



## A DEPARTMENT OF HEALTH & HUMAN SERVICES

### Office of the Secretary

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APR 12 2018

Christopher Dickson  
Post Office Box 2271  
Fort Collins, Colorado 80522

Nancy Katz-Johnson, MHS, RHIA, CIPP/G  
Privacy Specialist  
Department of Veterans Affairs  
Veterans Health Administration  
VHA Privacy Office  
810 Vermont Avenue, N.W.  
Washington, D.C. 20420

Re: Dickson v. Grand Junction VA Medical Center  
OCR Transaction Number: 17-268749

Dear Mr. Dickson:  
Ms. Katz-Johnson:

Please be advised that the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR), Rocky Mountain Region has completed its investigation of the complaint from Mr. Christopher Dickson (Complainant) on April 25, 2017, in which he alleged that the Grand Junction VA Medical Center (GJVAMC) was not in compliance with the applicable provisions of the Federal Standards for Privacy of Individually Identifiable Health Information and/or the Security Standards for the Protection of Electronic Protected Health Information (45 Code of Federal Regulations (C.F.R.) Parts 160 and 164, Subparts A, C, and E, the Privacy and Security Rules) and the Breach Notification Rule (45 C.F.R. Parts 160 and 164, Subpart D).<sup>1</sup>

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<sup>1</sup> OCR enforces federal civil rights laws which prohibit discrimination in the delivery of health and human services based on race, color, national origin, disability, age, sex, religion, and the exercise of conscience, and also enforces the Health Insurance Portability and Accountability Act (HIPAA) Privacy, Security and Breach Notification Rules.



Specifically, Complainant alleged that, in a letter dated January 23, 2017, GJVAMC acknowledged that it had failed to safeguard his protected health information (PHI) when a GJVAMC staff member impermissibly used (accessed) his PHI numerous times. However, GJVAMC's letter did not indicate that it had sanctioned Dr. Roger Jacobsen, the employee responsible for impermissibly using (accessing) Complainant's PHI. This allegation suggested GJVAMC may not be in compliance with the Privacy Rule under 45 C.F.R. 164.530(e) (Sanctions).

OCR notified GJVAMC of the subject investigation in a letter dated August 29, 2017. GJVAMC provided its response and stated that, after receiving an internal complaint from Complainant on November 21, 2016, GJVAMC's Privacy Officer conducted an investigation into the matter and determined that Dr. Jacobson impermissibly used (accessed) Complainant's PHI six times after Dr. Jacobson ceased being Complainant's assigned provider on October 16, 2016.<sup>2</sup> GJVAMC's also informed OCR that GJVAMC's Chief of Staff reopened the investigation of this matter after receiving OCR's notification letter, and GJVAMC's Chief of Staff determined that Dr. Jacobsen's accesses of Complainant's PHI were permitted and "in accordance with his job duties."

After receiving this response, OCR submitted a supplemental data request to GJVAMC informing it that, in addition to investigating GJVAMC's compliance with the Privacy Rule's sanctions provision, OCR's investigation would also address whether Dr. Jacobsen's conduct resulted in GJVAMC's noncompliance with the Privacy Rule under 45 C.F.R. §§ 164.502(a) (Impermissible Use) and 164.530(c) (Safeguards).

In addition to requiring a covered entity to have and apply appropriate sanctions against workforce members who fail to comply with the Privacy Rule and the covered entity's privacy policies and procedures, the Privacy Rule also prohibits covered entities from using or disclosing PHI except as otherwise permitted by the Privacy Rule.<sup>3</sup> A covered entity must also have in place appropriate administrative, technical, and physical safeguards to protect the privacy of PHI.<sup>4</sup>

OCR received and reviewed GJVAMC's response and documentary evidence in response to OCR's supplemental data request and determined that a preponderance of the evidence indicates that Dr. Jacobsen impermissibly used (accessed) Complainant's PHI on the six dates referenced above. OCR informed GJVAMC of this conclusion, and GJVAMC provided OCR with

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<sup>2</sup> According to GJVAMC, Dr. Jacobsen accessed Complainant's PHI on October 18, 19, 29, and 31, and November 3 and 8, 2016.

<sup>3</sup> 45 C.F.R. §§ 164.502(a) and 164.530(e).

<sup>4</sup> 45 C.F.R. § 164.530(c).

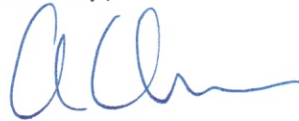
documentation that it sanctioned Dr. Jacobsen in accordance with its sanctions policies and procedures.

Based on the aforementioned, OCR is closing the subject complaint effective the date of this letter. OCR's determination as stated in the letter applies only to the allegations that OCR reviewed.

Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If you have any questions, please contact Mr. Ian Shipps, J.D., Supervisory Equal Opportunity Specialist, at (303) 844-7899, or via email at [ian.shipps@hhs.gov](mailto:ian.shipps@hhs.gov). When contacting this office, please remember to include the transaction number referenced above.

Sincerely,

A handwritten signature in blue ink, appearing to read 'A Oliver', with a long horizontal flourish extending to the right.

Andrea Oliver  
Regional Manager