



**Minutes from the Chapter Meeting of the  
Austin Chapter of the Association of Legal Administrators  
June 26, 2014 at 11:30 am  
Headliners Club**

**President's Chapter Meeting Announcements**

1. Shary Tutt, President-elect, introduced herself and informed the members that Kelly Barker, President, had asked her to fill in for him at the meeting because he was attending the State Bar of Texas Annual Conference. Shary welcomed the members, guests and business partners at 11:45 AM to our Monthly Meeting. Shary also informed the group that our scheduled speaker, Nora Belcher, had a family emergency and had arranged for Stephen Palmer to speak in her place.
2. Guests were introduced – Steve Koenig, Yvonne Love, Cindy Gonzales and Lindsey Price
3. Announcements
  - a. Joan McClendon announced that the chapter will be doing a community service project with the Capital Area Food Bank on Saturday, June 28 from 9 – 12. We will also be participating in the Light the Night Walk on October 25. More information will be coming soon on that event but Joan asked everyone to note it on their calendar now.
  - b. Summer Jurrells announced that the Communications Committee is having a contest to name the new eblast newsletter. The deadline to submit a name is July 9. Email your suggestions to Summer Jurrells (Summer Jurrells ([summersjurrells@gmail.com](mailto:summersjurrells@gmail.com)) or Linda Siegert (Siegert, Linda ([Linda.Siegert@huschblackwell.com](mailto:Linda.Siegert@huschblackwell.com))). The winner will be announced at next month's chapter meeting. Prizes will be awarded!

**Luncheon Sponsor**

Capital Vending and Coffee was the meeting sponsor. Katy Mosely introduced herself and asked everyone to be sure and grab an organic fruit drink and drink cozy from the cooler on their way out.

**Luncheon Speaker**

Katy Mosely introduced the speaker, Stephen Palmer. He discussed the requirements of HB 300, especially as they relate to law firms. The luncheon invitation and handout is attached as **ATTACHMENT A.**

## **Adjournment**

The meeting was adjourned at 1:00 PM. The next meeting is July 24, 2014 and the topic will be Workplace Bullying.

# **ATTACHMENT A**

**From:** [Association of Legal Administrators- Austin Chapter](#)  
**To:** [Diana Stangl](#)  
**Subject:** ALA Monthly Lunch and Learn- RSVP DEADLINE NOON TODAY  
**Date:** Tuesday, June 24, 2014 9:31:31 AM

June 2014 Austin ALA Lunch and Learn

[View this email in your browser](#)



Please join us at our [ALA Austin Chapter June Lunch and Learn](#) for an informative presentation on HB 300. Our speaker [Nora Belcher](#), Executive Director of [Texas e-Health Alliance](#) will deliver an informative presentation on HB 300 and how it affects law firms who handle medical records for their clients. We will learn about the training requirements for staff and our responsibilities for keeping client medical records secure.

JOIN US AT

**[Headliners Club](#)**

20<sup>th</sup> Floor – Chase Tower

221 W. 6<sup>th</sup> Street Austin, TX 78701

**Thursday, June 26, 2014**

11:30 A.M. -1:00 P.M

**Program Fee:**

- \$20 for ALA Members
- \$5 parking validation
- \$20 cancellation fee after 6/24/14

**RSVP due by noon, Tuesday 6/24/2014**



A big ALA  
**THANK YOU**  
to our Lunch and Learn  
sponsor for June 2014  
**Capitol  
Vending**



## RSVP



Facebook



Website

*Copyright © 2014 Association of Legal Administrators- Austin Chapter, All rights reserved.*  
You are receiving this email because you are a member of the Austin Chapter of the Association of Legal Administrators.

[unsubscribe from this list](#) [update subscription preferences](#)



---

This email has been scanned by the Symantec Email Security.cloud service.  
For more information please visit <http://www.symanteccloud.com>

---

## HB 300: Urban Legend Edition

*Presentation to the Association  
of Legal Administrators*

Stephen Palmer, Principal and Founder  
Waterloo Research and Consulting  
June 26<sup>th</sup>, 2014



### Disclaimers

- I am not an attorney and cannot give legal advice
- I will provide context around why different laws have evolved the way they have and what their intent is
- I am happy to answer specific questions and refer you to resources



### Presentation Outline

- Disclaimers
- Regulator Framework Overview
- Urban Myths About HB 300



### Overview

- Effective September 1, 2012
- Texas Health and Safety Code: Chapter 181 (Medical Records Privacy, est. 2001), Chapter 182 (Texas Health Services Authority, est. 2007)
- Texas Business and Commerce Code: Chapter 521 (Identity Theft, est. 2007)
  1. **Greater enforcement and increased penalties:** broader definition of covered entity; \$5,000 per violation to \$1.5 million per year
  2. **New operational requirements:** training, notice, disclosure, authorization, breach notification



### Organizational Background

TeHA was established in 2009 to support HITECH implementation in Texas and to provide the IT vendor community with a voice in public policy.

