

## Report on Medicare Compliance Volume 31, Number 14. April 18, 2022 In New Cases, OCR Nixes Political Use of PHI, Review Backlash

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By Theresa Defino

By many measures, David Northcutt's unsuccessful 2018 bid for the Alabama senate was a costly one. Northcutt, a dentist, loaned his campaign \$73,000 throughout the previous year, part of a war chest that eventually reached more than \$301,000. He came in second during the Republican primary but lost to Chris Elliott in a runoff in July 2018. Elliott won the general election and is now running for his second four-year term—unopposed.

Local media branded the campaign “vicious” due to barbs Northcutt and Elliott slung at each other. Northcutt highlighted a drunk-driving arrest of Elliott's while he focused on a rebuke the dentist received for practicing with an expired license.<sup>[1]</sup>

But years after the election, Northcutt's finances have taken another hit. Twice during the campaign, Northcutt's election manager and a vendor contacted more than 5,000 patients “to announce Dr. Northcutt's run for state senate,” in the words of the federal government.<sup>[2]</sup> Northcutt agreed to pay \$62,500 and implement an extensive two-year corrective action plan (CAP) to settle allegations that the mailings, which used protected health information (PHI) without patient authorization for nonallowable purposes, violated HIPAA. Through his attorney Richard Davis, Northcutt declined to comment about the settlement.

As unique as Northcutt's settlement is, based on the political use of PHI, it is also rare for the HHS Office for Civil Rights (OCR) to pursue violations by a dentist, yet Northcutt was one of three featured in four new enforcement actions OCR Director Lisa Pino announced simultaneously late last month. The nondental provider in a new settlement with OCR is Said Jacob, MD, a California psychiatrist.<sup>[3]</sup>

The quartet represents the first enforcement actions OCR announced so far this year, although three of the cases were finalized in 2021. Northcutt's agreement was signed in March, bringing an end to a saga that began in the summer of 2017, according to OCR.

As the agency said in the settlement agreement, Northcutt, owner of Northcutt Dental-Fairhope LLC, launched a run for state senate and “engaged a campaign manager for assistance in this endeavor.” On approximately July 10 of that year, Northcutt gave his campaign manager an Excel spreadsheet with the names and addresses of 3,657 of Northcutt's dental patients. The manager sent letters on campaign letterhead addressed “Dear Valued Patient,” but the purpose wasn't their dental care; it was to announce his campaign.

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