

Unauthorized EHR Access = Snooping!  
How Does a Healthcare Entity Respond?



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## DISCLAIMER

The information provided in today's presentation does not constitute legal advice and is intended to be used for guidance.

If you require legal advice, please consult with an attorney.



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## QUESTIONS

- Does your organization routinely audit for unauthorized EHR access? If so, how often?
- Does your organization utilize a vendor product to manage EHR access audits?
- What prompts you to audit?



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## QUESTIONS

- Does your organization practice Zero-Tolerance for EHR/system snooping?
- Are there exceptions to Zero-Tolerance for EHR/system snooping?



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## SCENARIO A

- A co-worker reported a long-term patient financial services employee with no history of privacy violations has accessed the EHR of a personal friend and prominent community member who was involved in a serious accident.
- During the investigation, the employee stated she was asked by the spouse to verify insurance coverage. EHR access audits indicated she accessed the actual ED record and went beyond the scope of her job responsibilities.
- The employee reached out to the spouse; he supports the employee and does not want to see any repercussions for her actions. The spouse is also a prominent community member and active with the medical center's leadership activities. (Due to the accident, the patient is not capable of providing feedback.)



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## DISCUSSION: SCENARIO A

Leadership is questioning if the spouse's support for the employee "cancels" the need for corrective disciplinary action and breach reporting.

Would this have an impact on the situation?



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## SCENARIO B

- Based on an allegation from a patient that a staff member has accessed her information, an EHR access audit was carried out and it was found to be positive.
- Because of the positive finding, the staff member's access was audited for 30 days and her supervisor determined that she inappropriately accessed eight other patient records in that time frame. The staff member has been employed for six months.
- There is concern that auditing back further will reveal more unauthorized access cases and administration is advising that the audits end with the 30 day audit with the staff member terminated.



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## DISCUSSION: SCENARIO B

Does the organization have a responsibility to extend EHR access audits back to the staff member's start date and notify any additional individual discovered to be the victims of unauthorized access?



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## SCENARIO C

- Chris, who works in clinic reception overhears that another employee, Pat, has an appointment at 11:30 a.m.
- The clinic reception desk gets overwhelmed. Chris remembers that Pat has an appointment, so Chris logs in to Epic to find out where Pat's appointment is taking place, in order to ask Pat to return to the clinic reception desk to help out.



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## DISCUSSION: SCENARIO C

True or False: Chris has committed a privacy incident which will be investigated as a possible privacy breach. Explain your answer.



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## SCENARIO D

- Patients/beneficiaries call because they are dissatisfied with the results of a coverage determination or prior authorization denial.
- They ask to speak to the Privacy Officer about their dissatisfaction, voice their complaint and then switch to a demand to receive the names of every individual that has "touched" their account in the name of HIPAA Right of Access with the expectation that the Privacy Officer will not want to provide this list and cave into their demand to have coverage/prior authorization approval.



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## DISCUSSION: SCENARIO D

How have you defined your responsibility to the patient/member in this scenario and balanced this with the interest of the organization?



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## SCENARIO E

- One employee, Mary, was overheard by another employee talking about accessing her brother's account because of his frustration with medication coverage.
- Mary was going to "help" figure out the issue.
- After she was reported, Mary's access was reviewed and supported the allegation. Medications were observed that are used to treat mental health.
- Mary was interviewed and admitted the access was without consent. Her brother is challenging to deal with, and he didn't want others helping him.



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## DISCUSSION: SCENARIO E

Does Mary's intent to help impact the evaluation of standards being bypassed and the application of sanctions?



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## SCENARIO F

- A well respected and liked 20-year nurse learns unexpectedly that her husband is leaving her for another woman and he has taken their two small children with him. Blindsided and distressed the nurse confides in co-workers, one of which tells her the name of the "other woman."
- The nurse finds the woman's name and address in the medical center's computer system. She shows up at the woman's home and demands her children back. Days later the "other woman" files a privacy complaint with the medical center.



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## DISCUSSION: SCENARIO F

Because of the nurse's long-term employment and the nature of the situation, her leaders are reluctant to impose serious corrective action and are advising a consultation only. Is this an appropriate response?



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## SCENARIO G

- A friend of mine is a labor and delivery nurse. A few days ago, she had a horrible experience that she described on Facebook (where her account is kept private and you have to add her as a friend to see anything she posts).
- She did not identify the patient or their condition in ANY way; she simply put "Today was absolutely heartbreaking. Had the worst case of fetal demise I've ever witnessed; taking a break from work for a few days to deal."
- She has over 200 "friends" who all know what she does, where she works, and which shift.



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## DISCUSSION: SCENARIO G

- Is my friend's post in violation of anything as far as HIPAA goes?
- If her employer found out about what she posted, would it be enough to get her in trouble?



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**THANK YOU**



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