PHI to the Department on 3/13/15. The hospital notified Patient 1 of the Breach of PHI on 3/17/15.	A 000	The affected patient was notified of the breach on 3/13/15 and a follow up letter was mailed on 3/17/15. There were no other patients affected by the same deficient practice identified.	
A 017	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 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. 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 the amount of an administrative penalty pursuant to this section.	A 017	Systemic Actions: The importance of protecting patient health information (PHI) is included in the annual mandatory compliance training for physicians and staff and is part of the "Principles of Responsibility" (POR) that detail our code of conduct. The POR highlights the fact that staff should not access charts without a business related reason. During mandatory New Employee Orientation there is an emphasis on not accessing records without a business related reason. Examples and consequences of breaches are reviewed. The Compliance Department uses proactive monitoring of patient's PHI through a system activity review program including application of 'break the glass' technology, a safeguard on the electronic medical record.	Annual and Ongoing Ongoing Ongoing

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A 017	Continued From page 2 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 of one sampled patient (Patient 1), when a unit assistant (UAA) intentionally, and without a job related need, accessed the medical record of Patient 1 who was on a different unit. The failure resulted in the disclosure of Patient 1's PHI to an unauthorized individual. Findings: The California Department of Public Health received a faxed report on 3/13/15, which indicated on 2/24/15, the hospital was notified of a potential unauthorized access of a patient's medical record by a staff member. After an internal investigation, the hospital identified UAA had accessed Patient 1's medical record twice. Patient 1 was not a patient on the same unit where UAA was working, and UAA did not have a business related reason to access Patient 1's medical record. During an interview on 5/21/15 at 10:40 a.m. the interim area compliance officer (ACO) stated on 2/23/15, labor & delivery (L&D) staff (UAB) was trying to register Patient 1 when the computer indicated Patient 1's medical record was already open by user UAA, who worked on a different unit. ACO stated an audit was run which indicated UAA had accessed Patient 1's record disclosing her name, scheduled visit, provider (physician), diagnosis, and hospital. ACO stated regardless of what was viewed by UAA, it was inappropriate to access the medical record	A 017	Responsible Parties: Area Compliance Officer Monitoring: The Compliance Department monitors employees for completion of annual compliance training. Results from monitoring activities are reported to the Compliance Committee. Responsible Parties: Area Compliance Officer	

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A 017	<p>Continued From page 3</p> <p>without a business related need.</p> <p>During an interview on 5/21/15 at 11:30 a.m. the nurse manager of maternal/child health (MMC) stated she received a forwarded email from UA B which indicated when UA B tried to register Patient 1 the computer indicated Patient 1's medical record was being used elsewhere by user UAA. MMC stated UAA never worked in L&D and there was no reason she should have been accessing Patient 1's medical record.</p> <p>Review of a copy of the hospital audit indicated UAA had accessed Patient 1's medical record on 2/23/15 at 12:23 a.m. and 5:39 a.m. The audit indicated UAA accessed Patient 1's demographics page (disclosing Patient 1's medical diagnosis, scheduled visits, and physician as per ACO) and a provider notes (nurse and/or physician) page.</p> <p>Review of a copy of a letter sent on 3/17/15 from the hospital to Patient 1 indicated, on 2/24/15 the hospital was made aware of a potential unauthorized access to Patient 1's medical record by a staff member (UAA). After an internal investigation the hospital determined UAA had accessed Patient 1's medical record without a legitimate business need, on 2/23/15.</p> <p>Review of a copy of the hospital's 01/2014 "Access and Use of Patient Care Computer Applications" policy indicated access to patient care applications is granted to those persons who are members of patient care teams or other persons who require access to one or more applications to perform their job functions. Patient care applications may be used to provide patient care or perform other authorized business functions. Accessing any patient's medical</p>	A 017		

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A 017	Continued From page 4 information for purposes not described in this policy is an inappropriate use of hospital online applications. Avoid accessing any information except as part of routine care delivery or other official functions.	A 017		