

Medical Jurisprudence

**Behavioral Sciences Term
St. Georges University
School of Medicine**

**Visiting Professor
Thaddeus Pope, JD, PhD**

Segment

7 of 8

Confidentiality & Privacy

Objectives

1. Explain the difference between privacy, confidentiality, and privilege
2. Identify exceptions to the duty of confidentiality

3. What is a *Tarasoff* duty
4. Identify the scope of HIPAA protection
5. Under HIPAA, what disclosure can be made without patient authorization

Duty of Confidentiality

Patient's right to confidentiality

typically arises in a
physician/patient
relationship

Typically applies to information one has disclosed to a person in a **position of trust** with the expectation that the information will not be released without consent.

When a physician obtains information from a patient, or prospective patient, she is immediately under a duty of confidentiality with respect to the information disclosed to him.

A physician has a
clear legal **duty to**
protect patient
information and
keep it confidential.

A breach of that
duty is a **tort** for
which a physician
may be sued.

**AMA Principles of
Medical Ethics (III): A
physician shall . . .
safeguard patient
confidences **within the
limits of the law.****

Exceptions

to duty of

confidentiality

Not just permissive

Physicians are

mandatory reporters

Gunshot wounds

Knife Wounds

Abuse or neglect

Child

Elder (vulnerable
adult)

Triggers

Suspicious injuries

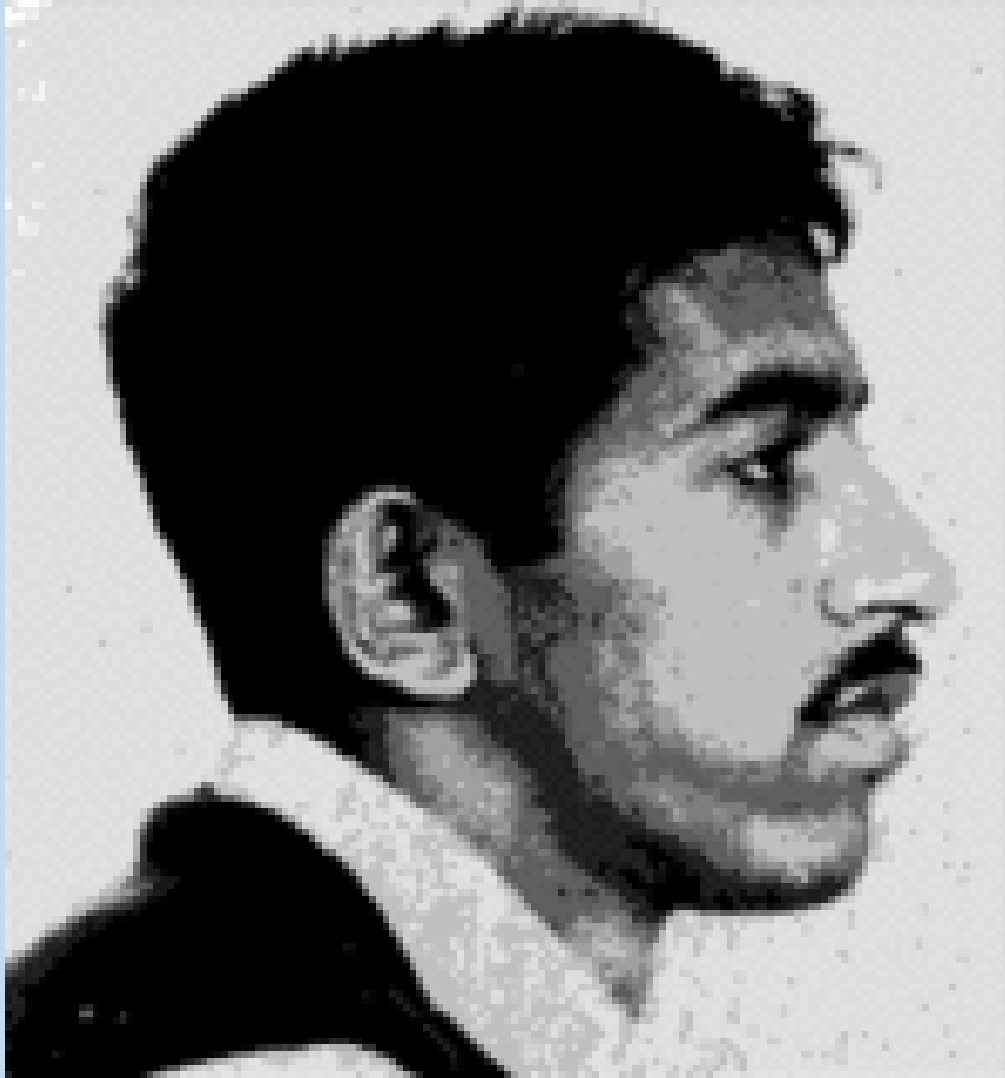
STD (in child)

