COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.
12-4568 H

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff,

v.

JOSEPH A. GAGNON and LOUISE E. GAGNON,
d/b/a GOLDTHWAIT ASSOCIATES,
KEVIN B. DOLE, M.D.,
MILFORD PATHOLOGY ASSOCIATES, P.C.,
MILTON PATHOLOGY ASSOCIATES, P.C., and
PIONEER VALLEY PATHOLOGY ASSOCIATES, P.C.,
Defendants.

INTRODUCTION

1. The Commonwealth of Massachusetts, by and through its Attorney General Martha Coakley, brings this action against defendants Joseph A. Gagnon and Louise E. Gagnon d/b/a Goldthwait Associates ("Goldthwait"), Dr. Kevin Dole, Milford Pathology Associates, P.C. ("Milford Pathology"), Milton Pathology Associates, P.C. ("Milton Pathology"), and Pioneer Valley Pathology Associates, P.C. ("Pioneer Valley") (collectively, "Defendants").

2. The Gagnons violated the Massachusetts Consumer Protection Act, G.L. c. 93A; the Massachusetts Data Disposal and Destruction Act, G.L. c. 93I; and the Massachusetts Security Breach Act, G.L. c. 93H/201 CMR 17.00, by improperly disposing of medical records containing protected information such as names, Social Security numbers, and medical diagnoses, at a public dump located in Georgetown, Massachusetts.

3. Mr. and Mrs. Gagnon were the owners of Goldthwait, a medical billing company. The Gagnons retired in May 2010, and in an effort to dispose of multiple years' worth of personal health information as cheaply and as quickly as possible, they hired their son, Joseph Gagnon, Jr. ("Gagnon, Jr."), to dump the documents at the Georgetown Transfer Station in July 2010.

4. More than 67,000 Massachusetts residents were affected by this data breach, whereby sensitive health and other personally identifiable information was disposed of at the public dump, in plain view of any person disposing his or her trash. The Gagnons' failure to institute and implement reasonable data security measures to protect the confidentiality of protected health and personal information entrusted to Goldthwait, and instead allow an untrained third-party to dispose of the documents at a dump, resulted in a serious violation of patient privacy and violations of state consumer protection and data security laws.

5. Defendants Dr. Dole, Milford Pathology, Milton Pathology, and Pioneer Valley (collectively, the "Pathology Defendants") engaged in multiple violations of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health ("HITECH") Act, by failing to maintain safeguards and implement appropriate policies and procedures to protect the protected health information of hospital patients that they were regularly disclosing to the Gagnons.

6. The Pathology Defendants are also subject to related state-law claims under G.L. c. 93A and G.L. c. 93H/201 CMR 17.00, in connection with their handling and disclosure of protected health information and personal information of Massachusetts

residents, and their failure to take reasonable steps to ensure that the Gagnons were capable of maintaining appropriate security measures to protect this sensitive information.

7. The HITECH Act § 13410(e), gives State Attorneys General the authority to bring civil actions on behalf of state residents for violations of the HIPAA Privacy and Security Rules, 45 C.F.R. §§ 160 and 164, to obtain damages on behalf of state residents, and to enjoin further violations of these Rules.

8. By this action, the Commonwealth seeks penalties, costs, attorneys' fees, and restitution pursuant to G.L. c. 93A, the Massachusetts Consumer Protection Act; G.L. c. 93I, the Massachusetts Data Disposal and Destruction Act; G.L. c. 93H/201 CMR 17.00, the Massachusetts Security Breach Act and its attendant regulations; HIPAA, and the HITECH Act. The Commonwealth also seeks injunctive relief as may be determined to be appropriate and equitable in order to remedy, address, and prevent future harm by the Defendants.

JURISDICTION AND VENUE

9. The Attorney General is authorized to bring this action pursuant to G.L. c. 93A, § 4, G.L. c. 12, § 10, and HIPAA, 42 U.S.C. § 1320d-5(d).

10. The Attorney General has provided notice of this action to the United States Secretary of Health and Human Services as required under 42 U.S.C. § 1320(d)-5(d)(4).

11. This Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 93A, § 4 and G.L. c. 12, § 10.

12. Venue is proper in Suffolk County pursuant to G.L. c. 223, § 5 and G.L. c. 93A, § 4.

III. THE PARTIES

13. The plaintiff is the Commonwealth of Massachusetts, represented by the Attorney General, who brings this action in the public interest pursuant to G.L. c. 12, § 10, G.L. c. 93A, § 4, and 42 U.S.C. § 1320d-5(d).

14. Defendant Joseph A. Gagnon is a natural person who resides at 40 Lincoln Avenue, Marblehead, Massachusetts, and was the co-owner of Goldthwait.

15. Louise E. Gagnon is a natural person who resides at 40 Lincoln Avenue, Marblehead, Massachusetts, and was the co-owner of Goldthwait.

16. Dr. Kevin Dole is a natural person who was the president of Chestnut Pathology, which had a principal place of business at 2100 Dorchester Avenue, Boston, Massachusetts. Dr. Dole, in his capacity as a health care provider, is a covered entity under HIPAA, and thus is required to comply with the HIPAA federal standards that govern the privacy of individually identifiable health information. (45 C.F.R. Part 160 and Subparts A, C, and E of Part 164).

17. Milford Pathology is a Massachusetts professional corporation with a principal place of business at 14 Prospect Street, Milford, Massachusetts. Milford Pathology is a covered entity within the meaning of HIPAA, and it and its workforce are required to comply with the HIPAA federal standards that govern the privacy of individually identifiable health information. (45 C.F.R. Part 160 and Subparts A, C, and E of Part 164).

18. Milton Pathology is a Massachusetts professional corporation with a principal place of business at 199 Reedsdale Road, Milton, Massachusetts. Milton Pathology is a covered entity within the meaning of HIPAA, and it and its workforce are required to comply with the HIPAA federal standards that govern the privacy of individually identifiable health information. (45 C.F.R. Part 160 and Subparts A, C, and E of Part 164).

19. Pioneer Valley is a Massachusetts professional corporation with a principal place of business at 575 Beech Street, Holyoke, Massachusetts. Pioneer Valley is a covered entity within the meaning of HIPAA, and it and its workforce are required to comply with the HIPAA federal standards that govern the privacy of individually identifiable health information. (45 C.F.R. Part 160 and Subparts A, C, and E of Part 164).

STATEMENT OF FACTS

CONDUCT OF THE GAGNONS

20. Goldthwait, founded by Mr. and Mrs. Gagnon in 1983, conducted medical billing services for Massachusetts physicians and physician groups. By 2010, Goldthwait's four remaining clients were Chestnut Pathology, operated by Dr. Kevin Dole, Milford Pathology, Milton Pathology, and Pioneer Valley.

21. As a medical billing company, Goldthwait received sensitive medical records and billing information containing Personal Information ("PI"), as defined pursuant to G.L. c. 93H, and Protected Health Information ("PHI"), as defined in 45 C.F.R. § 160.103, in order to send medical bills on behalf of its client physician groups.

22. The hospitals associated with the Pathology Defendants provided patients' medical records and billing information to the Pathology Defendants and the Pathology Defendants in turn provided the medical records and billing information to the Gagnons.

23. In the spring of 2010, Mr. and Mrs. Gagnon retired. They transferred ownership of Goldthwait on or around June 1, 2010.

24. Despite transferring the business, the Gagnons continued to possess a basement full of documents containing patients' PI and PHI, and it remained the Gagnons' responsibility to properly dispose of these documents.

25. The Gagnons chose not to use a professional shredding or data disposal company, but instead, asked their son, Gagnon, Jr., to dispose of medical records containing PI and PHI, as he had done in the past.

26. On July 26, 2010, the Gagnons improperly disposed of the PI and PHI of tens of thousands of Massachusetts residents at the Georgetown Transfer Station ("GTS").

27. On July 26, 2010, a portion of those medical records were taken from the GTS by a private citizen and ultimately provided to law enforcement. The remaining records disposed of that day were not recovered, but on information and belief, are presumed destroyed. In addition to this occasion, Gagnon, Jr. disposed of Goldthwait medical records at the GTS in March 2007, January 2008, January 2009, and January 2010.

28. The medical records disposed of at the GTS on July 26, 2010 were readable, as the Gagnons did not redact, shred, pulverize, or destroy these documents before Gagnon, Jr. left them at the Dump Site. The process followed by Gagnon, Jr. for

document disposal on July 26, 2010, was the same process that he used to dispose of medical records in Goldthwait's possession in March 2007, January 2008, January 2009, and January 2010.

29. The documents disposed of by the Gagnon Defendants on July 26, 2010, included the following types of PI and PHI:

Names
Addresses
Social Security numbers
Name of medical procedures
Medical diagnoses
Procedure codes
Dates of birth
Gender
Marital status
Telephone numbers
Patient numbers and/or account numbers
Dates of service
Health insurance information (policy ID number, group ID number, and subscriber names).

30. By improperly disposing of the medical records at the GTS, the Goldthwait Defendants sought to minimize the cost of disposing of PI and PHI at the expense of the protection of patients' confidential information.

31. As a result of the Gagnons' failure to reasonably and appropriately protect consumers' PI and PHI, patients' sensitive data was exposed to unauthorized persons, thus putting the patients' private information at risk.

Failure to Train Employees on the Protection of PI and PHI.

32. Goldthwait was in operation from 1983-2010, and was founded by Mr. and Mrs. Gagnon. In the 27 years that Goldthwait was in business, it never had a written or verbal policy for the security, disposal, or destruction of documents containing PI or PHI.

33. The Gagnons never trained Goldthwait employees on protecting patient records or abiding by HIPAA.

34. In addition, the Gagnons failed to develop, implement, or maintain a written information security program, as required by Massachusetts data security regulations, 201 CMR 17.00.

Procedure for Disposal of Documents Containing PI and PHI.

35. The July 26, 2010, disposal of medical records was not the first time that the Gagnons improperly disposed of documents at the GTS. The Gagnons had been disposing of documents at the GTS since 2005. On a roughly annual basis, the Gagnons instructed Gagnon, Jr. to clean out the basement of Goldthwait's offices and dispose of medical records.

36. Gagnon, Jr. was never trained by Mr. or Mrs. Gagnon, or any other entity, on the proper disposal of PI and PHI.

37. The GTS is a public dump, located at 203 East Main Street, Georgetown, Massachusetts. The GTS is not, nor has it ever represented itself to be, a secure place to dispose of PI and PHI.

38. The GTS consists of several recycling units, dumping bays, a compactor machine, and a large, unsecured building (the "Dump Site") used for unsorted dumping and construction debris. The Dump Site is where Gagnon, Jr. disposed of PI and PHI in the possession of the Gagnons on July 26, 2010, as well as on the prior occasions described in paragraph 28 of the Complaint.

39. The contents of the Dump Site remain in the Dump Site for up to 24 hours before removal and there is no way to guarantee whether materials disposed of at the Dump Site are actually incinerated or used as landfill cover.

40. Neither Mr. nor Mrs. Gagnon discussed the GTS' disposal procedures with any GTS employee, never reviewed any of the GTS' policies or procedures concerning data disposal, never informed the GTS what kind of documents they were disposing of at the public dump, and never even visited the GTS.

41. The Gagnons did not have a contract with the GTS for disposal of documents. There was no agreement between the Gagnons or Goldthwait and the GTS for proper maintenance, security or disposal of PI and PHI.

42. The Gagnons' conduct - collecting PI and PHI from multiple physician groups, failing to implement any written or verbal data disposal policies, failing to train their employees and contractors on the protection of consumers' PI and PHI, and failing, on multiple occasions, to properly dispose of sensitive medical records - led to the breach of tens of thousands of consumers' PI and PHI.

43. The Gagnons knew or should have known that throwing away sensitive medical records containing PI and PHI, at a public dump was unfair and deceptive in violation of G.L. c. 93A, § 2, G.L. c. 93I, and 201 CMR 17.00.

CONDUCT OF DR. DOLE

44. Dr. Dole was the President of Chestnut Pathology, which was associated with Caritas Carney Hospital.

45. On an annual basis, Dr. Dole provided pathology services to thousands of patients that were seen at Caritas Carney.

46. From the mid-1980s through May 2010, Dr. Dole utilized Goldthwait as his medical billing company.

47. As part of the medical billing process, Dr. Dole provided Goldthwait with patient PI and PHI that was generated at Caritas Carney, including information such as the patient's name, address, date of birth, Social Security number, and a separate pathology billing report with information such as the type of procedure performed and diagnoses. On at least a weekly basis, Dr. Dole emailed patient demographic information to Goldthwait, and mailed patient pathology reports to Goldthwait.

48. On March 12, 2003, Dr. Dole entered into a HIPAA Business Associate Agreement with Goldthwait.

49. The Business Associate Agreement was entered into in order to comply with HIPAA, but Dr. Dole failed to take reasonable steps to safeguard, monitor or track what was happening to the PI and PHI once it was transferred to Goldthwait. Dr. Dole knew or should have known that failing to monitor and track the handling of PI and PHI, including failing to evaluate the methods used for disposal by Goldthwait, could result in a data breach.

50. Throughout his entire relationship with the Gagnons, Dr. Dole did not:

a) inquire about Goldthwait's methods for ensuring adequate safeguards for protecting the confidentiality of PI and PHI;

b) inquire about Goldthwait's methods for disposing of PI and PHI;

c) inspect Goldthwait's facilities;

d) request a copy of Goldthwait's policies and procedures or contracts that detailed Goldthwait's method for disposing of PI and PHI; or

e) verify that Goldthwait employees were adequately trained on the appropriate methods for handling and disposing PI and PHI.

