

#### Drinking from a firehose...



This is an overview of about 6 hours of material in 1 hour

>We'll concentrate on what's new since 2016

If you have questions, talk to us

≻Email us:

Joe@PracticeComplianceSolutions.com Bjavery@PracticeComplianceSolutions.com



Hey...aren't you the Freddie Krueger guy???

Don't you understand we don't want to be sad?

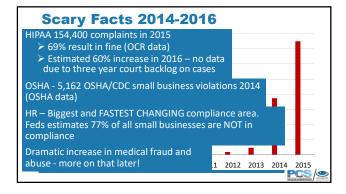


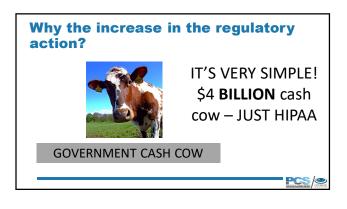
# Here's the deal... You have two choices

- 1. Comply with the law
- 2. Gamble

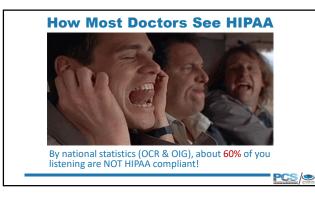
You are over 10X more likely to have a compliance violation filed against you than a malpractice claim...and the average compliance fine or lawsuit dwarfs the average liability claim penalty.

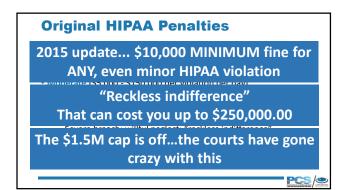
WHAT ARE WE MISSING HERE?











And its not just hospitals and big clinics?

#### **HEALTHCARE**

\$750,000 fine – just for not having <u>updated</u> BAA

Two doctor small medical clinic – JUST LIKE MOST OF YOU! Most common investigation since 2017 – small healthcare businesses



#### **OCR / OIG Response in 2018**

- \$4.3 million loss of one (ONE) unencrypted laptop
- \$500K + 2 years prison providing pharm company unauthorized access to PHI
- \$125K because provider did not sanction employee who gave out reason provider refused to see patient
- Since June 2018 two dozen REPORTABLE breaches per month due to cyber attack
- IBM average breach costs provider (big or small) \$148 PER RECORD
- Newest biggest...\$16 MILLION settlement with Anthem

BUT THIS IS ALL "HIPAA SCHMIPPA"



## **BIG UPDATE COMING 2019-2020**

You are legally obligated to do all this and have doctors AND STAFF that are prepared to answer patient's questions about their rights and your policies

## NOT UPDATED = NOT COMPLIANT

### Laundry List of Other Privacy Issues

#### Authorizations

Marketing Minimum Necessary Rule Incidental Disclosure Rule Business Associates HIPAA Breach Medical records review Medical records request Request to change medical records Requests for disclosure documentation Individual privacy accommodations requests

You and your staff must understand all of these issues and they must be addressed in your Privacy Manual

HIPAA legislation totals 2712 pages of legal mumbo jumbo. You can try to do this yourself or work with a compliance company who has already done it!

## **Security Rules**

#### Security Rule Requirements

- Appoint a Security Officer
- Conduct a risk analysis and risk management plan to
- determine threats or risks in your operational systems
- Complete the Organizational Requirements
- Documented policies and procedures for all applicable Security Standards – Security Manual

And that is how involved? Another 1,000 pages of legal mumbo jumbo

#### OCR Tenets of Security Risk Analysis and Management

- FLEXIBILITY the Security Standards do not prescribe a specific policy, software and other course of action
- **SCALABILITY** and do not hold large and small business to the same standard!
- UNIQUE your risk analysis is unique to your business

Be wary of "experts" telling you that you MUST do certain things under the Security Rules – that is NOT the way the rules were written!