Communicable diseases

Neurological impairment
affect driving

Patient poses
imminent danger
to others → warn
them





Prosenjit
Poddar
Indian
exchange
student
1967-1969



Poddar
interested
in Tatianna
Tarasoff

She is not



Mental Health

COUNSELING

“I am going to kill her.”

Not only **may** you breach confidentiality, you **must**

Danger is serious

Danger is imminent

Privacy

The right to privacy exists on its own and does **not** require a physician/patient relationship to exist.

The Right to Privacy is a right that **every person** has and that right, accordingly, imposes a duty on others to respect an individual's privacy.

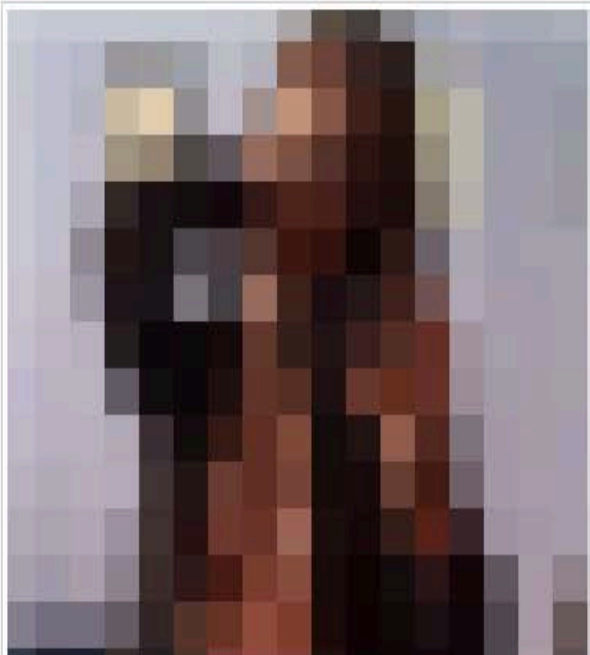


Find Someone You Know...

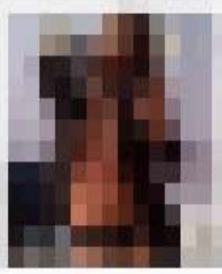


Location:

Age:



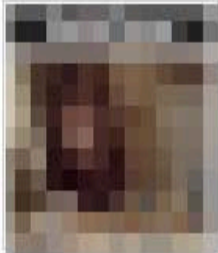
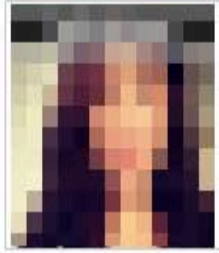
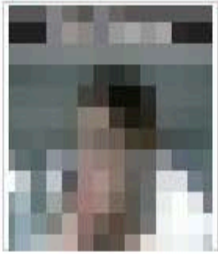
REMOVE MY NAME



Nude Photos >

ADD YOUR EX TO MY EX
Submit A Post

MOST POPULAR



On type of invasion
privacy:

Public disclosure of
private facts

On type of invasion
privacy:

Appropriate name or
likeness

SPARKLE!

MR. SPARKLE IS
DISRESPECTFUL OF DIRT!

I AM THE
MOST RESPECTFUL
OF ALL!



THAT'S THE
ESSENTIAL DIFFERENCE
BETWEEN US
AND THEM!