51. Dr. Dole bears responsibility for the improper data disposal at the GTS because he did not have any administrative, technical, or physical safeguards in place, nor did he have policies and procedures designed to protect the privacy of PI and PHI when he transferred this information to the Gagnons.

52. Between June 1, 2010 and September 3, 2010, Dr. Dole disclosed patient PI and PHI to a new medical billing service, but did not enter into a Business Associate Agreement with this Business Associate as required by HIPAA.

CONDUCT OF MILFORD PATHOLOGY

53. On an annual basis, Milford Pathology provides pathology services to thousands of patients that are seen at Milford Regional Medical Center.

54. From the mid-1980s through May 2010, Milford Pathology utilized Goldthwait as its medical billing company.

55. As part of the medical billing process, Milford Pathology provided Goldthwait with patient PI and PHI generated at Milford Regional Medical Center, including information such as the patient's name, address, date of birth, Social Security number, and a separate pathology billing report with information such as the type of procedure performed and diagnoses. On at least a weekly basis, Milford Pathology

emailed the patient demographic information to Goldthwait, and mailed patient pathology reports to Goldthwait.

56. On April 10, 2003, Milford Pathology entered into a HIPAA Business Associate Agreement with Goldthwait.

57. Milford Pathology failed to take reasonable steps to safeguard, monitor or track what was happening to the PI and PHI once it was transferred to Goldthwait. Milford Pathology knew or should have known that failing to monitor and track the handling of PI and PHI, including the failure to evaluate the methods used for disposal by Goldthwait, could result in a breach of the confidentiality of medical records.

58. Throughout its entire relationship with the Gagnons, Milford Pathology did not:

a) inquire about Goldthwait's methods for ensuring adequate safeguards for protecting the confidentiality of PI and PHI;

b) inquire about Goldthwait's methods for disposing of PI and PHI;

c) inspect Goldthwait's facilities;

d) request a copy of Goldthwait's policies and procedures or contracts that detailed Goldthwait's method for disposing of PI and PHI; or

e) verify that the employees of Goldthwait who were coming in contact with patients' PI and PHI were adequately trained regarding the appropriate methods for handling and disposing of such information.

59. Milford Pathology bears responsibility for the improper data disposal because it did not have any administrative, technical, or physical safeguards in place, nor did it have policies and procedures designed to protect the privacy of PI and PHI when it transferred this information to the Gagnons.

60. Between June 1, 2010 and September 17, 2010, Milford Pathology disclosed patient PI and PHI to a new medical billing service, but did not have a Business Associate Agreement with this Business Associate as required by HIPAA.

CONDUCT OF MILTON PATHOLOGY

61. On an annual basis, Milton Pathology provided pathology services to thousands of patients that are seen at Milton Hospital.

62. Since 1984, Goldthwait provided medical billing services for Milton Pathology until Goldthwait's closure on May 31, 2010.

63. As part of the medical billing process, Milton Pathology provided Goldthwait with patient PI and PHI that was generated at Milton Hospital, including information such as the patient's name, address, date of birth, Social Security number and a separate pathology billing report with information such as the type of procedure performed and diagnoses. On at least a weekly basis, Milton Pathology mailed patient demographic information to Goldthwait, and mailed hard copies of patient pathology reports to Goldthwait.

64. Milton Pathology did not enter into a Business Associate Agreement with Goldthwait Associates in 2003 as required by HIPAA.

65. Milton Pathology failed to take reasonable steps to safeguard, monitor, or track what was happening to the PI and PHI once it was transferred to Goldthwait.

Milton Pathology knew or should have known that failing to monitor and track the handling of PI and PHI, including the failure to evaluate the methods used for disposal by Goldthwait, could result in a breach of the confidentiality of medical records.

66. Throughout its entire relationship with the Gagnons, Milton Pathology did not:

a) inquire about Goldthwait's methods for ensuring adequate safeguards for protecting the confidentiality of PI and PHI;

b) inquire about Goldthwait's methods for disposing of PI and PHI;

c) inspect Goldthwait's facilities;

d) request a copy of Goldthwait's policies and procedures or contracts that detailed Goldthwait's method for disposing of PI and PHI; or

e) verify that the employees of Goldthwait Associates who were coming in contact with PI and PHI were adequately trained regarding the appropriate methods for handling and disposing of such information.

67. Milton Pathology bears responsibility for the improper data disposal because it did not have any administrative, technical, or physical safeguards in place, nor did it have policies and procedures designed to protect the privacy of PI and PHI when it transferred this information to the Gagnons.

68. Between June 1, 2010 and September 10, 2010, Milton Pathology disclosed patient PI and PHI to a new medical billing service, but did not enter into a Business Associate Agreement with this Business Associate as required by HIPAA

CONDUCT OF PIONEER VALLEY

69. On an annual basis, Pioneer Valley provided services to thousands of patients that are seen at Holyoke Medical Center.

70. Goldthwait provided medical billing services for Pioneer Valley from 1988 through May 31, 2010.

71. As part of the medical billing process, Pioneer Valley provided Goldthwait with patient PI and PHI that was generated at Holyoke Medical Center, including information such as the patient's name, address, date of birth, Social Security number, medical procedure, and diagnosis.

72. On April 11, 2003, Pioneer Valley entered into a HIPAA Business Associate Agreement with Goldthwait.

73. Pioneer Valley entered into the Business Associate Agreement in order to comply with HIPAA, but Pioneer Valley failed to take reasonable steps to safeguard, monitor, or track what was happening to the PHI and PI once it was transferred to Goldthwait. Pioneer Valley knew or should have known that failing to monitor and track the handling of PI and PHI, including the failure to evaluate the methods used for disposal by Goldthwait, could result in a breach of the confidentiality of medical records.

74. Throughout its entire relationship with the Gagnons, Pioneer Valley did not:

a) inquire about Goldthwait's methods for ensuring adequate safeguards for protecting the confidentiality of PI and PHI;

b) inquire about Goldthwait's methods for disposing of PI and PHI;

c) inspect Goldthwait's facilities;

d) request a copy of Goldthwait's policies and procedures or contracts that detailed Goldthwait's method for disposing of PI and PHI; or

e) verify that the employees of Goldthwait Associates who were coming in contact with PI and PHI were adequately trained regarding the appropriate methods for handling and disposing of such information.

75. Pioneer Valley bears responsibility for the improper data disposal because it did not have any administrative, technical, or physical safeguards in place, nor did it have policies and procedures designed to protect the privacy of PI and PHI when it transferred this information to the Gagnons.

76. Between June 1, 2010 and September 10, 2010, Pioneer Valley disclosed patient PI and PHI to a new medical billing service, but did not enter into a Business Associate Agreement with this Business Associate as required by HIPAA.

COUNT I

(Violation of the Massachusetts Consumer Protection Act, G.L. c. 93A, through unfair and deceptive acts and practices)
(Joseph A. Gagnon and Louise E. Gagnon d/b/a Goldthwait Associates)

77. The Commonwealth incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges as follows.

78. Joseph A. Gagnon and Louise E. Gagnon engaged in unfair or deceptive acts or practices, in violation of G.L. c. 93A, § 2 by:

a) failing to implement or maintain policies and procedures to protect and secure the confidentiality and ensure the proper disposal of PI and PHI; and

b) intentionally disposing of medical records containing PI and PHI at a public dump.

COUNT II
(Violation of the Massachusetts Data Disposal and Destruction Act, G.L. c. 93I)
(Joseph A. Gagnon and Louise E. Gagnon d/b/a Goldthwait Associates)

79. The Commonwealth incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges as follows.

80. Pursuant to G.L. c. 93I, § 3, the Massachusetts Data Disposal and Destruction Act, the Attorney General may bring an action pursuant to G.L. c. 93A, § 4 against a person or otherwise to remedy violations of G.L. c. 93I and for other relief that may be appropriate.

81. G.L. c. 93I is effective as of February 3, 2008.

82. G.L. c. 93I defines "Personal Information" as a resident's first name and last name or first initial and last name in combination with any one or more of the following data elements that relate to the resident: (a) Social Security number; (b) driver's license number or Massachusetts identification card number; (c) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password that would permit access to a resident's financial account; or (d) a biometric indicator.

83. Pursuant to G.L. c. 93I(a), paper documents containing personal information shall be either redacted, burned, pulverized or shredded so that personal data cannot practicably be read or reconstructed.

84. The Gagnons dumped the medical records, which contained PI, at the GTS without redacting, burning, pulverizing, or shredding them so that the personal data could not practicably be read or reconstructed.

85. The Gagnons knew or should have known that the medical records disposed of at the dump should have been redacted, burned, pulverized or shredded so that the personal data could not practicably be read or reconstructed.

COUNT III
(Violation of the Massachusetts Security Breach Act, G.L. c. 93H, and its attendant regulations, 201 CMR 17.00)
(All Defendants)

86. The Commonwealth incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges as follows.

87. Pursuant to G.L. c. 93H, § 6, the Massachusetts Security Breach Act, the Attorney General may bring an action pursuant to G.L. c. 93A, § 4 against a person or otherwise to remedy violations of G. L c. 93H, and for other relief that may be appropriate.

88. G.L. c. 93H, governing security breaches, took effect on October 31, 2007.

89. Pursuant to G.L. c. 93H, § 2, the Massachusetts Office of Consumer Affairs and Business Regulation ("OCABR") adopted regulations governing the safeguarding of PI. OCABR promulgated 201 CMR 17.00, Standards for the Protection of Personal Information of Residents of the Commonwealth, effective March 1, 2010.

90. Pursuant to 201 CMR 17.00, all of the Defendants are persons that own or license personal information about a resident of the Commonwealth.

91. 201 CMR 17.03 states that every person that owns or licenses personal information about a resident "shall develop, implement, and maintain a comprehensive information security program that is written ['WISP'] in one or more readily accessible parts and contains administrative, technical, and physical safeguards that are appropriate" in light of a number of factors.

92. The Defendants failed to comply with 201 CMR 17.03, including by:

a) failing to either develop, implement, or maintain a WISP;

b) failing to oversee their third-party service providers, including failing to take reasonable steps to select and retain third-party service providers that are capable of maintaining appropriate security measures to protect PI;

c) failing to obtain contracts with their third-party service providers which require such third-party service providers to implement and maintain appropriate security measures for PI; and

d) failing to train their employees on how to protect PI.

COUNT IV
(Violation of HIPAA)
(Dr. Kevin Dole, Milford Pathology, Milton Pathology, and Pioneer Valley)

93. The Commonwealth incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges as follows.

94. The Pathology Defendants are covered entities under HIPAA as defined by 45 CFR § 160.103 and are thus subject to the security standards and privacy rules contained within HIPPA. 45 CFR § 164 Subpart A, C, and E.

95. By the actions alleged herein, the Pathology Defendants violated HIPAA by failing to comply with the standards, requirements, and implementation specifications as set forth in 45 CFR §§ 160 and 164 of HIPAA including the following:

a) The Pathology Defendants failed to have in place appropriate administrative, technical, and physical safeguards to protect the privacy of PHI when transferred to an external contractor, in violation of 45 CFR § 164.530(c).

b) The Pathology Defendants failed to implement policies and procedures with respect to PHI that are designed to safeguard and protect PHI when it is transferred to an external contractor, in violation of 45 CFR § 164.530(i) .

c) The Pathology Defendants failed to obtain satisfactory assurance that the B.A. (Medical Billing Solutions, Inc.) would appropriately safeguard PHI, in violation of 45 CFR § 164.502(e)(1)(i).

d) The Pathology Defendants failed to have in place a Business Associate Agreement with the Business Associate (Medical Billing Solutions, Inc.), in violation of 45 CFR § 164.504(e).

e) The Pathology Defendants failed to effectively train all members of their workforce (as exemplified by the individuals involved in the data breach) on the policies and procedures with respect to PHI as necessary and appropriate for members of the workforce to carry out their functions and to maintain security of PHI, in violation of 45 CFR § 164.530(b).

f) Milton Pathology failed to obtain satisfactory assurance that the Business Associate (Goldthwait Associates) would appropriately safeguard the PHI, in violation of 45 CFR § 164.502(e)(1)(i).

g) Milton Pathology failed to have in place a Business Associate Agreement with Goldthwait Associates. in violation of 45 CFR § 164.504(e).

96. By failing to comply with the standards of HIPAA, the Pathology Defendants are liable for the breach of information caused by the dumping of confidential medical records at the GTS.

97. As noted in HITECH Act § 13410(e)(1), in any case in which the attorney general of a State has reason to believe that an interest of one or more of the residents of that State has been or is threatened or adversely affected by any person who violates HIPAA, the attorney general of the State may bring a civil action on behalf of such residents to enjoin further such violations by the defendant and to obtain damages on behalf of such residents of the State.