Waterloo Research and Consulting was established in 2013 to assist organizations navigating the intersections of health care, technology, and government.



### Acronyms

- CE = covered entity
- PHI = protected health information
- EHR = electronic health record
- TPO = treatment, payment, and health care operations
- HHSC = Health and Human Services Commission
- THSA = Texas Health Services Authority
- AG = Texas Attorney General



### 181.001: Covered Entity

- CE under HIPAA, you must comply.
- CE under Texas law, you must comply.
  - 181.001(b)(2) "Covered entity" means any person who:
    - (A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, **health care provider**, or person who maintains an Internet site;
    - (B) comes into possession of protected health information;
    - (C) obtains or stores protected health information under this chapter; or
    - (D) is an employee, agent, or contractor of a person described by Paragraph (A), (B), or (C) insofar as the employee, agent, or contractor creates, receives, obtains, maintains, uses, or transmits protected health information."



### 181.201 Civil Penalties cont.

Mitigating factors related to the \$250,000 annual cap:

- Court must find:
  1. The disclosure was made only to another CE AND only for the following reason(s):
    - TPO or performing an insurance or HMO function; OR
    - As otherwise authorized or required by state or federal law.
  2. The PHI was:
    - Encrypted or transmitted using encrypted technology;
    - The recipient of the PHI did not use or release the PHI; OR
    - At the time of the disclosure the CE had implemented policies on the use of PHI.



### 181.201 Civil Penalties

HIPAA	HB 300
\$100 per unknowing violation, up to \$50,000	\$5,000 per negligent violation
\$1,000 per violation without willful neglect, up to \$50,000	\$25,000 per knowing violation
\$10,000 per violation due to willful neglect, up to \$50,000	\$250,000 per violation made for financial gain
Penalty capped at \$1.5 million annually	Penalty capped at \$250,000 annually if certain mitigating factors are met or \$1.5 million* annually if there is a pattern of violations



### 181.201-202 Civil Penalties cont.

- State licensing agency can investigate and revoke license if violations are found to be a pattern or practice and egregious.
- NEW: State licensing agency can refer cases to the AG's office for further action and civil penalties. The AG may retain a portion of the civil penalties recovered.
- A violation by an individual or facility licensed by an agency of the state is subject to disciplinary proceedings, including probation or suspension by the licensing agency. If there is evidence that violations are egregious and constitute a pattern or practice, the agency may:
  - Revoke the CE's license; OR
  - Refer the case to the AG for civil penalties.



### 181.201 Civil Penalties cont.

- Mitigating factors related to the penalties ranging from \$5,000 - \$250,000:
  - The seriousness of the violation;
  - The entity's compliance history;
  - Whether any harm was done to the individual involved in the violation;
  - Whether the covered entity had participated in THSA's certification process;
  - How much of a fine might be needed to deter future violations; and,
  - The covered entity's efforts to correct the violation.



### 181.205 Mitigating Factors

- In any action or proceeding to impose an administrative penalty or assess a civil penalty for actions related to the disclosure of PHI, a **CE may introduce**, as mitigating evidence, evidence of the CE's good faith efforts to comply with:
  - (1) state law related to the privacy of individually identifiable health information; or
  - (2) HIPAA.



### 181.101 Training

- Requires CEs to provide training about state and federal laws on protected health information *related to the line of business and the employee's scope of employment*.
- Training must be completed within in 90 days of hiring and documented. Documentation must be kept for 6 years. (SB 1609, 2013)
- Training must be refreshed within one year of any material change to state and federal law. (SB 1609, 2013)



### 181.153 Disclosure of PHI

- **General Rule:** A CE may not disclose PHI for direct or indirect remuneration.
- **Exceptions:** Disclosure of PHI to another CE for remuneration is allowed for:
  1. TPO;
  2. Performing an insurance or HMO function; or
  3. As otherwise authorized by or required by state or federal law.
  - If a CE received payment for PHI, the amount may not exceed the CE's reasonable costs of preparing or transmitting the information.



### 181.154 Notice

- CEs must provide individuals with general notice that their PHI may be *electronically* disclosed.
- Notice may be posted:
  - In their place of business;
  - On an Internet site; or
  - Any other place an individual may be likely to see it.



### 181.102 Request for Patient Record

- **General Rule:** A health care provider using an electronic health records system *capable of providing an electronic record to a consumer* must fulfill a request for an electronic copy of a person's record in *no more than 15 business days AND in electronic form*, unless the person agrees to accept another form.
- **Exceptions:** Federal exceptions to release of PHI under HIPAA apply.
- Texas HHSC *may* recommend a standard electronic format for the release of EHRs, and it must be consistent with federal law, if feasible.