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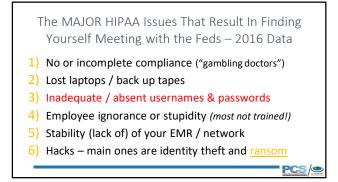
### **SECURITY IS MORE THAN COMPUTERS**

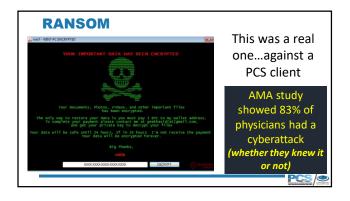
SECURITY IS ABOUT YOUR OFFICE LAYOUT, LOCKS, ALARMS, FLOODS, HURRICANES, BACK UPS, LOCATION, PASSWORDS, PAPER RECORDS, EMPLOYEES, OFFICE POLICIES

COMPUTERS ARE JUST ONE COMPONENT OF THAT YES IT IS COMPLICATED BUT IT CAN BE MADE EASY, UNDERSTANDABLE AND NOT A HUGE FINANCIAL BURDEN

### So How Do I Get Caught? (true of all the compliance issues)

- Whistleblowers (90%)
  ▶ 1<sup>0</sup> unhappy patients
  - >  $1^0$  unhappy patients >  $2^0$  – unhappy current / former employees
  - Opportunists, *trained by the government*
- Random audits
  Permanently funded in HIPAA
  New to OSHA
- Actions of staff
  Primarily due to lack of training
  Cyber criminals recruiting and training "insiders" your staff





#### And Why Is a Secure Cloud Based Back Up Invaluable?

## Brookside ENT and Hearing Center closes after hack deletes all files

Written by Eric Oliver / April 01, 2019

Battle Creek, Mich.-based Brookside ENT and Hearing Center closed after the center fell victim to a data hack that wiped out all the practice's files, local news affiliate *WWMT* reports.

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#### Summaries of New HIPAA Regs

- Breach responses MUST have a plan
- Encryption in medical records
- Legal healthcare communications
- Medical records release BIG UPDATE
  Patient non-discrimination
- Patient's rights regarding YOUR use of THEIR insurance
- Marketing regulations

Don't know ALL this? You're still gambling!

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## **Major Concept**

Have to keep up...

HIPAA considers not updated = not compliant

\$111K for not eliminating prior employee's UN/PW \$750K for outdated Business Associate Agreements

In both cases, NO BREACH

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# Human Resources

One of the most complicated, most dangerous and potentially most financially devastating compliance issues facing doctor employers





### HR issues you MUST understand

- Necessity of employee manual
- Legal hiring / firing What you CANNOT ask in an interview
- · Checking credit reports
- Criminal background checks
- New Hire reporting requirements 
  Family Medical Leave
- · Discrimination laws Smoking laws
- Guns on property laws
- Avoiding embezzlement
- Employee poster requirements
- FLSA salary vs hourly
- Contract labor laws · Breaks, meals, time off requirements
- · Jury leave, military leave, voting leave
- Employee surveillance
- Disability requirements
- Harassment Sexual and more
- Pay requirements
  - Social media regulations
- COBRA
  - Legal / proper terminations ....and many more...
    - PCS le

#### Three most important HR issues

- 1. ALL these laws are written to "protect and serve" your employee – NOT YOU. We are in the age of "Minimal Employer Rights"
- 2. HR laws are Federal AND State
- 3. Your employees likely know more about HR laws than you do. And what they do not know attorneys are willing to teach them

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#### **Docs That Didn't Play by the Rules**

#### All of these are from 2016!

A.B., TX \$108,000 - FLSA violation C.S., FL \$58,500 - Wrongful termination D.H., MS \$293,400 - Contract labor violation ≻R.P, IL \$112,300 - Hiring discrimination suit T.B, OH \$185,324 – FLSA violation E.S., TX \$163,390 - FLSA violation L.S., PA \$694,000 & Bankrupt - Harassment PCS/@

#### That will never happen to me...

- •The great employer myth "my staff loves me - they would never hurt me" ... then life happens
- Every one of these cases was the result of "qui tam" action – a Whistleblower. FOUR OF SEVEN WERE THE OFFICE MANAGER!

## Most Important Slide on HR

- You MUST have a complete, state law specific employee manual - and you have to keep up with the frequent changes (HR is fastest changing compliance area in small business law)
- · Policies must be enforced fairly, consistently and without discrimination
- · If you delegate HR responsibilities, that person MUST know what they are doing (and they should be glad they don't work in California!)