PRAYERS FOR RELIEF

WHEREFORE, the Commonwealth requests that the Court grant the following relief:

1. Order that the Gagnons refrain from violating G.L. c. 93I, G.L. c. 93H, and 201 CMR 17.00;

2. Order that the Gagnons, if they own, run, or manage any future businesses that own or license information about Massachusetts residents, implement, maintain, and adhere to a "WISP" pursuant to 201 CMR 17.00 and produce said WISP to the Attorney General's Office;

3. Order that the Gagnons make restitution, plus interest, to any consumers injured by any acts and practices found to have violated G.L. c. 93A, G.L. c. 93I, and/or G.L. c. 93H/201 CMR 17.00, including those known and not yet known to the Attorney General;

4. Order that the Gagnons pay civil penalties and costs of investigation and litigation of this matter, including reasonable attorney's fees, to the Commonwealth pursuant to G.L. c. 93A, § 4, G.L. c. 93I, and G.L. c. 93H/201 CMR 17.00;

5. Permanently enjoin the Pathology Defendants from further violations as provided under 42 U.S.C. § 1320d-5(d)(1)(A);

6. Order that the Pathology Defendants pay statutory damages for all violations as provided under 42 U.S.C. § 1320d-5(d)(2);

7. Order the Pathology Defendants to refrain from the unfair acts or practices described herein under Massachusetts state law, in violation of G.L. c. 93A, § 2 and G.L. c. 93H/201 CMR 17.00;

8. Order the Pathology Defendants to establish and implement a system of record maintenance that addresses the transfer of records from a Hospital Department to all outside contractors and ensures the confidentiality of patient records and includes confirmation that:

   a. Medical records are only being released to authorized individuals;

   b. Medical Records are being maintained or destroyed per State law and the industry standard; and

   c. Individuals and entities handling the hospital's medical records, whether they are part of the hospital's workforce or outside contractors, are appropriately trained in the area of confidentiality of patient record, including the industry standard for appropriate disposal.

9. Order the Pathology Defendants to pay civil penalties and costs of investigation and litigation of this matter, including reasonable attorneys' fees, to the Commonwealth of Massachusetts as provided under 42 U.S.C. §1320d-5(d)(3) and G.L. c. 93A, § 4; and

10. Order such other and further relief as this Court deems just and proper.

Respectfully Submitted,

COMMONWEALTH OF
MASSACHUSETTS

MARTHA COAKLEY
ATTORNEY GENERAL

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Date: December 20, 2012

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 12-4568 H

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

JOSEPH A. GAGNON and
LOUISE E. GAGNON,
d/b/a GOLDTHWAIT ASSOCIATES

Defendants.

FINAL JUDGMENT BY CONSENT OF DEFENDANTS JOSEPH A. AND LOUISE E. GAGNON, d/b/a GOLDTHWAIT ASSOCIATES

The Court has reviewed the Complaint filed in this case by the Commonwealth of Massachusetts through the Office of the Attorney General ("Commonwealth" or "Plaintiff"), the assented to Motion for Entry of Final Judgment by Consent, and the attached Consents. The Court finds that it properly has subject matter jurisdiction of this Complaint and personal jurisdiction over Defendants Joseph A. Gagnon and Louise E. Gagnon, d/b/a Goldthwait Associates (the "Gagnons"), and finds that the entry of this Final Judgment by Consent does not violate the law, is otherwise not unreasonable and is within the scope of the Attorney General's authority.

WHEREAS, the Attorney General has concluded an investigation into the policies, procedures, and practices of the Gagnons regarding their protection of personal information ("PI") and protected health information ("PHI") of residents of the Commonwealth;

JUDGMENT ENTERED ON DOCKET 1/7 2013
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 58(a)
AND NOTICE SENT TO PARTIES PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 77(d) AS FOLLOWS

file sent 1/7/13
JAG
LEG
SCCS
WOL
MCF
AM
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DPN
RLK
PHR

WHEREAS, the Attorney General's investigation pertained to allegations that the Gagnons engaged in unfair or deceptive acts or practices by accepting PI and PHI of Massachusetts residents for medical billing purposes, but failed to take reasonable steps to protect said PI and PHI, failed to implement verbal or written policies and procedures addressing the protection of PI and PHI, failed to properly dispose of PI and PHI, and failed to develop a Written Information Security Program ("WISP"), in violation of state rules and regulations designed to protect patient privacy, including G.L. c. 93A, 940 C.M.R. 3.16, G.L. c. 93I, G.L. c. 93H, and certain provisions of 201 C.M.R 17.00;

WHEREAS, the Commonwealth filed a Complaint against the Gagnons, alleging that the Gagnons engaged in unfair or deceptive acts;

WHEREAS, in or around May 1, 2010, Joseph A. and Louise E. Gagnon retired and sold the assets of their medical billing service, Goldthwait Associates, to a third-party;

WHEREAS, without admission of liability, in order to amicably resolve their differences concerning the Complaint and in order to avoid the cost and uncertainty of litigation, the parties have agreed to entry of this Final Judgment by Consent;

WHEREAS, the Commonwealth has filed an assented to motion seeking entry of a Final Judgment by Consent;

Accordingly, **IT IS HEREBY ORDERED AND ADJUDGED THAT:**

INJUNCTIVE RELEIF

1. If the Gagnons establish or conduct a medical billing practice, or any other business which handles PI and PHI, the Gagnons and their agents, servants, employees, successors, heirs and assigns, or any other person acting under their direction and control, directly or indirectly, are enjoined from disclosing PI and PHI to any third-

party service provider or Business Associate as defined by 45 C.F.R. §160.103 ("B.A."), that is not a covered entity, without taking reasonable steps to select and retain such providers that are capable of maintaining appropriate security measures to protect PI and PHI. These steps shall include:

a. inquiring about the B.A.'s methods for ensuring adequate safeguards for protecting the confidentiality of PI and PHI and reasonably determining that the B.A.'s methods/practices are sufficient to comply with the Gagnons' obligations to protect PI and PHI;

b. inquiring about the B.A.'s methods for disposing of PI and PHI and reasonably determining that the B.A.'s methods/practices are sufficient to comply with the Gagnons' obligations to protect PI and PHI;

c. inquiring about the security of a B.A.'s facility to determine the physical safeguards and methods utilized for the protection of PI and PHI at the facility, including obtaining a copy of the B.A.'s WISP, created pursuant to 201 C.M.R. 17.03 and reasonably determining that the B.A.'s methods/practices are sufficient to comply with the Gagnons' obligations to protect PI and PHI;

d. requesting a copy of the B.A.'s policies and procedures or contracts delineating PI and PHI disposal methods;

e. inquiring and obtaining written confirmation that the B.A.'s employees are adequately trained on at least an annual basis regarding the requirements for handling or disposing of PI or PHI pursuant to state and federal law;

f. obtaining from the B.A. certificates of destruction, at least on a quarterly basis, which state that any disclosed PHI was destroyed pursuant to the requirements of G.L. c. 93I, or obtaining returns, at least on a quarterly basis, of any disclosed PHI that is no longer in use by the B.A.; and

g. maintaining a current list of B.A.s. The Gagnons shall also maintain documentation which shows that it has met requirements (1)(a) – (f) above as to each of its B.A.s.

2. If the Gagnons establish or conduct a medical billing practice, or any other business which handles PI and PHI, the Gagnons and their agents, servants, employees, successors, heirs and assigns, or any other person acting under their direction and control, directly or indirectly, are enjoined from disclosing PI and PHI to any third-party service provider or B.A., that is not a covered entity, without:

   a. obtaining a written B.A. Agreement that contains satisfactory assurances that the B.A. will appropriately safeguard and maintain PI and PHI. In addition to complying with the requirements of 45 C.F.R. §164.504(e)(1), the B.A. Agreement shall include requirements reflecting the agreement is in full compliance with:

      i. the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act; and

      ii. G.L. c. 93I, G.L. c. 93H, and 201 C.M.R. 17.00.

3. If the Gagnons establish or conduct a medical billing practice, or any other business which handles PI and PHI, the Gagnons, during the course of their relationship with

any B.A., shall review all B.A. Agreements annually from the effective date of the B.A. Agreement, or at such time that the service agreement between the Gagnons and said B.A. is renewed, modified, or terminated, to determine if (i) there are any changes to the relationship with the B.A. that require an addendum to the B.A. Agreement or (ii) the B.A. Agreement as written remains effective.

4. If the Gagnons establish or conduct a medical billing practice, or any other business which handles PI and PHI, the Gagnons shall, within thirty (30) days of so establishing or conducting such a practice within the Commonwealth, create a B.A. Agreement that incorporates all the requirements of this Final Judgment by Consent and shall provide a model copy of the B.A. Agreement to the Office of the Attorney General.

5. If the Gagnons establish or conduct a medical billing practice, or any other business which handles PI or PHI, the Gagnons shall, within fourteen (14) days of so establishing or conducting such a practice within the Commonwealth, implement, maintain, and adhere to a WISP pursuant to 201 C.M.R. 17.03, and produce said WISP to the Attorney General's Office.

6. If the Gagnons establish or conduct a medical billing practice, or any other business which handles PI or PHI, within ninety (90) days of so establishing or conducting such a practice within the Commonwealth, the Gagnons will engage, at its own expense, an independent third-party firm to review and audit the practice's compliance with the Federal Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. §§ 160 and 164 as they pertain to the practice's handling and disclosure of such materials to third party vendors. Within sixty (60) days of the

completion of this required compliance review, the Gagnons shall (i) take all corrective actions recommended in the compliance review that are necessary to bring this practice into compliance with state and federal law and (ii) report to the Commonwealth the results of the compliance review and all corrective actions that are taken as a result of said review.

7. If the Gagnons establish or conduct a medical billing practice, or any other business which handles PI or PHI, the Gagnons shall review the scope of their security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing PI or PHI.

8. If the Gagnons establish or conduct a medical billing practice, or any other business which handles PI or PHI, the Gagnons shall cause a true and correct copy of the injunctive terms contained herein to be given to every person who is an officer, director, manager, or employee of the Gagnons.

9. The Gagnons shall comply with all reasonable inquiries and requests from the Office of the Attorney General regarding implementation of the terms contained within this Final Judgment.

MONETARY RELEIF

10. Pursuant to G. L. c. 93A, § 4, judgment is hereby entered against the Gagnons in the amount of $30,000: (i) $15,000 in civil penalties, (ii) $5,000 as attorney's fees and costs, and (iii) $10,000 that shall be paid pursuant to G.L. c. 12 § 4A to, as a contribution to a fund to be used at the sole discretion of the Attorney General, to promote education or further investigation/litigation in the area of PI and PHI data

protection or to fund other programs, such as a local consumer aid fund, reasonably targeted to benefit consumers.

11. Based upon a review of personal and business financial records provided by the Gagnons, the sum of $25,000 will be suspended, contingent upon the Gagnons' compliance with the provisions of this Final Judgment. Failure to comply with any of the provisions of this Final Judgment, including the payment provisions described below, will make the suspended sum of $25,000 immediately due and payable to the Commonwealth. The Commonwealth is entitled to seek an execution in the amount of the $30,000, together with accrued interest from the date of the entry of the Final Judgment at the statutory interest rate. The Gagnons are liable for attorney's fees and costs incurred in the enforcement of this Consent Judgment.
12. The non-suspended sum of $5,000 shall be paid upon entry of this Consent Judgment to the Commonwealth as civil penalties.
13. All payments made pursuant to this Final Judgment shall be made by certified or cashier's check made payable to the "Commonwealth of Massachusetts" and delivered to Wendoly Ortiz Langlois, Assistant Attorney General, Health Care Division, One Ashburton Place, Boston, Massachusetts 02108.

NOTICES

14. All notices and documents required by this Final Judgment shall be provided in writing to the parties as follows:

A. If to the Attorney General:

Wendoly Ortiz Langlois (BBO# 654442)
Assistant Attorney General
Health Care Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2551
Wendoly.Langlois@state.ma.us

Shannon Choy-Seymour (BBO# 663245)
Assistant Attorney General
Consumer Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2918
Shannon.Choy-Seymour@state.ma.us

B. If to the Gagnons:

Joseph A. and Louise E. Gagnon
40 Lincoln Avenue, Apt. 2
Marblehead, MA 01945
(781) 639-0520

MISCELLANEOUS

15. The Gagnons waive all rights of appeal with respect to the allegations and claims of the Attorney General set forth in the Complaint against the Gagnons. The Gagnons also waive the requirements of Rule 52 of the Massachusetts Rules of Civil Procedure with respect to entry of this Final Judgment.

16. The Superior Court of the Commonwealth retains jurisdiction of this action for the purpose of enforcing or modifying the terms of this Final Judgment, or granting such

further relief as the Court deems just and proper, and the provisions of this Final Judgment shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

17. Compliance with this Final Judgment resolves and settles all civil claims the Commonwealth has, or may in the future have, against the Gagnons relating to the allegations, facts and circumstances set forth in the Complaint filed against the Gagnons in this action.
18. The provisions of this Final Judgment shall be severable and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the other provisions of this Judgment shall remain in full force and effect.
19. Nothing in this Final Judgment shall be construed as relieving the Gagnons of their duty to comply with all applicable federal, state, and local laws, regulations, rules, and permits.
20. Consent to this Final Judgment does not constitute an approval by the Commonwealth of any of the Gagnons' business acts and practices.
21. Except for purposes of its enforcement by the Attorney General or by court order, no part of the Complaint or this Final Judgment by Consent shall be admitted into evidence against the Gagnons or any of their affiliates, predecessors, or successors. No allegation or assertion of liability or wrongdoing on the part of the Gagnons set forth in either the Complaint or this Final Judgment by Consent shall be treated or construed as an admission of liability or wrongdoing by the Gagnons or any of its affiliates, predecessors, or successors.

22. Any violation of this Final Judgment by Consent is punishable by civil or criminal contempt proceedings, or as otherwise provided by law.