### 181.154 Authorization

- **General Rule:** A CE may not electronically disclose an individual's PHI to any person without a *separate authorization* from the affected individual or the individuals legally authorized representative for *each* disclosure. Authorization may be in written or electronic form, or orally given (if documented).
- **Exceptions:** Authorization is not required if:
  1. The disclosure is made to another CE for the purposes of TPO or performing an insurance or HMO functions; OR
  2. As otherwise authorized or required by state or federal law.
- Not later than Jan. 1, 2013, the AG shall adopt a standard authorization form which must comply with HIPAA and state law.

NOTE: The notice and authorization requirements do not apply to a CE as defined in Ins. Code § 602.001 if that entity is not a CE under federal law or Tx. Health and Safety Code Chapter 181.



### 181.206 Auditing

- Texas HHSC may request that the U.S. Secretary of Health and Human Services perform an audit of a CE in Texas to determine HIPAA compliance. HHSC must monitor results of request.
- *If Texas HHSC has evidence that a CE has committed violations that are egregious and constitute a pattern or practice*, HHSC may require the CE to perform and submit a risk analysis. Texas HHSC may, alternatively, refer a CE to a licensing agency for an audit.
- Texas HHSC must report to the Texas Legislature on the number of federal audits conducted.





### Business & Commerce Code § 521.053 Breach Notification

- Breach notification is required to Texas residents AND residents of other states.
- If the individual impacted is a resident of a state that has its own related breach notification law, notice under that state's law satisfies the Texas requirement. (SB 1610, 2013)
- Penalties for Failure to Comply with Breach Notification:
  - Civil penalty of not more than \$100 for each person for each day in which the CE does not take "reasonable action" to notify the individual (cap of \$250,000 for all individuals under a single breach).



### Myth or Fact?

- A student lost a unencrypted flash drive with thousands of pieces of patient data
- A practice used a public Google calendar to schedule appointments
- A hospital allowed any treating provider to access psychotherapy notes inside their EMR system without specific patient consent
- A federal agency employee forgot to lock their car, so someone was able to steal a laptop with millions of pieces of patient data



### 182.108 and Ins. Code § 602.054 Texas Health Services Authority

- THSA is tasked with:
  - developing privacy and security standards for the electronic sharing of PHI; and,
  - developing a *voluntary* certification process for CEs that want to use the standards.



### Urban Legend #1

HB 300 created a new definition of covered entity, regulating entire new classes of providers and businesses that were previously unregulated.

False. HB 300 used the definition of covered entity from the 2001 Texas Medical Records Privacy Act. Texas has always had a broader definition of covered entity than HIPAA. It is true that HB 300 placed new requirements on covered entities in Texas, such as a prohibition on the sale of PHI.



### Additional provisions

- AG must maintain a website with information on consumer privacy rights and other information. Website must be up by May 1, 2012. AG must annually report to the Texas Legislature on *all* consumer complaints received and their enforcement action taken, if any. Other Texas agencies must report any complaints received to the AG for this report. The first report is due by Dec. 1, 2013
- Texas HHSC shall explore and evaluate new developments in protecting PHI and report by Dec. 1 each year to the legislature.
- Texas HHSC review issues related to the security and accessibility of medical records held by a CE that ceases to operate.
- A task force of 11 members shall be created to develop recommendations for improvement of informed consent protocols, the improvement of patient access to PHI, and any other critical issues related to PHI.
- An identify theft offense that involves stealing PHI is now a state jail felony.



### Urban Legend #2

HB 300 created a new, unreasonable training requirement for covered entities that will be impossible to implement

False. HB 300 did create a training requirement, but if you are a health care provider and a HIPAA covered entity, your current training should meet the requirement.



### Urban Legend #3

HB 300 created a new requirement for hospitals to provide electronic records to patients that will cost hospitals in order to comply.

False. HB 300's patient medical records provision only applies to EMRs that can produce an electronic version of the medical records.



### Questions ?

Stephen Palmer  
stephen.palmer@waterlooresearch.com  
(512) 657-2569

References:

To find HB 300 (82): <http://www.capitol.state.tx.us/>

To find Tx. Health and Safety Code: <http://www.statutes.legis.state.tx.us/index.aspx>



### Urban Legend #4

HB 300 created a duplicative breach notification requirement, especially if a patient lives outside of Texas.

False. HB 300's breach provision directs a hospital to meet either the Texas breach provisions or the provisions in the patient's state of residence.



### Urban Legend #5

HB 300 created a new regulatory structure for health information exchange.

False. HB 300's certification process for health information exchange is voluntary.

