

RESOLUTION AGREEMENT

I. Recitals

1. Parties. The Parties to this Resolution Agreement (“Agreement”) are:

A. The United States Department of Health and Human Services, Office for Civil Rights (“HHS”), which enforces the Federal standards that govern the privacy of individually identifiable health information (45 C.F.R. Part 160 and Subparts A and E of Part 164, the “Privacy Rule”), the Federal standards that govern the security of electronic individually identifiable health information (45 C.F.R. Part 160 and Subparts A and C of Part 164, the “Security Rule”), and the Federal standards for notification in the case of breach of unsecured protected health information (45 C.F.R. Part 160 and Subparts A and D of 45 C.F.R. Part 164, the “Breach Notification Rule”). HHS has the authority to conduct compliance reviews and investigations of complaints alleging violations of the Privacy, Security, and Breach Notification Rules (the “HIPAA Rules”) by covered entities and business associates, and covered entities and business associates must cooperate with HHS compliance reviews and investigations. See 45 C.F.R. §§ 160.306(c), 160.308, and 160.310(b).

B. Complete P.T., Pool & Land Physical Therapy, Inc. (CPT), which is a covered entity, as defined at 45 C.F.R. § 160.103, and therefore is required to comply with the HIPAA Rules. CPT is a California, private, for-profit corporation.

HHS and CPT shall together be referred to herein as the “Parties.”

2. Factual Background and Covered Conduct.

On August 8, 2012, the HHS Office for Civil Rights (OCR) received a complaint alleging that CPT was impermissibly disclosing Protected Health Information (PHI) on its website. Specifically, the complaint alleged that CPT had impermissibly disclosed numerous individuals’ Protected Health Information (PHI), when it posted patient testimonials, including full names and full face photograph images, to its website without obtaining valid, HIPAA-compliant authorizations. On January 15, 2013, OCR notified CPT of its investigation regarding its compliance with the Privacy Rule. OCR’s investigation indicated that the following conduct occurred (“Covered Conduct”):

A. CPT failed to reasonably safeguard PHI. *See* 45 C.F.R. § 164.530(c)(1).

B. CPT impermissibly disclosed PHI. *See* 45 C.F.R. § 164.502(a).

C. CPT failed to implement policies and procedures with respect to PHI that were designed to comply with the requirements with regard to authorization. *See* 45 C.F.R. § 164.530(i)(1).

3. Admission. This Agreement is an admission of civil liability by CPT for violating the provisions of the Privacy Rule identified in the Covered Conduct at Paragraph I.2.A-C above. This Agreement is not an admission of liability for violating Section 1177(a) of the Social Security Act, 42 U.S.C. § 1320d-6(a).

4. No Concession. This Agreement is not a concession by HHS that CPT is not in violation of the Privacy Rule and that CPT is not liable for civil money penalties.

5. Intention of Parties to Effect Resolution. This Agreement is intended to resolve HHS Transaction Number: 12-147771 and any violations of the HIPAA Privacy, Security, and Breach Notification Rules related to the Covered Conduct specified in Paragraph I.2 of this Agreement. In consideration of the Parties' interest in avoiding uncertainty, burden and expense of further investigation and formal proceedings, the Parties agree to resolve this matter according to the Terms and Conditions below.

II. Terms and Conditions

6. Payment. CPT agrees to pay HHS, the amount of \$25,000.00 ("Resolution Amount"). CPT agrees to pay the Resolution Amount on the Effective Date of this Agreement as defined in Paragraph II.14 by automated clearinghouse transaction pursuant to written instructions to be provided by HHS.

7. Corrective Action Plan. CPT has entered into and agrees to comply with the Corrective Action Plan (CAP), attached as Appendix A, which is incorporated into this Agreement by reference. If CPT breaches the CAP, and fails to cure the breach as set forth in the CAP, then CPT will be in breach of this Agreement and HHS will not be subject to the Release set forth in Paragraph II.8 of this Agreement.

8. Release by HHS. In consideration and conditioned upon CPT's performance of its obligations under this Agreement, HHS releases CPT from any actions it may have against CPT under the HIPAA Rules for Covered Conduct specified in Paragraph I.2 of this Agreement. HHS does not release CPT from, nor waive, any rights, obligations, or causes of action other than those for the Covered Conduct and referred to in this paragraph. This release does not extend to actions that may be brought under Section 1177 of the Social Security Act, 42 U.S.C. § 1320d-6.