23. This Final Judgment becomes effective upon entry by the Court, and all period of time described herein commence as of that date.

24. The Gagnons acknowledge that they have been advised of their right to seek the advice of counsel.

APPROVED AND ORDERED:

Justice of the Superior Court

Dated: 2 Jan, ~~2012~~ 2017

CONSENT TO JUDGMENT OF JOSEPH A. GAGNON, d/b/a GOLDTHWAIT ASSOCIATES

1. The Defendant, Joseph A. Gagnon, d/b/a Goldthwait Associates ("Mr. Gagnon"), admits to the continuing jurisdiction and venue of the Suffolk Superior Court, and hereby consents to the entry of the Final Judgment in the form attached hereto. In so consenting, Mr. Gagnon certifies that he has read and understands each of the sections, paragraphs, and subparagraphs in the Final Judgment.
2. Mr. Gagnon waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.
3. Mr. Gagnon understands that the restrictions set forth in the Final Judgment apply to him and to his agents, servants, employees, successors, heirs, and assigns.
4. Mr. Gagnon states that he understands that any violation of this Final Judgment may result in sanctions against him under G.L. c. 93A, § 4, and/or a finding of contempt of court.
5. Except for purposes of its enforcement, this consent shall not constitute evidence against Mr. Gagnon.
6. Mr. Gagnon acknowledges that he has been advised of his right to seek the advice of counsel.

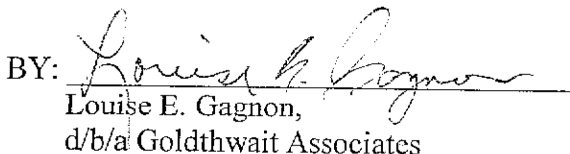
ASSENTED TO, WAIVING ALL RIGHTS OF APPEAL

BY: ______________________ Dated: 6/29/12
Joseph A. Gagnon,
d/b/a Goldthwait Associates

CONSENT TO JUDGMENT OF LOUISE E. GAGNON, d/b/a GOLDTHWAIT ASSOCIATES

1. The Defendant, Louise E. Gagnon, d/b/a Goldthwait Associates ("Mrs. Gagnon"), admits to the continuing jurisdiction and venue of the Suffolk Superior Court, and hereby consents to the entry of the Final Judgment in the form attached hereto. In so consenting, Mrs. Gagnon certifies that she has read and understands each of the sections, paragraphs, and subparagraphs in the Final Judgment.
2. Mrs. Gagnon waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.
3. Mrs. Gagnon understands that the restrictions set forth in the Final Judgment apply to her and to her agents, servants, employees, successors, heirs, and assigns.
4. Mrs. Gagnon states that she understands that any violation of this Final Judgment may result in sanctions against her under G.L. c. 93A, § 4, and/or a finding of contempt of court.
5. Except for purposes of its enforcement, this consent shall not constitute evidence against Mrs. Gagnon.
6. Mrs. Gagnon acknowledges that she has been advised of her right to seek the advice of counsel.

ASSENTED TO, WAIVING ALL RIGHTS OF APPEAL

BY: 
Louise E. Gagnon,
d/b/a Goldthwait Associates

Dated: 6/29/12

9

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 12-4568 H

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

KEVIN B. DOLE, M.D.

Defendant.

FINAL JUDGMENT BY CONSENT OF DEFENDANT KEVIN B. DOLE, M.D.

The Court has reviewed the Complaint filed in this case by the Commonwealth of Massachusetts through the Office of the Attorney General ("Commonwealth" or "Plaintiff"), the assented to Motion for Entry of Final Judgment by Consent and the attached Consent. The Court finds that it properly has subject matter jurisdiction of this Complaint and personal jurisdiction over the defendant, Kevin B. Dole, M.D. ("Dr. Dole") and finds that the entry of this Final Judgment by Consent is in the interests of justice.

WHEREAS, the Attorney General has concluded an investigation into the policies, procedures, and practices of Dr. Dole, while serving as president of Chestnut Pathology Services P.C. ("Chestnut Pathology"), regarding his protection of personal information ("PI"), as that term is defined in G.L. c. 93H, §1, and protected health information ("PHI"), as that term is defined in 45 C.F.R. §160.103, of residents of the Commonwealth;

Notice sent 1/7/13

JUDGMENT ENTERED ON DOCKET 1-7 20 13
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 58(a)
AND NOTICE SENT TO PARTIES PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 77(d) AS FOLLOWS

WHEREAS, Chestnut Pathology was a Massachusetts Professional Corporation with a principal place of business at 2100 Dorchester Avenue, Boston, Massachusetts. Dr. Dole was the president of Chestnut Pathology and was employed by Carney Hospital as the Director of its Pathology Department;

WHEREAS, on or about July 31, 2011, Dr. Dole concluded his service as the chief of pathology and ended his pathology practice at Carney Hospital;

WHEREAS, on or about March 12, 2012, Chestnut Pathology was voluntarily dissolved and therefore, Dr. Dole no longer serves as its president;

WHEREAS, the Attorney General's investigation pertained to allegations that Dr. Dole, while serving as president of Chestnut Pathology and employed by Carney Hospital, reportedly engaged in unfair or deceptive acts or practices by accepting PI and PHI of the patients of Carney Hospital in the regular course for treatment and billing purposes, but failed to take reasonable steps to protect said PI and PHI when handling and disclosing the information to its billing service, in violation of state rules and regulations designed to protect patient privacy, including G.L. c. 93A, 940 C.M.R. 3.16, and certain provisions of 201 C.M.R 17.00, as well as federal law. As such, this Final Judgment is intended to address and resolve any and all civil claims the Commonwealth has or may have in the future, against Dr. Dole as well as against Chestnut Pathology, now dissolved, relating to the allegations, facts and circumstances set forth in the Complaint, occurring prior to the entry of this Final Judgment;

WHEREAS, the HITECH Act § 13410(e) gives State Attorneys General the authority to bring civil actions on behalf of state residents for violations of the HIPAA Privacy and Security Rules, 45 C.F.R. §§ 160 and 164, to obtain damages on behalf of state residents and to enjoin

further violations of these Rules, which prohibit the unauthorized disclosure of patients' PHI and establish the federal minimum standards that must be followed to protect such information;

WHEREAS, the Commonwealth filed a Complaint against Dr. Dole, a health care provider, who in his capacity as a health care provider is a covered entity under HIPAA as defined by 45 C.F.R. §160.103 ("covered entity"), alleging that he violated various standards of the HIPAA Privacy Rule, found at 45 C.F.R. § 164 Subparts A and E;

WHEREAS, Dr. Dole has no current intention or plan to establish or otherwise run his own pathology practice within the Commonwealth of Massachusetts;

WHEREAS, without admission of liability, in order to amicably resolve their differences concerning the Complaint and in order to avoid the cost and uncertainty of litigation, the parties have agreed to entry of this Final Judgment by Consent; and

WHEREAS, the parties have filed a joint motion seeking entry of a Final Judgment by Consent.

Accordingly, good cause being shown, **IT IS HEREBY ORDERED AND ADJUDGED THAT:**

I. INJUNCTIVE RELIEF

1. Dr. Dole is enjoined from disclosing PI and PHI to any third-party service provider or Business Associate as defined by 45 C.F.R. §160.103 ("B.A."), that is not a covered entity, without taking reasonable steps to select and retain such providers that are capable of maintaining appropriate security measures to protect PI and PHI. In the event that Dr. Dole establishes or runs an independent pathology practice within the Commonwealth, he shall comply with the following steps:

a. inquiring about the B.A.'s methods for ensuring adequate safeguards for protecting the confidentiality of PI and PHI and reasonably determining that the B.A.'s methods/practices are sufficient to comply with Dr. Dole's obligations to protect PI and PHI;

b. inquiring about the B.A.'s methods for disposing of PI and PHI and reasonably determining that the B.A.'s methods/practices are sufficient to comply with Dr. Dole's obligations to protect PI and PHI;

c. inquiring about the security of a B.A.'s facility to determine the physical safeguards and methods utilized for the protection of PI and PHI at the facility, including obtaining a copy of the B.A.'s Written Information Security Program ("WISP"), created pursuant to 201 C.M.R. 17.03 and reasonably determining that the B.A.'s methods/practices are sufficient to comply with Dr. Dole's obligations to protect PI and PHI;

d. requesting a copy of the B.A.'s policies and procedures or contracts delineating PI and PHI disposal methods;

e. inquiring and obtaining written confirmation that the B.A.'s employees are adequately trained on at least an annual basis regarding the requirements for handling or disposing of PI or PHI pursuant to state and federal law;

f. obtaining from the B.A. certificates of destruction, at least on a quarterly basis, which state that any disclosed PHI was destroyed pursuant to the requirements of G.L. c. 93I or obtaining returns, at least on a quarterly basis, of any disclosed PHI that is no longer in use by the B.A.; and

g. maintaining a current list of B.A.s Dr. Dole shall also maintain documentation which shows that he has met requirements (1)(a) – (f) above as to each of his B.A.s.

2. Dr. Dole is enjoined from disclosing PI and PHI to any third-party service provider or B.A., that is not a covered entity, without obtaining satisfactory assurances that a third-party service provider or B.A. will appropriately safeguard and maintain the PI and PHI. In the event that Dr. Dole establishes or runs an independent pathology practice within the Commonwealth, he shall comply with the following steps:

    a. obtaining a written B.A. Agreement that contains satisfactory assurances that a B.A. will appropriately safeguard and maintain PI and PHI. In addition to being drafted pursuant to the requirements of 45 C.F.R. §164.504(e)(1), the B.A. Agreement shall:

        i. state that any paper PI and PHI that is disclosed to the B.A. will only be destroyed or disposed of by the B.A. by either returning such to Dr. Dole or by being redacted, burned, pulverized or shredded;

        ii. state that any electronic media and other non-paper media containing PI and PHI shall be destroyed or erased so that PI and PHI cannot practicably be read or reconstructed;

        iii. state that any PI stored on laptops or other portable devices shall be encrypted;

        iv. state that all records and files containing PI transmitted across public networks and/or transferred wirelessly shall be encrypted;

v. designate method(s) that the B.A. will use to destroy the PI and PHI it receives from Dr. Dole;

vi. state that the B.A. will provide Dr. Dole with at least thirty (30) days notice if the B.A. decides to change the method of destruction previously designated;

vii. require that the B.A. provide Dr. Dole with confirmation of the destruction or the return of the PI and PHI on at least a quarterly basis;

viii. require that any changes to the method of destruction elected by the B.A. or any other material changes to the agreement be detailed in a written addendum to the B.A. Agreement that must be executed by both the B.A. and Dr. Dole.

3. If Dr. Dole establishes or runs an independent pathology practice within the Commonwealth, then during the course of his relationship with any B.A., he shall review all B.A. Agreements annually from the effective date of the B.A. Agreement, or at such time that the service agreement between Dr. Dole and said B.A. is renewed, modified, or terminated, to determine if (i) there are any changes to the relationship with the B.A. that require an addendum to the B.A. Agreement or (ii) the B.A. Agreement as written remains effective.

4. If Dr. Dole establishes or runs an independent pathology practice within the Commonwealth, then within thirty (30) days of establishing or running said practice, Dr. Dole shall create a B.A. Agreement that incorporates all the requirements of this Final Judgment by Consent and shall provide a model copy of the B.A. Agreement to the Office of the Attorney General.

5. If Dr. Dole establishes or runs an independent pathology practice within the Commonwealth, then within fourteen (14) days of establishing or running said practice, Dr. Dole shall implement, maintain, and adhere to a WISP pursuant to 201 C.M.R. 17.03, and produce said WISP to the Attorney General's Office.
6. If Dr. Dole establishes or runs an independent pathology practice within the Commonwealth, then within one hundred and twenty (120) days of establishing or running such a practice within the Commonwealth, Dr. Dole will engage, at the practice's own expense, an independent third-party firm to review and audit the practice's compliance with the State Standards for the Protection of Personal Information of Residents of the Commonwealth, 201 C.M.R. 17.00 and the Federal Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. §§ 160.164, as they pertain to the practice's handling and disclosure of such materials to third party vendors. Within ninety (90) days of the completion of this required compliance review, Dr. Dole shall (i) take all corrective actions recommended in the compliance review that are necessary to bring this practice into compliance with state and federal law and (ii) report to the Commonwealth the results of the compliance review and all corrective actions taken or to be taken as a result of said review.
7. If Dr. Dole establishes or runs an independent pathology practice within the Commonwealth, then within sixty (60) days he will establish and implement a system of record maintenance that addresses the transfer of records from the practice to any B.A. which ensures the confidentiality of patient records and includes confirmation that:
    a. medical records are only being released to authorized individuals;

b. disclosure of PHI is limited to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request; and

c. medical records are being maintained or destroyed per state law and the industry standard.

8. If Dr. Dole establishes or runs an independent pathology practice within the Commonwealth, then he shall review the scope of the practice's security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing PI or PHI.

9. Dr. Dole shall comply with all reasonable inquiries and requests from the Office of the Attorney General regarding implementation of the terms contained within this Final Judgment.