On type of invasion
privacy:

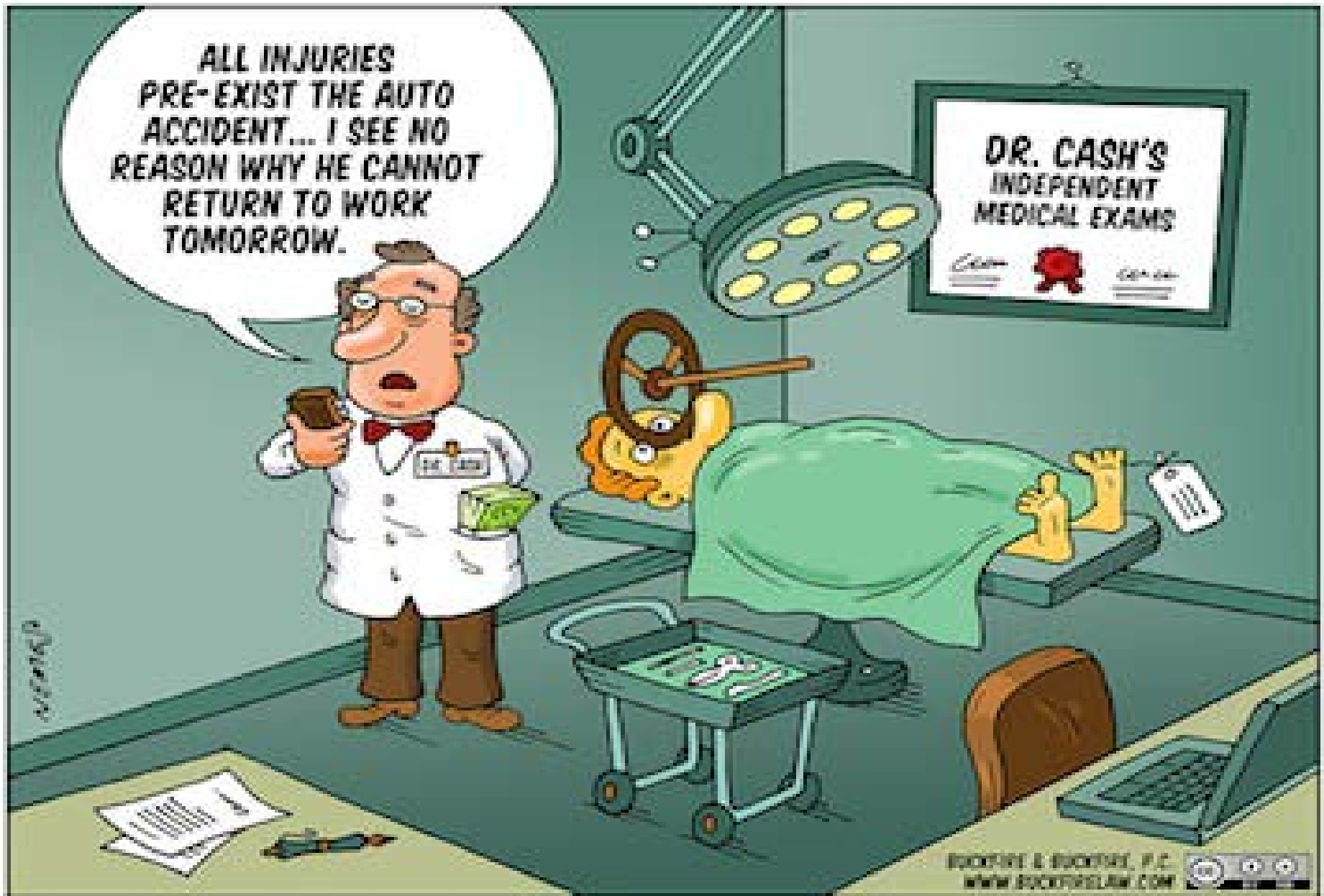
Intrusion upon
seclusion



Confidentiality

vs.

Privacy



TYPICAL OPINION FROM INSURANCE COMPANY DOCTOR

A physician conducting an insurance claims exam is **not** providing medical treatment to a patient and is not in a physician/patient relationship with the person being examined.

