

Report on Patient Privacy Volume 23, Number 6. June 08, 2023 Five Years After 'a Singular Human Error,' Two Breach Notices, Revenue Firm Settles With OCR

By Theresa Defino

As far as settlements for alleged HIPAA violations go, a recent agreement announced by the HHS Office for Civil Rights (OCR) doesn't immediately jump out as particularly noteworthy. The amount paid by the practice management and IT firm—\$350,000—is a far cry from the millions OCR used to command in such cases, and the number of patient records wasn't in the millions, either.

But most compliance officials know they should review all OCR's enforcement actions for insights. And when they dive into the agreement Matt Rolfes, president and CEO of MedEvolve Inc., signed with OCR in March, they'll discover a slightly more complicated story than just protected health information (PHI) left unguarded on a server for perhaps four months. The case demonstrates that—at least in the eyes of OCR—an organization can make an error when it concludes an incident isn't a breach.

The settlement documents reveal that OCR disagreed with MedEvolve's assessment of the number of records affected in June 2018 and required the Arkansas firm to make another public breach notification two years later.

"After five years, we are glad to have concluded the settlement," Rolfes said in an email in response to *RPP*'s questions. "We look forward to moving beyond the incident with a bright future, creating new opportunities in healthcare, and helping healthcare organizations improve margin to further their missions."

MedEvolve's was the second settlement OCR announced in May. A Pittsburgh, therapist agreed to pay \$15,000 as part of OCR's 44th records access initiative.^[1]

MedEvolve, founded in 1998, provides revenue cycle management and other services. Under HIPAA, it is a business associate (BA), not a covered entity (CE). According to information MedEvolve released on July 10, 2018, the firm experienced a breach of PHI belonging to Premier Immediate Medical Care. At the time, MedEvolve said it "discovered that an FTP [file transfer protocol] containing a file with information related to certain Premier patients was inadvertently accessible to the internet."^[2]

The firm's "investigation determined that the file was internet accessible from March 29, 2018, to May 4, 2018. The investigation also determined that one file was subject to unauthorized access on March 29, 2018," MedEvolve said. However, in its settlement documents, OCR listed a far longer period of public accessibility.

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