II. MONETARY RELIEF

10. Pursuant to G.L. c. 93A, judgment shall enter against Dr. Dole in the amount of $20,000. Within sixty (60) days after the entry of this Final Judgment by Consent, Dr. Dole shall pay a total sum of $20,000 to the Office of the Attorney General, and such total payment shall comprise: (i) $5,000 as civil penalties, (ii) $5,000 as attorneys' fees and costs, and (iii) $10,000 that shall be paid pursuant to G.L. c. 12 §4A to fund a contribution at the sole discretion of the Attorney General, to promote education or further investigation/litigation in the area of PI and PHI data protection or to fund other programs, such as a local consumer aid fund, reasonably targeted to benefit consumers.

III. NOTICES

11. All notices and documents required by this Final Judgment shall be provided in writing to the parties as follows:

A. If to the Attorney General:

Wendoly Ortiz Langlois (BBO# 654442)
Assistant Attorney General
Health Care Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2551
Wendoly.Langlois@state.ma.us

Shannon Choy-Seymour (BBO# 663245)
Assistant Attorney General
Consumer Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2918
Shannon.Choy-seymour@state.ma.us

B. If to Kevin B. Dole, M.D.:

Martin C. Foster, Esq.
Alexis D. McLachlan, Esq.
Foster & Eldridge, LLP
One Canal Park, Suite 2100
Cambridge, MA 02141
(617)252-3366
mfoster@fosteld.com
amclachlan@fosteld.com

IV. WAIVER OF APPEAL AND OF FINDINGS AND RULINGS

12. Dr. Dole waives all rights of appeal with respect to the allegations and claims of the Attorney General set forth in the Complaint against Dr. Dole. He also waives the requirements of Rule 52 of the Massachusetts Rules of Civil Procedure with respect to entry of this Final Judgment.

V. MISCELLANEOUS

13. The Superior Court of the Commonwealth retains jurisdiction of this action for the purpose of enforcing or modifying the terms of this Final Judgment, or granting such further relief as the Court deems just and proper, and the provisions of this Final Judgment shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

14. Compliance with this Final Judgment resolves and settles all civil claims the Commonwealth has or may in the future have against Dr. Dole relating to the allegations, facts and circumstances set forth in the Complaint filed against Dr. Dole in this action, occurring prior to the entry of this Final Judgment.

15. Compliance with this Final Judgment likewise resolves and settles all civil claims the Commonwealth has or may in the future have against Dr. Dole, as well as against Chestnut Pathology, now dissolved, relating to the allegations, facts and circumstances set forth in the Complaint, occurring prior to the entry of this Final Judgment.

16. The provisions of this Final Judgment shall be severable and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the other provisions of this Judgment shall remain in full force and effect.

17. Nothing in this Final Judgment shall be construed as relieving Dr. Dole of his duty to comply with all applicable federal, state, and local laws, regulations, rules, and permits.

18. Consent to this Final Judgment does not constitute an approval by the Commonwealth of any of Dr. Dole's business acts and practices.

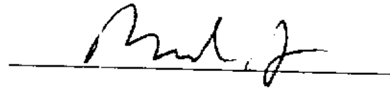
19. Except for purposes of its enforcement by the Attorney General, no part of this Final Judgment by Consent shall be admitted into evidence against Dr. Dole. No part of this Final Judgment by Consent shall be treated or construed as an admission of liability or wrongdoing by Dr. Dole.

20. Nothing in this Final Judgment of Consent shall be construed as a prohibition or limitation on Dr. Dole's ability to practice medicine.

21. Any violation of this Final Judgment by Consent is punishable by civil or criminal contempt proceedings, or as otherwise provided by law.

22. This Final Judgment becomes effective upon entry by the Court, and all period of time described herein commence as of that date.

APPROVED AND ORDERED:



Justice of the Superior Court

Dated: 2 Jan, ~~2012~~ 2013

CONSENT TO JUDGMENT OF KEVIN B. DOLE, M.D.

1. The Defendant, Kevin B. Dole ("Dr. Dole") admits to the continuing jurisdiction and venue of the Suffolk Superior Court, and hereby consents to the entry of the Final Judgment in the form attached hereto. In so consenting, Dr. Dole certifies that he has read and understands each of the sections, paragraphs, and subparagraphs in the Final Judgment.
2. Dr. Dole waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.
3. Dr. Dole understands that the restrictions set forth in the Final Judgment apply to him and any independent pathology practice that he establishes or manages.
4. Dr. Dole states that he understands that any violation of this Final Judgment may result in sanctions against him under G.L. c. 93A, § 4, and/or a finding of contempt of court.
5. Dr. Dole states that he is represented by legal counsel, Foster & Eldridge, LLP, One Canal Park, Suite 2100, Cambridge, MA 02141, and that he has personally read and understands each numbered paragraph in the Final Judgment by Consent.
6. The undersigned, Kevin B. Dole, M.D., represents that he voluntarily enters into this Final Judgment by Consent.
7. Except for purposes of its enforcement, this consent shall not constitute evidence against Dr. Dole.

ASSENTED TO, WAIVING ALL RIGHTS OF APPEAL

BY: [signature]
Kevin B. Dole, M.D.

Dated: 12-15-2012

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 12-4568 H

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

PIONEER VALLEY PATHOLOGY ASSOCIATES, P.C.,

Defendant.

FINAL JUDGMENT BY CONSENT

The Court has reviewed the Complaint filed in this case by the Commonwealth of Massachusetts through the Office of the Attorney General ("Commonwealth" or "Plaintiff"), the assented to Motion for Entry of Final Judgment by Consent and the attached Consent. The Court finds that it properly has subject matter jurisdiction of this Complaint and personal jurisdiction over Defendant, Pioneer Valley Pathology Associates, P.C. ("Pioneer Valley"), and finds that the entry of this Final Judgment by Consent is in the interests of justice.

WHEREAS, the Attorney General has concluded an investigation into the policies, procedures, and practices of Pioneer Valley regarding its protection of personal information ("PI"), as that term is defined in G.L. c. 93H, §1, and protected health information ("PHI"), as that term is defined in 45 C.F.R. § 160.103, of residents of the Commonwealth;

WHEREAS, the Attorney General's investigation pertained to allegations that Pioneer Valley engaged in unfair and deceptive acts or practices by accepting PI and PHI of the patients of Holyoke Medical Center, Inc. in the regular course for treatment and billing purposes, but

Notice sent 1-17-13

JUDGMENT ENTERED ON DOCKET 1-7 2013
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 58(a)
AND NOTICE SENT TO PARTIES PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 77(d) AS FOLLOWS

failed to take reasonable steps to protect said PI and PHI when handling and disclosing the information to its billing service, in violation of state rules and regulations designed to protect patient privacy, including G.L. c. 93A, 940 C.M.R. 3.16, and certain provisions of 201 C.M.R 17.00, as well as federal law;

WHEREAS, the HITECH Act § 13410(e) gives State Attorneys General the authority to bring civil actions on behalf of state residents for violations of the HIPAA Privacy and Security Rules, 45 C.F.R. §§ 160 and 164, to obtain damages on behalf of state residents and to enjoin further violations of these Rules, which prohibit the unauthorized disclosure of patients' PHI and establish the federal minimum standards that must be followed to protect such information;

WHEREAS, the Commonwealth filed a Complaint against Pioneer Valley, which is a covered entity under HIPAA as defined by 45 C.F.R. §160.103 ("covered entity"), alleging that Pioneer Valley violated various standards of the HIPAA Privacy Rule, found at 45 C.F.R. § 164 Subparts A and E;

WHEREAS, Dr. Thomas Gould and Dr. John Blanchette are currently employees of Holyoke Medical Center and have ceased the operation of Pioneer Valley;

WHEREAS, without admission of liability, in order to amicably resolve their differences concerning the Complaint and in order to avoid the cost and uncertainty of litigation, the parties have agreed to entry of this Final Judgment by Consent;

WHEREAS, the parties have filed a joint motion seeking entry of a Final Judgment by Consent;

Accordingly, good cause being shown, **IT IS HEREBY ORDERED AND ADJUDGED THAT:**

1. Pioneer Valley and its officers, employees, agents, attorneys, representatives, affiliates, successors, and assigns are enjoined from disclosing PI and PHI to any third-party service provider or Business Associate as defined by 45 C.F.R. §160.103 ("B.A."), that is not a covered entity, without taking reasonable steps to select and retain such providers that are capable of maintaining appropriate security measures to protect PI and PHI. In the event that Drs. Gould or Blanchette ("the doctors") establish or run an independent pathology practice, they shall ensure that they comply with the following steps:
    a. inquiring about the B.A.'s methods for ensuring adequate safeguards for protecting the confidentiality of PI and PHI and reasonably determining that the B.A.'s methods/practices are sufficient to comply with the doctors' obligations to protect PI and PHI;
    b. inquiring about the B.A.'s methods for disposing of PI and PHI and reasonably determining that the B.A.'s methods/practices are sufficient to comply with the doctors' obligations to protect PI and PHI;
    c. inquiring about the security of a B.A.'s facility to determine the physical safeguards and methods utilized for the protection of PI and PHI at the facility, including obtaining a copy of the B.A.'s Written Information Security Program ("WISP"), created pursuant to 201 C.M.R. 17.03 and reasonably determining that the B.A.'s methods/practices are sufficient to comply with the doctors' obligations to protect PI and PHI;
    d. requesting a copy of the B.A.'s policies and procedures or contracts delineating PI and PHI disposal methods;

e. inquiring and obtaining written confirmation that the B.A.'s employees are adequately trained on at least an annual basis regarding the requirements for handling or disposing of PI or PHI pursuant to state and federal law;

f. obtaining from the B.A. certificates of destruction, at least on a quarterly basis, that state that any disclosed PHI was destroyed pursuant to requirements of G.L. c. 93I, or obtaining returns, at least on a quarterly basis, of any disclosed PHI that is no longer in use by the B.A.; and

g. maintaining a current list of B.A.s. The doctors shall also maintain documentation which shows that they have met the requirements (1)(a) – (f) above as to each of their B.A.s.

2. Pioneer Valley and its officers, employees, agents, attorneys, representatives, affiliates, successors, and assigns, are enjoined from disclosing PI and PHI to any third-party service provider or B.A. that is not a covered entity, without obtaining satisfactory assurances that the third-party service provider or B.A. will appropriately safeguard and maintain the PI and PHI. In the event that Drs. Gould or Blanchette establish or run an independent pathology practice, they shall ensure that they comply with the following steps :

   a. obtaining a written B.A. agreement that contains satisfactory assurances that a B.A. will appropriately safeguard and maintain PI and PHI. In addition to being drafted pursuant to the requirements of 45 C.F.R. § 164.504(e)(1), the B.A. Agreement shall:

i. state that any paper PI and PHI that is disclosed to the B.A. will only be destroyed or disposed of by the B.A. by either returning such to the doctors or by being redacted, burned, pulverized or shredded;

ii. state that any electronic media and other non-paper media containing PI and PHI shall be destroyed or erased so that personal information cannot practicably be read or reconstructed;

iii. state that any PI stored on laptops or other portable devices shall be encrypted;

iv. state that all records and files containing PI transmitted across public networks and/or transferred wirelessly shall be encrypted;

v. designate method(s) that the B.A. will use to destroy the PI and PHI it receives from the doctors;

vi. state that the B.A. will provide the doctors with at least thirty (30) days notice if the B.A. decides to change the method of destruction previously designated;

vii. require that the B.A. provide the doctors with confirmation of the destruction or the return of the PI and PHI on at least a quarterly basis;

viii. require that any changes to the method of destruction elected by the B.A. or any other material changes to the agreement be detailed in a written addendum to the B.A. Agreement that must be executed by both the B.A. and the doctors.

3. If Dr. Blanchette or Dr. Gould establish or run an independent pathology practice, then the doctors shall review all B.A. Agreements annually from the effective date of

a B.A. Agreement, or at such time that the service agreement between the doctors and any B.A. is renewed, modified, or terminated, to determine if (i) there are any changes to the relationship with the B.A. that require an addendum to the B.A. Agreement or (ii) the B.A. Agreement as written remains effective.

4. If Dr. Blanchette or Dr. Gould establish or run an independent pathology practice, then within thirty (30) days of establishing or running the practice, the doctors shall create a B.A. Agreement that incorporates all the requirements of this Final Judgment by Consent and shall provide a model copy of the B.A. Agreement to the Office of the Attorney General.
5. If Dr. Blanchette or Dr. Gould establish or run an independent pathology practice, then within fourteen (14) days of establishing or running the practice, the doctors shall implement, maintain, and adhere to a WISP pursuant to 201 C.M.R. 17.03, and produce said WISP to the Attorney General's Office.
6. If Dr. Blanchette or Dr. Gould establish or run an independent pathology practice, then within ninety (90) days of establishing or running the practice, Dr. Blanchette or Dr. Gould will engage, at their own expense, an independent third-party firm to review and audit the practice's compliance with the Federal Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. §§ 160 and164 as they pertain to the practice's handling and disclosure of such materials to third party vendors. Within sixty (60) days of the completion of this required compliance review, Dr. Blanchette or Dr. Gould shall (i) take all corrective actions recommended in the compliance review that are necessary to bring this practice into compliance with state

and federal law and (ii) report to the Commonwealth the results of the compliance review and all corrective actions that are taken as a result of said review.

7. Pioneer Valley will maintain its existing system of record maintenance that addresses the transfer of records from Pioneer Valley to its Business Associate, Medical Billing Solutions, Inc., during Pioneer Valley's business wind down period, pursuant to the Business Associate Agreement that was entered into by both during September 2010, a copy of which was provided to the Attorney General.

8. If there are any residual operations, Pioneer Valley shall review the scope of its security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing PI or PHI.