If that physician were to reveal purely private information about the individual he examined, that act probably would **not** be a breach of physician patient confidentiality because the obligation to “safeguard patient confidences” generally exists in a treatment relationship

Improper disclosure of that individual's private information could be treated as a violation of his **right to privacy** for which the physician could be held liable.

Claim for an invasion of privacy may have a different statute of limitations than a claim for a physician's wrongful disclosure of confidential information.

Insurer may pay for one claim but not the other.

Privilege

Privilege applies
only in the context
of court
proceedings

You might be
served with
subpoena for
documents or
deposition

Privilege is a limit
on a party's right to
obtain your
medical records or
testimony

Also a limit on
party's ability to
introduce into
evidence (before
jury)

HIPAA

The Health Insurance Portability
and Accountability Act of 1996

HIPAA governs
use of PHI
by covered
entities

PHI

Health information

In any form or medium

Related to

Physical or mental health
(past, present, future)

Provision of healthcare

Payment for healthcare

Individually identifiable

Name

SSN

VIN

Account #

Email

Biometric (fingerprint)

**Covered
entity**

Knock knock
Who's there?~~~HIPAA
HIPAA who?

Sorry, I can't tell you
THAT



som^{ee}cards
user card



Copyright © 2010 R. J. Romero www.hipaacartoons.com

"Sorry, but my name and phone number are protected health information under HIPAA."

Health plans

Healthcare providers

Healthcare clearinghouses

Not

Employers

Worker comp carriers

Non-health plans (life,
disability)

Child protection agency

Normally, you need
patient/surrogate
authorization to
release

Uses or disclosures of PHI require either individual opportunities to object or **written authorizations** pursuant to the “anti-disclosure rule.”

**Some uses
permitted
without
authorization**

“Except as **otherwise permitted or required** . . .
. . . , a CE may not use or disclose PHI without an authorization”

ТРО

Treatment

Payment

Operations

CEs may use or disclose
PHI **without** individual
written authorization to
carry out treatment,
payment, or health care
operations