9. Agreement by Released Parties. CPT shall not contest the validity of its obligation to pay, nor the amount of, the Resolution Amount or any other obligations agreed to under this Agreement. CPT waives all procedural rights granted under Section 1128A of the Social Security Act (42 U.S.C. § 1320a-7a), 45 C.F.R. Part 160 Subpart E, and HHS Claims Collection regulations, 45 C.F.R. Part 30, including, but not limited to, notice, hearing, and appeal with respect to the Resolution Amount.

10. Binding on Successors. This Agreement is binding on CPT and its successors, heirs, transferees, and assigns.

11. Costs. Each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including preparation and performance of this Agreement.

12. No Additional Releases. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against or by any other person or entity.

13. Effect of Agreement. This Agreement constitutes the complete agreement between the Parties. All material representations, understandings, and promises of the Parties are contained in this Agreement. Any modifications to this Agreement must be in writing and signed by both Parties.

14. Execution of Agreement and Effective Date. This Agreement shall become effective (*i.e.*, final and binding) on the date of signing this Agreement and the CAP by the last signatory (“Effective Date”).

15. Tolling of Statute of Limitations. Pursuant to 42 U.S.C. § 1320a-7a(c)(1), a civil money penalty (“CMP”) must be imposed within six (6) years from the date of the occurrence of the violation. To ensure that this six-year period does not expire during the term of this Agreement, CPT agrees that the time between the Effective Date of this Agreement and the date this Agreement may be terminated by reason of CPT’s breach, plus one year thereafter, will not be included in calculating the six (6) year statute of limitations applicable to the violations which are the subject of this Agreement. CPT waives and will not plead any statute of limitations, laches, or similar defenses to any administrative action relating to the Covered Conduct identified in Paragraph I.2 that is filed by HHS within the time period set forth above, except to the extent that such defenses would have been available had an administrative action been filed on the Effective Date of this Agreement.

16. Disclosure. HHS places no restriction on the publication of the Agreement. In addition, HHS may be required to disclose this Agreement and related material to any person upon request consistent with the applicable provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and its implementing regulations, 45 C.F.R. 5.

17. Execution in Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement.

18. Authorizations. The individual(s) signing this Agreement on behalf of CPT represent and warrant that they are authorized by CPT to execute this Agreement. The individual(s) signing this Agreement on behalf of HHS represent and warrant that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

For Complete P.T., Pool & Land Physical Therapy, Inc.

_____/s/_____/ 02/01/2016
Lynda Huey, Owner Date

For the United States Department of Health and Human Services

_____/s/_____/ 02/02/2016
Michael Leoz Date
Regional Manager
Office for Civil Rights, Pacific Region

Appendix A
CORRECTIVE ACTION PLAN
BETWEEN THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
COMPLETE P.T., POOL AND LAND PHYSICAL THERAPY, INC.

I. Preamble

Complete P.T., Pool and Land Physical Therapy, Inc. (hereinafter referred to as (“CPT”) hereby enters into this Corrective Action Plan (“CAP”) with the United States Department of Health and Human Services, Office for Civil Rights (“HHS” or “OCR”). Contemporaneously with this CAP, CPT is entering into a Resolution Agreement (“Agreement”) with HHS, and this CAP is incorporated by reference into the Agreement as Appendix A. CPT enters into this CAP as part of the consideration for the release in Paragraph II.8 of the Agreement.

II. Contact Persons and Submissions

A. Contact Persons

CPT has identified the following individual as its authorized representative and contact person regarding the implementation of this CAP and for the receipt and submission of notifications and reports:

Ms. Lynda Huey
Owner
Complete Land and Physical Therapy
3283 Motor Avenue
Los Angeles, CA 90034

HHS has identified the following individual as its contact person to whom CPT is to report information regarding implementation of this CAP:

Mr. Eric Press
Equal Opportunity Specialist
Department of Health and Human Services
Office for Civil Rights
90 7th Street, Suite 4-100
San Francisco, CA 94103
Phone: (415) 437-8321

Fax: (415) 437-8329

CPT and HHS agree to promptly notify each other of any changes in the contact persons or the other information provided above.