9. Within ten (10) days after the entry of this Final Judgment by Consent, Pioneer Valley shall cause a true and correct copy of the injunctive terms contained herein to be given to every person who on the date of entry of this Consent Judgment is an officer, director, manager, or employee of Pioneer Valley.

10. Pioneer Valley shall comply with all reasonable inquiries and requests from the Office of the Attorney General regarding implementation of the terms contained within this Final Judgment.

11. Pursuant to G.L. c. 93A, judgment shall enter against Pioneer Valley in the amount of $30,000. Within thirty (30) days after the entry of this Final Judgment by Consent, Pioneer Valley shall pay a total sum of $22,500 to the Office of the Attorney General, and such total payment shall be comprised of: (i) $5,000 as civil penalties, (ii) $5,000 as attorneys' fees and costs, and (iii) $12,500 that shall be paid pursuant to G.L. c. 12

§ 4A to fund a contribution at the sole discretion of the Attorney General, to promote education or further investigation/litigation in the area of PI and PHI data protection or to fund other programs, such as a local consumer aid fund, reasonably targeted to benefit consumers. Dr. Blanchette and Dr. Gould shall pay the remaining $7,500 in civil penalties to the Commonwealth at the time that either doctor establishes or runs an independent pathology practice, provided, however, that payment of this amount is suspended so long as Dr. Blanchette and Dr. Gould refrain from establishing or running an independent pathology practice for a period of three years from the date of the entry of this Final Judgment by Consent. If at the end of this three year period, neither Dr. Blanchette, nor Dr. Gould has established or run an independent pathology practice, then this payment of $7,500 shall be permanently waived.

12. All notices and documents required by this Final Judgment shall be provided in writing to the parties as follows:

    A. If to the Attorney General:

    Shannon Choy-Seymour (BBO# 663245)
    Assistant Attorney General
    Consumer Protection Division
    Office of the Attorney General
    One Ashburton Place
    Boston, MA 02108
    (617) 727-2200, ext. 2918
    Shannon.Choy-Seymour@state.ma.us

    Wendoly Ortiz Langlois (BBO# 654442)
    Assistant Attorney General
    Health Care Division
    Office of the Attorney General
    One Ashburton Place
    Boston, MA 02108
    (617) 727-2200, ext. 2551
    Wendoly.Langlois@state.ma.us

B. If to Pioneer Valley Pathology Associates, P.C.:

Paul H. Rothschild, Esq.
Gary J. Fialky, Esq.
Bacon Wilson, P.C.
33 State Street
Springfield, MA 01103
(413) 781-0560
prothschild@baconwilson.com
gfialky@baconwilson.com

13. Pioneer Valley waives all rights of appeal with respect to the allegations and claims of the Attorney General set forth in the Complaint against Pioneer Valley. Pioneer Valley also waives the requirements of Rule 52 of the Massachusetts Rules of Civil Procedure with respect to entry of this Final Judgment.

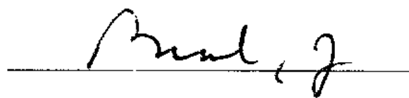
14. The Superior Court of the Commonwealth retains jurisdiction of this action for the purpose of enforcing or modifying the terms of this Final Judgment, or granting such further relief as the Court deems just and proper, and the provisions of this Final Judgment shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

15. Compliance with this Final Judgment resolves and settles all civil claims the Commonwealth has or may in the future have against Pioneer Valley relating to the allegations, facts and circumstances set forth in the Complaint filed against Pioneer Valley in this action.

16. The provisions of this Final Judgment shall be severable and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the other provisions of this Judgment shall remain in full force and effect.

17. Nothing in this Final Judgment shall be construed as relieving Pioneer Valley of its duty to comply with all applicable federal, state, and local laws, regulations, rules, and permits.
18. Consent to this Final Judgment does not constitute an approval by the Commonwealth of any of Pioneer Valley's business acts and practices.
19. Except for purposes of its enforcement by the Attorney General, no part of this Final Judgment by Consent shall be admitted into evidence against Pioneer Valley or any of its parent corporations, subsidiaries, affiliates, predecessors or successors. No part of this Final Judgment by Consent shall be treated or construed as an admission of liability or wrongdoing by Pioneer Valley or any or any of its officers, directors, employees, agents, affiliates, predecessors or successors.
20. Any violation of this Final Judgment by Consent is punishable by civil or criminal contempt proceedings, or as otherwise provided by law.
21. This Final Judgment becomes effective upon entry by the Court, and all periods of time described herein commence as of that date.

APPROVED AND ORDERED:



Justice of the Superior Court

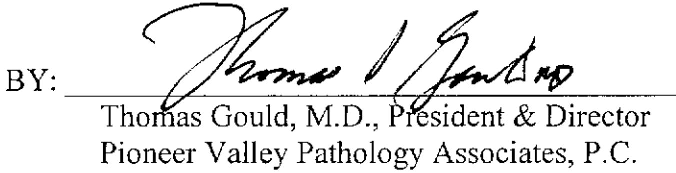
Dated: 2 Jan, ~~2012~~ 2013

CONSENT TO JUDGMENT OF PIONEER VALLEY PATHOLOGY ASSOCIATES, P.C.

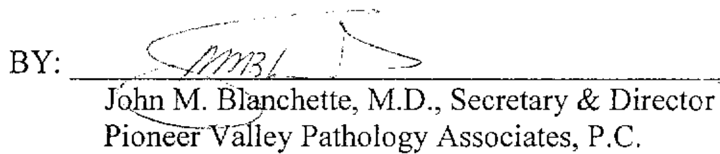
1. The Defendant, Pioneer Valley Pathology Associates, P.C. ("Pioneer Valley"), admits to the continuing jurisdiction and venue of the Suffolk Superior Court, and hereby consents to the entry of the Final Judgment in the form attached hereto. In so consenting, Pioneer Valley certifies that it has read and understands each of the sections, paragraphs, and subparagraphs in the Final Judgment.
2. Pioneer Valley waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.
3. Pioneer Valley understands that the restrictions set forth in the Final Judgment apply to Pioneer Valley and to its officers, employees, agents, representatives, affiliates, successors, and assigns.
4. Pioneer Valley states that it understands that any violation of this Final Judgment may result in sanctions against it under G.L. c. 93A, § 4, and/or a finding of contempt of court.
5. Pioneer Valley states that it is represented by legal counsel, Bacon Wilson PC, 33 State Street, Springfield, MA 01103, and that Thomas Gould, M.D., President and Director of Pioneer Valley Pathology Associates, P.C., and John M. Blanchette, M.D., Secretary and Director of Pioneer Valley Pathology Associates, P.C., have personally read and understand each numbered paragraph in the Final Judgment by Consent.
6. The undersigned, Thomas Gould, M.D. and John M. Blanchette, M.D., represent that they are duly authorized to execute this Consent to Judgment on behalf of Pioneer Valley and to bind Pioneer Valley to all of its provisions, and that on behalf of Pioneer Valley they voluntarily enter into this Final Judgment by Consent.

7. Except for purposes of its enforcement, this consent shall not constitute evidence against Pioneer Valley.

ASSENTED TO, WAIVING ALL RIGHTS OF APPEAL

BY:  Dated: 11/30/2012

Thomas Gould, M.D., President & Director
Pioneer Valley Pathology Associates, P.C.

BY:  Dated: 11/30/2012

John M. Blanchette, M.D., Secretary & Director
Pioneer Valley Pathology Associates, P.C.

ASSENT OF THOMAS GOULD, M.D.

Thomas Gould, M.D., acknowledges and assents to the entry of the Final Judgment by Consent (the "Consent Judgment") by Pioneer Valley Pathology Associates, P.C. ("Pioneer Valley"). Furthermore, to the extent the provisions of the Consent Judgment require certain actions by Dr. Gould, including, but not limited to, Consent Judgment paragraphs 1 - 6 and 11, Dr. Gould agrees to act in accordance with those provisions. In so agreeing, Dr. Gould certifies that he has personally read and understands the Consent Judgment. While not a named party to the Commonwealth's Complaint or the Consent Judgment, Dr. Gould has voluntarily assented to the Consent Judgment, without admission of individual liability or wrongdoing, in order to resolve the concerns the Attorney General raised by the Attorney General's investigation into the policies, procedures, and practices of Pioneer Valley regarding its protection of Personal Information and Protected Health Information of residents of the Commonwealth. Neither this assent nor any part thereof shall be treated or construed as an admission of liability or wrongdoing, or admitted into evidence or used for any other purpose except in a proceeding to enforce the terms of this agreement.

Assented to, waiving all rights of appeal:

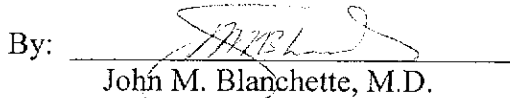
By:
Thomas Gould, M.D.

Dated: 11/30, 2012

ASSENT OF JOHN M. BLANCHETTE, M.D.

John M. Blanchette, M.D., acknowledges and assents to the entry of the Final Judgment by Consent (the "Consent Judgment") by Pioneer Valley Pathology Associates, P.C. ("Pioneer Valley"). Furthermore, to the extent the provisions of the Consent Judgment require certain actions by Dr. Blanchette, including, but not limited to, Consent Judgment paragraphs 1 - 6 and 11, Dr. Blanchette agrees to act in accordance with those provisions. In so agreeing, Dr. Blanchette certifies that he has personally read and understands the Consent Judgment. While not a named party to the Commonwealth's Complaint or the Consent Judgment, Dr. Blanchette has voluntarily assented to the Consent Judgment, without admission of individual liability or wrongdoing, in order to resolve the concerns the Attorney General raised by the Attorney General's investigation into the policies, procedures, and practices of Pioneer Valley regarding its protection of Personal Information and Protected Health Information of residents of the Commonwealth. Neither this assent nor any part thereof shall be treated or construed as an admission of liability or wrongdoing, or admitted into evidence or used for any other purpose except in a proceeding to enforce the terms of this agreement.

Assented to, waiving all rights of appeal:

By: 
John M. Blanchette, M.D.

Dated: 11-30, 2012

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 12-4568 H

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

MILFORD PATHOLOGY ASSOCIATES, P.C.,

Defendants.

FINAL JUDGMENT BY CONSENT OF DEFENDANT MILFORD PATHOLOGY ASSOCIATES, P.C.

The Court has reviewed the Complaint filed in this case by the Commonwealth of Massachusetts through the Office of the Attorney General ("Commonwealth" or "Plaintiff"), the assented to Motion for Entry of Final Judgment by Consent and the attached Consent. The Court finds that it properly has subject matter jurisdiction of this Complaint and personal jurisdiction over Defendant Milford Pathology Associates, P.C. ("Milford Pathology"), and finds that the entry of this Final Judgment by Consent is in the interests of justice.

WHEREAS, the Attorney General has concluded an investigation into the policies, procedures, and practices of Milford Pathology regarding its protection of personal information ("PI") and protected health information ("PHI") of residents of the Commonwealth;

WHEREAS, the Attorney General's investigation pertained to allegations that Milford Pathology engaged in unfair and deceptive acts or practices by accepting PI and PHI of the patients of Milford Regional Medical Center, Inc. in the regular course for treatment and billing

Notice sent 1-7-13

JUDGMENT ENTERED ON DOCKET 1/7/13 PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 58(a) AND NOTICE SENT TO PARTIES PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 77(d) AS FOLLOWS

purposes, but failed to take reasonable steps to protect said PI and PHI when handling and disclosing the information to its billing service, in violation of state rules and regulations designed to protect patient privacy, including G.L. c. 93A, 940 C.M.R. 3.16, and certain provisions of 201 C.M.R 17.00, as well as federal law;

WHEREAS, the HITECH Act § 13410(e) gives State Attorneys General the authority to bring civil actions on behalf of state residents for violations of the HIPAA Privacy and Security Rules, 45 C.F.R. §§ 160 and 164, to obtain damages on behalf of state residents and to enjoin further violations of these Rules, which prohibit the unauthorized disclosure of patients' PHI and establish the federal minimum standards that must be followed to protect such information;

WHEREAS, the Commonwealth filed a Complaint against Milford Pathology, which is a covered entity under HIPAA as defined by 45 C.F.R. § 160.103 ("covered entity"), alleging that Milford Pathology violated various standards of the HIPAA Privacy Rule, found at 45 C.F.R. § 164 Subparts A and E;

WHEREAS, without admission of liability, in order to amicably resolve their differences concerning the Complaint and in order to avoid the cost and uncertainty of litigation, the parties have agreed to entry of this Final Judgment by Consent;

WHEREAS, the parties have filed a joint motion seeking entry of a Final Judgment by Consent;

Accordingly, good cause being shown, **IT IS HEREBY ORDERED AND ADJUDGED THAT:**

1. Milford Pathology and its officers, employees, agents, representatives, affiliates, successors, and assigns are enjoined from disclosing PI and PHI to any third-party service provider or Business Associate as defined by 45 C.F.R. § 160.103 ("B.A."),

that is not a covered entity or medical malpractice insurer, without taking reasonable steps to select and retain such providers that are capable of maintaining appropriate security measures to protect PI and PHI. These steps shall include:

a. inquiring about the B.A.'s methods for ensuring adequate safeguards for protecting the confidentiality of PI and PHI and reasonably determining that the B.A.'s methods/practices are sufficient to comply with Milford Pathology's obligations to protect PI and PHI;

b. inquiring about the B.A.'s methods for disposing of PI and PHI and reasonably determining that the B.A 's methods/practices are sufficient to comply with Milford Pathology's obligations to protect PI and PHI;

c. inquiring about the security of a B.A.'s facility to determine the physical safeguards and methods utilized for the protection of PI and PHI at the facility, including obtaining a copy of the B.A.'s Written Information Security Program ("WISP"), created pursuant to 201 C.M.R. 17.03 and reasonably determining that the B.A.'s methods/practices are sufficient to comply with Milford Pathology's obligations to protect PI and PHI;

d. requesting a copy of the B.A.'s policies and procedures or contracts delineating PI and PHI disposal methods;

e. inquiring and obtaining written confirmation annually from the B.A. that the B.A.'s employees receive training on at least an annual basis regarding the requirements for handling or disposing of PI or PHI pursuant to state and federal law;

f. obtaining from the B.A. certificates of destruction, at least on a quarterly basis, that state that any PHI disclosed more than six (6) months previously and not specifically identified as still in use by the B.A., was destroyed pursuant to the requirements of G.L. c. 93I, or obtaining returns, at least on a quarterly basis, of any disclosed PHI that is no longer in use by the B.A.; and

g. maintaining a current list of B.A.s. Milford Pathology shall also maintain documentation for five (5) years which shows that it has met requirements (1)(a) – (f) above as to each of its B.A.s.