**Disclosure
required
by law**

Child abuse

Elder abuse

Public health

Imminent danger

Law enforcement

Minimum necessary

Limit information to that necessary to accomplish purpose

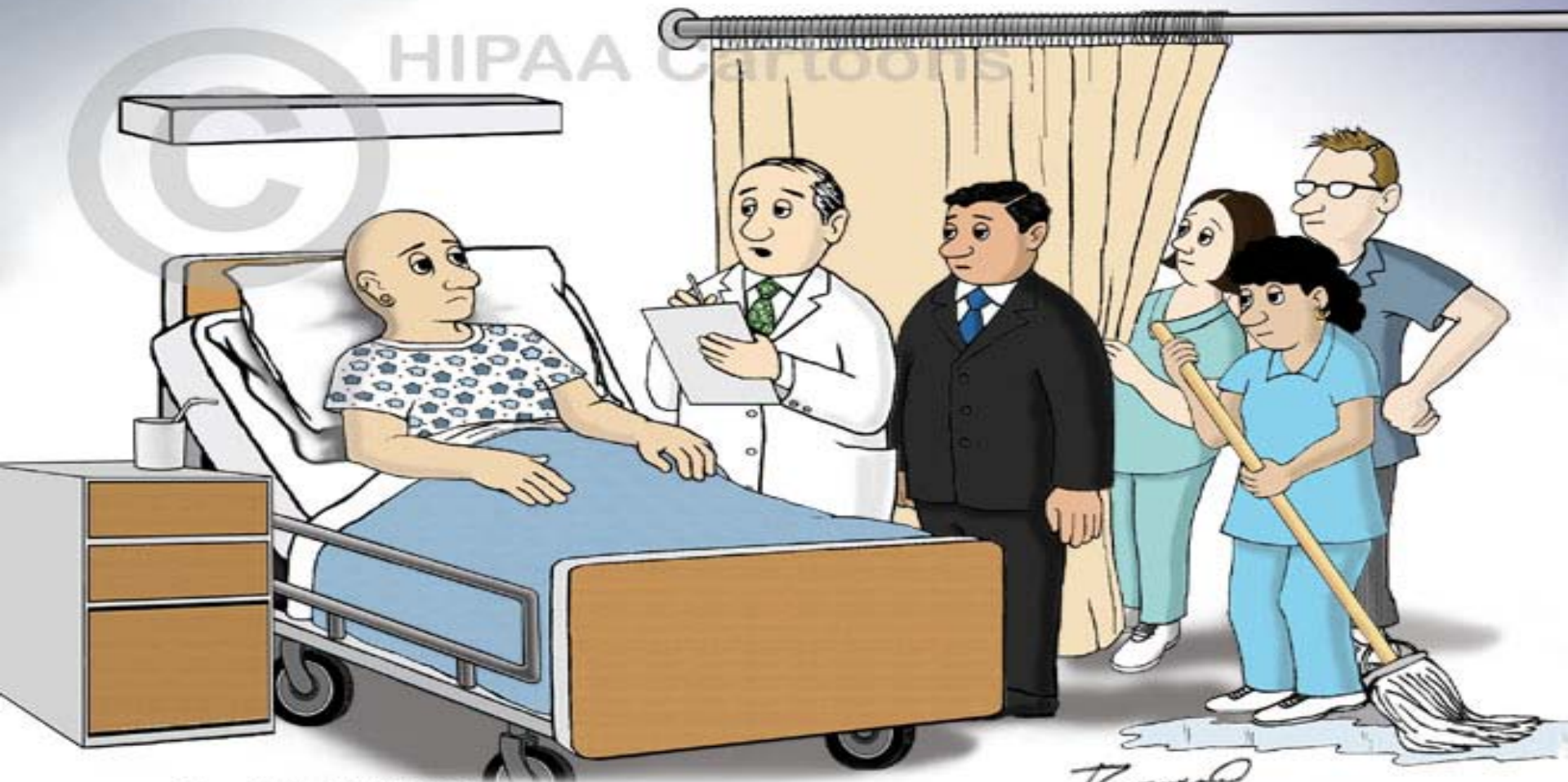
Otherwise

get patient

authorization

You can't talk about patients
outside of the office with anyone

Clinicians should only access the
medical information that is needed
for their job/clinical experience.



Copyright ©2012 R.J. Romero.

Romero

"No, they aren't medical students. It's just some of our staff that accessed your Electronic Medical Record and wanted to see that special tattoo."



Dá

"The guy with the weird skin disease forgot to sign the privacy forms."

DR. FLOYD WILL TALK TO YOU ABOUT YOUR EXTREMELY EMBARRASSING SEXUAL PROBLEM NOW, MR. FENTON.



We need patients to give permission before we can give information to others on their behalf.

Keep medical records in a secure place-both paper & electronic.

If you are using electronic medical records....

You should have a unique **password-**
don't share with others

Do not access information on
yourself, your family, your friends,
staff or any other person.

Get your own records the way your
patients do

You have a **duty to report** any breach in confidentiality to your supervising doctor.

Most computer systems can track all access to records.

Inappropriate access is punishable by federal and state law.