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## **Small Businesss Immune? January 18, 2018**

EEOC issues directive to "go after" small healthcare businesses.

## WHY?

<u>QUOTE:</u> The research indicates **ignoring HR laws** makes them a *"big, fat, juicy target", "low hanging fruit", "like shooting fish in a barrel"* 

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## **Most Significant NEW HR Issues**

- Lack of employee manual (policies)
- Discrimination
- Harassment "me too"
- Improper employee classification
- Contract labor
- I-9 regulations
- OTHER NEW STUFF!!!!

Is their a new form of harassment?

#### Harassment:

- Sexual
- Hostile work environment
- And now....Workplace bullying defined as "repeated, health harming mistreatment that interferes with the ability to get a employees work done"

## Key point to bullying...Includes "no harm no foul" clause AS DEFINED BY THE EMPLOYEE

#### But not in Australia!

March 2019: Flatulence in the workplace is not a form of bullying, Australian appeals court rules



## **MISC New Issues in the Cooker**

- Criminal history, credit check, salary history, non-competes - all on their way out
- Mandatory sexual harassment training for supervisors
- Mandatory Sick Pay laws

All of these becoming common across the country! PCS/@







## **The Hazard Players**

- Office of Health and Safety Administration (OSHA)
  > maintaining a safe working environment for your employees and your patients
- Center for Disease Control (CDC) → preventing spread of infection
- Clinical Laboratory Improvement Amendments > ensuring quality of lab test results

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## **Hazard Requirements**

- Must have written policies that comply with OSHA safety and CDC Universal Precaution standards
- Must have documented evidence that your staff is trained on Federal and YOUR policies in these two areas (trained AND TESTED)
- Must now meet the extensive requirements of the Globally Harmonized System – the completely re-written OSHA (effective 6/1/2015 - oops)

#### **Optometrists have to comply** with OSHA, CDC and CLIA?

Non-compliance penalties can include

- fines in excess of \$10,000 \$50,000 \$129,336 for "reckless indifference" (they learned from HIPAAI) or "repeat" violations
- civil law suites AND criminal charges
- termination of your third party payor contracts including VSP and EyeMed (it's in your provider contract!).

QUESTION: Are you a potential felon?

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#### **ANOTHER QUESTION**

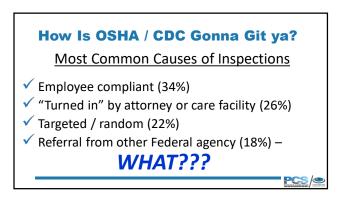
Of all the State and Federal laws, which one can do the most damage to your practice and pocketbook?

BIGGEST ISSUE: OSHA can padlock your

**door** and not remove it until you can demonstrate complete compliance

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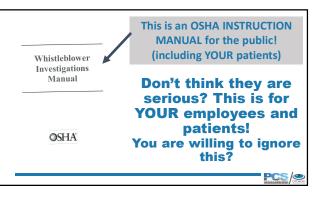




## **2015 Daugherty Ruling**

- *Paraphrase* OSHA has given private health care providers a free ride too long in 2016 we are going after them.
- They learned from HIPAA ongoing random audit project
- And they have recruited the public to help!

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## Fraud & Abuse This is NOT Stupid

- •There are five Federal fraud and abuse laws – can you name them?
- •You swear, under conviction of perjury, you know them every time you file an insurance claim!

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#### Ever read what you sign?

"In submitting this claim for payment from federal funds, I certify that 1) the information on this form is true, accurate and complete 2) I have familiarized myself with all laws, regulations and program instructions available from the Medicare contractor 3) I have provided or can provide sufficient information required to allow the government to make an informed eligibility and payment decision 4) this claim complies with all Medicare program instructions and..."

lists all five Federal F/A laws you can't name!

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#### And...

"My signature is to certify that the foregoing information is true and accurate. I understand that any false claims or statements or concealment of a material fact may be prosecuted under applicable Federal and Stark laws."