2. Milford Pathology and its officers, employees, agents, representatives, affiliates, successors, and assigns, are enjoined from disclosing PI and PHI to any third-party service provider or B.A., that is not a covered entity, without:

   a. obtaining a written B.A. agreement that contains satisfactory assurances that a B.A. will appropriately safeguard and maintain PI and PHI. In addition to being drafted pursuant to the requirements of 45 C.F.R. § 164.504(e)(1), the B.A. Agreement shall:

      i. state that any paper PI and PHI that is disclosed to the B.A. will only be destroyed or disposed of by the B.A. by either returning such to Milford Pathology or by being redacted, burned, pulverized or shredded;

      ii. state that any electronic media and other non-paper media containing PI and PHI shall only be destroyed, erased, or disposed of by the B.A. by either returning such media to Milford Pathology or by redacting the PI and PHI so that it cannot practicably be read or reconstructed;

iii. state that any PI stored on laptops or other portable devices shall be encrypted;

iv. state that all records and files containing PI transmitted across public networks and/or transferred wirelessly shall be encrypted;

v. designate method(s) that the B.A. will use to destroy the PI and PHI it receives from Milford Pathology;

vi. state that the B.A. will provide Milford Pathology with at least thirty (30) days notice if the B.A. decides to change the method of destruction previously designated;

vii. require that the B.A. provide Milford Pathology with confirmation of the destruction or the return of the PI and PHI on at least a quarterly basis of any PI or PHI held for more than six (6) months, and not specifically identified as still in use by the B.A.;

viii. require that any changes to the method of destruction elected by the B.A. or any other material changes to the agreement be detailed in a written addendum to the B.A. Agreement that must be executed by both the B.A. and Milford Pathology.

3. Milford Pathology shall review all B.A. Agreements annually from the effective date of the B.A. Agreement, or at such time that the service agreement between Milford Pathology and said B.A. is renewed, modified, or terminated, to determine if (i) there are any changes to the relationship with the B.A. that require an addendum to the B.A. Agreement or (ii) the B.A. Agreement as written remains effective.

4. Within thirty (30) days after the entry of this Final Judgment by Consent, Milford Pathology shall create a B.A. Agreement that incorporates all the requirements of this Final Judgment by Consent and shall provide a model copy of the B.A. Agreement to the Office of the Attorney General.
5. Within thirty (30) days after the entry of this Final Judgment by Consent, Milford Pathology shall implement, maintain, and adhere to a WISP pursuant to 201 C.M.R. 17.03, and produce said WISP to the Attorney General's Office.
6. Within thirty (30) days after the entry of this Final Judgment by Consent, Milford Pathology will engage, at its own expense, an independent third-party firm to review and audit Milford Pathology's compliance with the Federal Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. §§ 160.164 as they pertain to Milford Pathology's handling and disclosure of such materials to third party vendors. Within sixty (60) days of the completion of this required compliance review, or within one hundred and eighty (180) days of the entry of this Consent Judgment if earlier, Milford Pathology shall (i) take all corrective actions recommended in the compliance review and (ii) report to the Commonwealth the results of the compliance review and all corrective actions that Milford Pathology takes as a result of said review.
7. Within sixty (60) days of the entry of this Consent Judgment, Milford Pathology will establish and implement a system of record maintenance that addresses the transfer of records maintained by, in the possession of, or pertaining to Milford Pathology that are transferred on behalf of Milford Pathology to any B.A. which ensures the confidentiality of patient records and includes confirmation that:

a. medical records are only being released to authorized individuals;

b. disclosure of PHI is limited to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request, which includes the diagnosis to the extent permitted under HIPAA; and

c. medical records are being maintained or destroyed per state law and the industry standard.

8. Milford Pathology shall review the scope of its security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing PI or PHI.

9. Within ten (10) days after the entry of this Final Judgment by Consent, Milford Pathology shall cause a true and correct copy of the injunctive terms contained herein to be given to every person who on the date of entry of this Consent Judgment is an officer, director, manager, or employee of Milford Pathology.

10. Milford Pathology shall comply with all reasonable inquiries and requests from the Office of the Attorney General regarding implementation of the terms contained within this Final Judgment.

11. Pursuant to G.L. c. 93A, judgment shall enter against Milford Pathology in the amount of $30,000. Within thirty (30) days after the entry of this Final Judgment by Consent, Milford Pathology shall pay $15,000 to the Office of the Attorney General, and within sixty (60) days after entry of this Final Judgment by Consent, Milford Pathology shall pay an additional $10,000 to the Office of the Attorney General, and such payment shall comprise: (i) $5,000 as civil penalties, (ii) $10,000 as attorneys' fees and costs, and (iii) $10,000 shall be paid pursuant to G.L. c. 12 § 4A to fund a

contribution at the sole discretion of the Attorney General, to promote education or further investigation/litigation in the area of PI and PHI data protection or to fund other programs, such as a local consumer aid fund, reasonably targeted to benefit consumers. Within two hundred (200) days after entry of this Final Judgment by Consent, Milford Pathology shall pay the remaining $5,000 in civil penalties to the Commonwealth, provided, however, that payment of this $5,000 amount shall be waived if Milford Pathology completes all of its obligations pursuant to paragraph 6 of this Consent Judgment, including reporting to the Commonwealth the results of the compliance review, within one hundred and eighty (180) days after entry of this Final Judgment by Consent.

12. All notices and documents required by this Final Judgment shall be provided in writing to the parties as follows:

A. If to the Attorney General:

Shannon Choy-Seymour (BBO# 663245)
Assistant Attorney General
Consumer Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2918
Shannon.Choy-Seymour@state.ma.us

Wendoly Ortiz Langlois (BBO# 654442)
Assistant Attorney General
Health Care Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2551
Wendoly.Langlois@state.ma.us

B. If to Milford Pathology Associates, P.C.:
Lawrence R. Bowers, Esq.
40 Grove Street, Suite 260
Wellesley, MA 02482
(781) 237-9604
bowlaw@gis.net

13. Milford Pathology waives all rights of appeal with respect to the allegations and claims of the Attorney General set forth in the Complaint against Milford Pathology. Milford Pathology also waives the requirements of Rule 52 of the Massachusetts Rules of Civil Procedure with respect to entry of this Final Judgment.

14. The Superior Court of the Commonwealth retains jurisdiction of this action for the purpose of enforcing or modifying the terms of this Final Judgment, or granting such further relief as the Court deems just and proper to enforce the terms of this decree, and the provisions of this Final Judgment shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

15. Compliance with this Final Judgment resolves and settles all civil claims the Commonwealth has or may in the future have against Milford Pathology relating to the allegations, facts and circumstances set forth in the Complaint filed against Milford Pathology in this action.

16. The provisions of this Final Judgment shall be severable and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the other provisions of this Judgment shall remain in full force and effect.

17. Nothing in this Final Judgment shall be construed as relieving Milford Pathology of its duty to comply with all applicable federal, state, and local laws, regulations, rules, and permits.

18. Consent to this Final Judgment does not constitute an approval by the Commonwealth of any of Milford Pathology's business acts and practices.

19. Except for purposes of its enforcement by the Attorney General, no part of this Final Judgment by Consent shall be admitted into evidence against Milford Pathology or any of its parent corporations, subsidiaries, affiliates, predecessors or successors. No part of this Final Judgment by Consent shall be treated or construed as an admission of liability or wrongdoing by Milford Pathology or any or any of its officers, directors, employees, agents, affiliates, predecessors or successors.

20. Any violation of this Final Judgment by Consent is punishable by civil or criminal contempt proceedings, or as otherwise provided by law.

21. This Final Judgment becomes effective upon entry by the Court, and all periods of time described herein commence as of that date.

APPROVED AND ORDERED:

Justice of the Superior Court

Dated: 2 Jan, ~~2012~~ 2013

CONSENT TO JUDGMENT OF MILFORD PATHOLOGY ASSOCIATES, P.C.

1. The Defendant, Milford Pathology Associates, P.C. ("Milford Pathology"), admits to the continuing jurisdiction and venue of the Suffolk Superior Court, and hereby consents to the entry of the Final Judgment in the form attached hereto. In so consenting, Milford Pathology certifies that it has read and understands each of the sections, paragraphs, and subparagraphs in the Final Judgment.
2. Milford Pathology waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.
3. Milford Pathology understands that the restrictions set forth in the Final Judgment apply to Milford Pathology and to its officers, employees, agents, representatives, affiliates, successors, and assigns.
4. Milford Pathology states that it understands that any violation of this Final Judgment may result in sanctions against it under G.L. c. 93A, § 4, and/or a finding of contempt of court.
5. Milford Pathology states that it is represented by legal counsel, Lawrence Bowers, Esq., 40 Grove Street, Suite 260, Wellesley, MA 02482, and that Kamala Murali, M.D., President and Director of Milford Pathology Associates, P.C., has personally read and understands each numbered paragraph in the Final Judgment by Consent.
6. The undersigned, Kamala Murali, M.D., represents that she is duly authorized to execute this Consent to Judgment on behalf of Milford Pathology and to bind Milford Pathology to all of its provisions, and that on behalf of Milford Pathology she voluntarily enters into this Final Judgment by Consent.
7. Except for purposes of its enforcement, this consent shall not constitute evidence against Milford Pathology.

ASSENTED TO, WAIVING ALL RIGHTS OF APPEAL

BY: K Murali Dated: 5/25/12

Kamala Murali, M.D., President & Director
Milford Pathology Associates, P.C.

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 12-4568 H

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

MILTON PATHOLOGY ASSOCIATES, P.C.

Defendant.

FINAL JUDGMENT BY CONSENT OF DEFENDANT MILTON PATHOLOGY ASSOCIATES, P.C.

The Court has reviewed the Complaint filed in this case by the Commonwealth of Massachusetts through the Office of the Attorney General ("Commonwealth" or "Plaintiff"), the assented to Motion for Entry of Final Judgment by Consent and the attached Consent. The Court finds that it properly has subject matter jurisdiction of this Complaint and personal jurisdiction over Defendant, Milton Pathology Associates, P.C. ("Milton Pathology"), and finds that the entry of this Final Judgment by Consent is in the interests of justice.