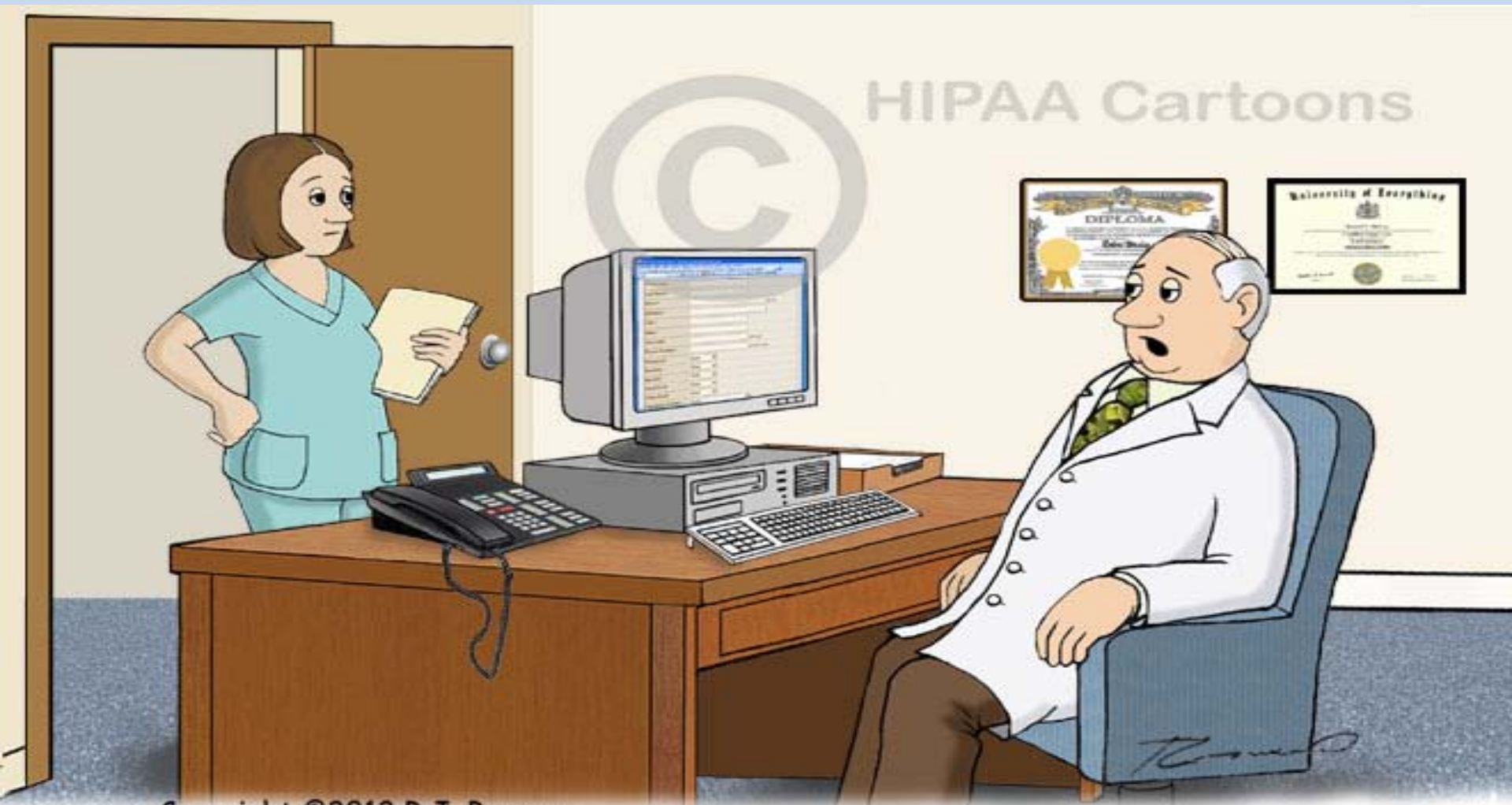
No private cause
of action

HIPAA Violation	Penalty Range	Annual Maximum
Individual did not know (and by exercising reasonable diligence would not have known) that he/she violated HIPAA	\$100 - \$50,000 per violation	\$1.5 million
Individual “knew, or by exercising reasonable diligence would have known” of the violation, but did not act with willful neglect	\$1,000 - \$50,000 per violation	\$1.5 million
HIPAA violation due to willful neglect but violation is corrected within the required time period	\$10,000 - \$50,000 per violation	\$1.5 million
HIPAA violation is due to willful neglect and is not corrected	\$50,000 per violation	\$1.5 million

Presumed reportable unless low probability compromise

1. Nature, extent PHI (sensitivity, likelihood identified)
2. Person who obtained access (e.g. independent obligation HIPAA)
3. PHI actually accessed
4. Extent mitigated (e.g confidentiality agreement)

HIPAA Cartoons



Copyright ©2012 R.J. Romero.

"So you faxed a patient's records to a wrong number and you don't know who got it? Don't worry. It's not a HIPAA violation unless the patient finds out."

Other

duties

to report

Impaired colleagues
(substance abuse)

Incompetent
colleagues

Your **own** errors (to
the patient)

Thaddeus Mason Pope

Director, Health Law Institute

Hamline University School of Law

1536 Hewitt Avenue

Saint Paul, Minnesota 55104

T 651-523-2519

F 901-202-7549

E Tpope01@hamline.edu

W www.thaddeuspope.com

B medicalfutility.blogspot.com