Good luck saying you did not know better

# Five Main Fraud and Abuse Laws

- 1. False Claims Act
- 2. Anti-Kickback Statute
- 3. Provider Self-Referral Law
- 4. Exclusion Statute
- 5. Civil Monetary Penalties Law

If you don't know what these laws say, you need to do some personal homework or get some help

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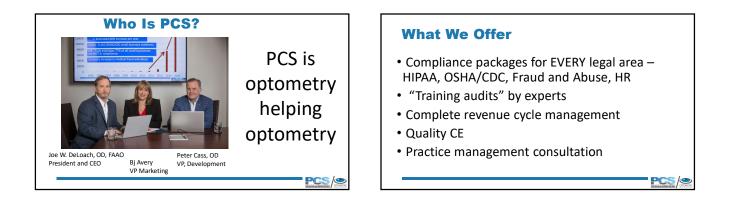
Come talk to us! We're here to help!



www.practicecomliancesolutions.com PCS/@

## **END OF OFFICIAL COPE LECTURE**

Take it away Bj...



#### We're Tired of Being Nice We Are The Best – NO Competition All products/services customized to optometry • All products/services specific to State law • Products for EVERY compliance area – not just HIPAA

- Secure cloud storage of all compliance packages
- Multiple service options self guided packages to complete onsite compliance overhaul. WE HAVE THE EASIEST, MOST COMPLETE SOLUTIONS AVAILABLE!
- Ongoing legal updates to all products that WE do FOR you at 1/10<sup>th</sup> the fee of our closest competitor



#### We really care

### PCS FINALLY DID IT!!

Total amount of contributions to optometric associations and organizations through February 15, 2019

# \$1,000,004.00

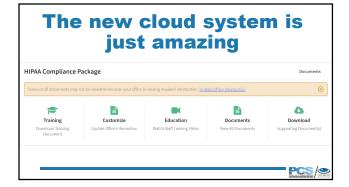
PCS	HIPAA vs. the "Competition"		
	Competitor # 1	Competitor # 2	Practice Compliance Solutions
Initial Cost	\$1,500	\$1,500	\$699
Additional Locations	Very Expensive	\$1,500	\$69 (10%)
Additional fees per doctor	Yes	No	No
Annual Renewal	\$1,400 or more	\$1,500	\$99
State Specific	No	Yes	Yes
Optometry Specific	No	No	Yes
Real Time Updates	No	No	Yes
Who does updates	You do	You do	We do it
Other products	None	None	OSHA / CLIA / CDC/ Fraud / HR / MIPS / Reimbursement

#### Initial cost at \$699 vs \$1500 Yearly renewal at \$99 vs \$1500 How can PCS do this?

- Technology PCS created the "self-guided" model
- Specificity you buy compliance for OPTOMETRY, not compliance for the Mayo Clinic
- Efficiency small workforce that works REALLY hard
- Dedication PCS IS OPTOMERTY HELPING OPTOMETRISTS

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#### Which is better...one or two? Which is better...one or two? **Onsite Overhaul** Self-Guided Tour Fill out some questions, your job is done > We complete and customize every > We created something easy to use manual, every form, every document > We created something incredibly > You KNOW it's done right economical Office inspection – OSHA / HIPAA But.....this stuff is distasteful and Staff training time is money Remember...Time is money

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#### Want To Know How You Would Hold Up In a REAL Audit?

- "Training" audit by experienced auditors
- Analysis of CORRECT, ETHICAL documentation, billing, payment comparison to national norms and payer expectations
- Suggestions if you are over-coding AND/OR under-coding
- May us a little before you pay them alot

**- PC**S/@



We offer comprehensive revenue cycle management

#### services

- Billing agents with significant experience in EYE CARE
- At or below industry standard pricing



#### BUT...you have to help us help you

If you are not in CURRENT compliance with all this mess, as WAY too many of you are... TALK TO US

WE DON'T BITE WE CAN HELP WE MAKE IT AS EASY AS IT CAN BE WE MAKE IT AS ECONOMICAL AS IT CAN BE

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#### **Existing clients...**

#### MOST OF YOU AREN'T LISTENING TO US!

We have offered free upgrades (*low maintenance fees only*) to our new system for over a year now....50% of existing clients have NOT taken advantage of this.

## The free offer ends July 1, 2019

You cannot get updated unless you upgrade!

' **PCS**/@