WHEREAS, the Attorney General has concluded an investigation into the policies, procedures, and practices of Milton Pathology regarding its protection of personal information ("PI"), as that term is defined in G.L. c. 93H, §1, and protected health information ("PHI"), as that term is defined in 45 C.F.R. §160.103, of residents of the Commonwealth;

WHEREAS, the Attorney General's investigation pertained to allegations that Milton Pathology engaged in unfair and deceptive acts or practices by accepting PI and PHI of the

JUDGMENT ENTERED ON DOCKET 1-2 and 3
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 58(A)
AND NOTICE SENT TO PARTIES PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 77(D) AS FOLLOWS

notice sent 1/3/12

patients of Milton Hospital in the regular course for treatment and billing purposes, but failed to take reasonable steps to protect said PI and PHI when handling and disclosing the information to its billing service, in violation of state rules and regulations designed to protect patient privacy, including G.L. c. 93A, 940 C.M.R. 3.16, and certain provisions of 201 C.M.R 17.00, as well as federal law;

WHEREAS, the HITECH Act § 13410(e) gives State Attorneys General the authority to bring civil actions on behalf of state residents for violations of the HIPAA Privacy and Security Rules, 45 C.F.R. §§ 160 and 164, to obtain damages on behalf of state residents and to enjoin further violations of these Rules, which prohibit the unauthorized disclosure of patients' PHI and establish the federal minimum standards that must be followed to protect such information;

WHEREAS, the Commonwealth filed a Complaint against Milton Pathology, which is a covered entity under HIPAA as defined by 45 C.F.R. § 160.103 ("covered entity"), alleging that Milton Pathology violated various standards of the HIPAA Privacy Rule, found at 45 C.F.R. § 164 Subparts A and E;

WHEREAS, on or about September 30, 2011, Dr. Jon L. Keller, the president of Milton Pathology, concluded his service as the chief of pathology and ended his pathology practice at Milton Hospital; Dr. Keller is currently winding down the practice of Milton Pathology and has relocated outside the Commonwealth;

WHEREAS, without admission of liability, in order to amicably resolve their differences concerning the Complaint and in order to avoid the cost and uncertainty of litigation, the parties have agreed to entry of this Final Judgment by Consent;

WHEREAS, the parties have filed a joint motion seeking entry of a Final Judgment by Consent;

Accordingly, good cause being shown, **IT IS HEREBY ORDERED AND ADJUDGED THAT:**

1. Milton Pathology and its officers, employees, agents, representatives, affiliates, successors, and assigns are enjoined from disclosing PI and PHI to any third-party service provider or Business Associate as defined by 45 C.F.R. §160.103 ("B.A."), that is not a covered entity, without taking reasonable steps to select and retain such providers that are capable of maintaining appropriate security measures to protect PI and PHI. These steps, to the extent not already complied with for existing B.A.s, shall be completed within thirty (30) days of entry of this Final Judgment by Consent, and shall include:
    a. inquiring about the B.A.'s methods for ensuring adequate safeguards for protecting the confidentiality of PI and PHI and reasonably determining that the B.A.'s methods/practices are sufficient to comply with Milton Pathology's obligations to protect PI and PHI;
    b. inquiring about the B.A.'s methods for disposing of PI and PHI and reasonably determining that the B.A.'s methods/practices are sufficient to comply with Milton Pathology's obligations to protect PI and PHI;
    c. inquiring about the security of a B.A.'s facility to determine the physical safeguards and methods utilized for the protection of PI and PHI at the facility, including obtaining a copy of the B.A.'s Written Information Security Program ("WISP"), created pursuant to 201 C.M.R. 17.03 and reasonably determining that the B.A.'s methods/practices are sufficient to comply with Milton Pathology's obligations to protect PI and PHI;

d. requesting a copy of the B.A.'s policies and procedures or contracts delineating PI and PHI disposal methods;

e. inquiring and obtaining written confirmation that the B.A.'s employees are adequately trained on at least an annual basis regarding the requirements for handling or disposing of PI or PHI pursuant to state and federal law;

f. obtaining from the B.A. certificates of destruction, at least on a quarterly basis, which state that any disclosed PHI was destroyed pursuant to the requirements of G.L. c. 93I, or obtaining returns, at least on a quarterly basis, of any disclosed PHI that is no longer in use by the B.A.; and

g. maintaining a current list of B.A.s. Milton Pathology shall also maintain documentation which shows that it has met requirements (1)(a) – (f) above as to each of its B.A.s.

2. Milton Pathology and its officers, employees, agents, representatives, affiliates, successors, and assigns, are enjoined from disclosing PI and PHI to any third-party service provider or B.A., that is not a covered entity, without:

   a. obtaining a written B.A. Agreement that contains satisfactory assurances that a B.A. will appropriately safeguard and maintain PI and PHI. In addition to being drafted pursuant to the requirements of 45 C.F.R. §164.504(e)(1), the B.A. Agreement shall:

      i. state that any paper PI and PHI that is disclosed to the B.A. will only be destroyed or disposed of by the B.A. by either returning such to Milton Pathology or by being redacted, burned, pulverized or shredded;

ii. state that any electronic media and other non-paper media containing PI and PHI shall only be destroyed, erased, or disposed of by the B.A. by either returning such media to Milton Pathology or by redacting the PI or PHI so that it cannot practicably be read or reconstructed;

iii. state that any PI stored on laptops or other portable devices shall be encrypted;

iv. state that all records and files containing PI transmitted across public networks and/or transferred wirelessly shall be encrypted;

v. designate method(s) that the B.A. will use to destroy the PI and PHI it receives from Milton Pathology;

vi. state that the B.A. will provide Milton Pathology with at least thirty (30) days notice if the B.A. decides to change the method of destruction previously designated;

vii. require that the B.A. provide Milton Pathology with confirmation of the destruction or the return of the PI and PHI on at least a quarterly basis;

viii. require that any changes to the method of destruction elected by the B.A. or any other material changes to the agreement be detailed in a written addendum to the B.A. Agreement that must be executed by both the B.A. and Milton Pathology.

b. For any existing B.A.s, the satisfactory assurances in the form of a B.A. Agreement as described in sections 2(a)(i) – (viii), will be obtained within thirty (30) days of the entry of the Final Judgment by Consent to the extent

that the existing B.A. Agreement does not satisfy the aforementioned requirements.

3. Milton Pathology, during the course of its relationship with any B.A., shall review all B.A. Agreements annually from the effective date of the B.A. Agreement, or at such time that the service agreement between Milton Pathology and said B.A. is renewed, modified, or terminated, to determine if (i) there are any changes to the relationship with the B.A. that require an addendum to the B.A. Agreement or (ii) the B.A. Agreement as written remains effective.
4. Within thirty (30) days after the entry of this Final Judgment by Consent, Milton Pathology shall create a B.A. Agreement that incorporates all the requirements of this Final Judgment by Consent and shall provide a model copy of the B.A. Agreement to the Office of the Attorney General.
5. Within fourteen (14) days after the entry of this Final Judgment by Consent, Milton Pathology shall implement, maintain, and adhere to a WISP pursuant to 201 C.M.R. 17.03, and produce said WISP to the Attorney General's Office.
6. If Dr. Keller returns to the Commonwealth and, under his ownership, establishes or conducts a pathology practice, within ninety (90) days of so establishing or conducting such a practice within the Commonwealth, the practice will engage, at its own expense, an independent third-party firm to review and audit the practice's compliance with the Federal Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. §§ 160 and 164 as they pertain to the practice's handling and disclosure of such materials to third party vendors. Within sixty (60) days of the completion of this required compliance review, the practice shall (i) take all

corrective actions recommended in the compliance review that are necessary to bring this practice into compliance with state and federal law and (ii) report to the Commonwealth the results of the compliance review and all corrective actions that are taken as a result of said review.

7. Within sixty (60) days of the entry of this Consent Judgment, Milton Pathology will establish and implement a system of record maintenance that addresses the transfer of records from Milton Pathology to any B.A. during Milton Pathology's business wind down period which ensures the confidentiality of patient records and includes confirmation that:
    a. medical records are only being released to authorized individuals;
    b. disclosure of PHI is limited to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request;
    c. medical records are being maintained or destroyed per state law and the industry standard; and
    d. upon complete wind down of Milton Pathology that all PHI related to the practice of Milton Pathology disclosed to any B.A. is destroyed.
8. Milton Pathology shall review the scope of its security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing PI or PHI.
9. Within ten (10) days after the entry of this Final Judgment by Consent, Milton Pathology shall cause a true and correct copy of the injunctive terms contained herein to be given to every person who on the date of entry of this Consent Judgment is an officer, director, manager, and employee of Milton Pathology.

10. Milton Pathology shall comply with all reasonable inquiries and requests from the Office of the Attorney General regarding implementation of the terms contained within this Final Judgment.

11. Within thirty (30) days after the entry of this Final Judgment by Consent, Milton Pathology shall pay a total sum of $30,000 to the Office of the Attorney General, and such total payment shall comprise: (i) $5,000 as civil penalties, (ii) $10,000 as attorneys' fees and costs, and (iii) $15,000 that shall be paid pursuant to G.L. c. 12 §4A to fund a contribution at the sole discretion of the Attorney General, to promote education or further investigation/litigation in the area of PI and PHI data protection or to fund other programs, such as a local consumer aid fund, reasonably targeted to benefit consumers.

12. All notices and documents required by this Final Judgment shall be provided in writing to the parties as follows:

A. If to the Attorney General:
Wendoly Ortiz Langlois (BBO# 654442)
Assistant Attorney General
Health Care Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2551
Wendoly.Langlois@state.ma.us

Shannon Choy-Seymour (BBO# 663245)
Assistant Attorney General
Consumer Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2918
Shannon.Choy-seymour@state.ma.us

B. If to Milton Pathology Associates, P.C.:

Dean P. Nicastro, Esq.
Robert L. Kirby, Esq.
Pierce & Mandell, P.C.
11 Beacon Street, Suite 800
Boston, MA 02108
(617)720-2444

13. Milton Pathology waives all rights of appeal with respect to the allegations and claims of the Attorney General set forth in the Complaint against Milton Pathology. Milton Pathology also waives the requirements of Rule 52 of the Massachusetts Rules of Civil Procedure with respect to entry of this Final Judgment.
14. The Superior Court of the Commonwealth retains jurisdiction of this action for the purpose of enforcing or modifying the terms of this Final Judgment, or granting such further relief as the Court deems just and proper, and the provisions of this Final Judgment shall be construed in accordance with the laws of the Commonwealth of Massachusetts.
15. Compliance with this Final Judgment resolves and settles all civil claims the Commonwealth has, or may in the future have, against Milton Pathology relating to the allegations, facts and circumstances set forth in the Complaint filed against Milton Pathology in this action.
16. The provisions of this Final Judgment shall be severable and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the other provisions of this Judgment shall remain in full force and effect.
17. Nothing in this Final Judgment shall be construed as relieving Milton Pathology of its duty to comply with all applicable federal, state, and local laws, regulations, rules, and permits.

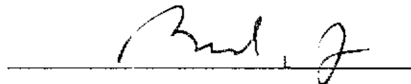
18. Consent to this Final Judgment does not constitute an approval by the Commonwealth of any of Milton Pathology's business acts and practices.

19. Except for purposes of its enforcement by the Attorney General, no part of this Final Judgment by Consent shall be admitted into evidence against Milton Pathology or any of its parent corporations, subsidiaries, affiliates, predecessors or successors. No part of this Final Judgment by Consent shall be treated or construed as an admission of liability or wrongdoing by Milton Pathology or any of its officers, directors, employees, agents, affiliates, predecessors or successors. No part of this Final Judgment by Consent shall be treated or construed as a restriction or limitation on Jon L. Keller, M.D.'s practice of medicine, or as a disciplinary action taken against Jon L. Keller, M.D. by any governmental authority or other entity. No part of this Final Judgment by Consent shall be treated or construed to mean that Jon L. Keller, M.D has been the subject of a claim or lawsuit, or of an investigation or inquiry by any governmental authority or other entity.

20. Any violation of this Final Judgment by Consent is punishable by civil or criminal contempt proceedings, or as otherwise provided by law.

21. This Final Judgment becomes effective upon entry by the Court, and all period of time described herein commence as of that date.

APPROVED AND ORDERED:



Justice of the Superior Court

Dated: 2 Jan, ~~2012~~ 2013

CONSENT TO JUDGMENT OF MILTON PATHOLOGY ASSOCIATES, P.C.

1. The Defendant, Milton Pathology Associates, P.C. ("Milton Pathology"), admits to the continuing jurisdiction and venue of the Suffolk Superior Court, and hereby consents to the entry of the Final Judgment in the form attached hereto. In so consenting, Milton Pathology certifies that it has read and understands each of the sections, paragraphs, and subparagraphs in the Final Judgment.
2. Milton Pathology waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.
3. Milton Pathology understands that the restrictions set forth in the Final Judgment apply to Milton Pathology and to its officers, employees, agents, representatives, affiliates, successors, and assigns.
4. Milton Pathology states that it understands that any violation of this Final Judgment may result in sanctions against it under G.L. c. 93A, § 4, and/or a finding of contempt of court.
5. Milton Pathology states that it is represented by legal counsel, Pierce & Mandell, P.C., 11 Beacon Street, Suite 800, Boston, MA 02108, and that Jon L. Keller, M.D., President of Milton Pathology Associates, P.C., has personally read and understands each numbered paragraph in the Final Judgment by Consent.
6. The undersigned, Jon L. Keller, M.D., represents that he is duly authorized to execute this Consent to Judgment on behalf of Milton Pathology and to bind Milton Pathology to all of its provisions, and that on behalf of Milton Pathology he voluntarily enters into this Final Judgment by Consent.
7. Except for purposes of its enforcement, this consent shall not constitute evidence against Milton Pathology.

ASSENTED TO, WAIVING ALL RIGHTS OF APPEAL

BY: Jon L. Keller, MD, President   Dated: 4/25/12

Jon L. Keller, M.D., President
Milton Pathology Associates, P.C.

ASSENT OF JON L. KELLER, M.D.

Jon L. Keller, M.D., acknowledges and assents to the entry of the Final Judgment by Consent (the "Consent Judgment") by Milton Pathology Associates, P.C. ("Milton Pathology"). Furthermore, to the extent the provisions of the Consent Judgment require certain actions by Dr. Keller, including, but not limited to, Consent Judgment paragraph 6, Dr. Keller agrees to act in accordance with those provisions. In so agreeing, Dr. Keller certifies that he has personally read and understands the Consent Judgment. While not a named party to the Commonwealth's Complaint or the Consent Judgment, Dr. Keller has voluntarily assented to the Consent Judgment, without admission of individual liability or wrongdoing, in order to resolve the concerns the Attorney General raised by the Attorney General's investigation into the policies, procedures, and practices of Milton Pathology regarding its protection of Personal Information and Protected Health Information of residents of the Commonwealth. Neither this assent nor any part thereof shall be treated or construed as an admission of liability or wrongdoing, or admitted into evidence or used for any other purpose except in a proceeding to enforce the terms of this agreement. Without limitation, the provisions of Consent Judgment paragraph 19 apply to this Assent.

Assented to, waiving all rights of appeal:

By: Jon L. Keller, MD
Jon L. Keller, M.D.

Dated: 4/25, 2012