

Report on Patient Privacy Volume 20, Number 10. October 08, 2020 Psychiatrist in Access Settlement 'Never Saw a Request'

By Theresa Defino

Last month, the HHS Office for Civil Rights (OCR) announced five settlement agreements with organizations it said had violated the right of access to medical records included in the privacy rule.^[1] Of these, Dr. Brian Wise, a psychiatrist in Centennial, Colorado, shared his experiences with *RPP*.

At \$10,000, Wise's is the second smallest payment among the five, which also calls for a one-year corrective action plan (CAP).^[2] Wise signed the agreement in August. According to OCR, a parent had contacted Wise's practice in November 2017 via certified letter seeking his minor son's records. They were eventually provided "as a result of OCR's investigation" in May of last year, OCR said.

But, in an email to *RPP*, Wise denied any involvement in the handling of the original request and said he first learned there was an issue from OCR. He has relocated and implemented access procedures and training, he said. Wise's situation may sound familiar to providers in shared spaces, and should send a reminder to larger covered entities that some in their networks may need help with HIPAA compliance.

"At the time of the apparent request for medical records, I was a solo practitioner who subleased office space in a larger medical practice. I did not hire or have any say in the front office operations at that time and unfortunately, there was a lot of turnover in staff during that period, including three different office managers," Wise said. "I never saw a request for medical records as the first notice I personally received was from the OCR."

As soon as he got the complaint, Wise "immediately released the records with my sincere apologies and without any fee for services for those records—i.e. copying, etc."

Wise added that he "tracked down the staff members that I could who would have been working at that practice during the time a release would have come into the office and none of them recalled receiving and/or signing for any letter" from the person who filed the complaint.

Since then, Wise "moved into my own office where I hired my own small staff. After developing a corrective action plan, I have made sure that they are properly trained on the timely handling of requests for medical records." Wise noted that he has "also voluntarily done additional training in medical record keeping."

The CAP acknowledged this, and it is one of the few (if not the only) CAP that OCR has issued that doesn't call for an organization to at least submit policies to the agency for review.

OCR noted that "Wise Psychiatry recently adopted written policies and procedures titled, 'Patients Request for Records,' which comply with the Federal standards that govern the privacy of individually identifiable health information." These are to be distributed to workers who will then receive training about them (as will any business associates, as appropriate). These individuals must certify "in electronic or written form" that they have completed the training.

As with the other CAPs, Wise is required to inform OCR within 30 days of any reportable events, namely instances when a worker or business associate fails to comply with the access requirements. The report must include a

“description of the actions taken and any further steps Wise Psychiatry plans to take to address the matter to mitigate any harm, and to prevent it from recurring, including application of appropriate sanctions against workforce members who failed to comply with its Privacy Rule policies and procedures.”

Implementation reports are also to be sent to OCR at four months and one year from the effective date of the CAP.

Contact Wise at bwise@wisepsych.com.

1 Theresa Defino, “New Agreements Signal OCR’s Impatience With Thwarted Access to Patients’ Records,” *Report on Patient Privacy* 20, no. 10 (October 2020).

2 HHS, “Wise Psychiatry Resolution Agreement and Corrective Action Plan,” resolution agreement, August 21, 2020, <https://bit.ly/3nhrVwL>.

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