Proof of Submissions. Unless otherwise specified, all notifications and reports required by this CAP may be made by any means, including certified mail, overnight mail, or hand delivery, provided that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

III. Effective Date and Term of CAP

The Effective Date for this CAP shall be calculated in accordance with Paragraph II.14 of the Agreement (“Effective Date”). The period for compliance (“Compliance Term”) with the obligations assumed by CPT under this CAP shall begin on the Effective Date of this CAP and end three (3) years from the Effective Date unless HHS has notified CPT under Section VIII hereof of its determination that CPT has breached this CAP. In the event of such a notification by HHS under Section VIII hereof, the Compliance Term shall not end until HHS notifies CPT that it has determined that the breach has been cured. After the Compliance Term ends, CPT shall still be obligated to submit the final Annual Report as required by Section VI and comply with the document retention requirement in Section VII of this CAP.

IV. Time

In computing any period of time prescribed or allowed by this CAP, all days referred to shall be calendar days. The day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not one of the aforementioned days.

V. Corrective Action Obligations

CPT agrees to the following:

A. Policies and Procedures.

1. CPT shall develop, maintain, and revise, as necessary, written policies and procedures to comply with the Federal standards that govern the privacy of individually identifiable health information (45 C.F.R. Part 160 and Subparts A and E of Part 164, the Privacy Rule). CPT’s policies and procedures shall include, but not be limited to, the minimum content set forth in section V.C below.

2. CPT shall provide such policies and procedures, consistent with Paragraph V.A.1 above, to HHS within 30 days of the Effective Date for review and approval. Upon receiving any recommended changes to such policies and procedures from HHS, CPT shall have 30 days to revise such policies and procedures accordingly and provide the revised policies and

procedures to HHS for review and approval. This process shall continue until HHS approves the policies and procedures.

3. CPT shall adopt and begin implementation of such policies and procedures within 30 days of receipt of HHS' final approval.

B. Distribution and Updating of Policies and Procedures.

1. CPT shall distribute the policies and procedures identified in section V.A to all members of its workforce within 30 days of HHS approval of such policies and procedures and to new members of the workforce within 30 days of their beginning of service.

2. CPT shall require, at the time of distribution of such policies and procedures, a signed written or electronic initial compliance certification from each member of the workforce, stating that the workforce member has read, understands, and shall abide by such policies and procedures.

3. CPT shall assess and update and revise, as necessary, the policies and procedures at least annually. CPT shall provide such revised policies and procedures to HHS for review and approval. Upon receiving any recommended changes to such policies and procedures from HHS, CPT shall have 30 days to revise such policies and procedures accordingly and provide the revised policies and procedures to HHS for review and approval. Within 30 days of the effective date of any approved, substantive revisions, CPT shall distribute such revised policies and procedures to all members of its workforce, and to new members as required by Section V.B.1, and shall require new compliance certifications.

4. CPT shall not involve any member of its workforce in the use or disclosure, including disposal, of PHI if that workforce member has not signed or provided the written or electronic certification required by Paragraphs V.B.2 and V.B.3 of this section.

C. Minimum Content of the Policies and Procedures.

The Policies and Procedures shall include, but not be limited to:

1. Measures that address the following Privacy Rule provisions:

a. Uses and disclosures of PHI – 45 C.F.R. § 164.502(a).

b. Authorizations – 45 C.F.R. § 164.508(a), including:

i) A description of uses and disclosures for which CPT is required to obtain an individual's authorization, including for posting on CPT's website and/or social media pages;

ii) A description of Complete PT's procedure for obtaining an individual's authorization; and

- iii) A valid authorization form.
- c. Safeguards – 45 C.F.R. § 164.530(c)(1).

2. Application of appropriate sanctions (which may include counseling or other instructive corrective action, depending on the circumstances) against members of CPT’s workforce, including supervisors and managers, who fail to comply with the CPT Policies and Procedures.

D. Training.

1. All members of CPT’s workforce shall receive training on CPT’s policies and procedures to comply with the Privacy Rule within 30 days of the implementation of the policies and procedures, or within 30 days of when they become a member of the workforce of CPT.

2. At a minimum, training shall cover all of the topics that are necessary and appropriate for each member of the workforce to carry out that workforce member’s function within CPT, with respect to the use and disclosure of PHI.

3. Each workforce member shall certify, in writing or in electronic form, that she or he has received and understands the required training. The training certification shall specify the date on which training was received. All course materials shall be retained in compliance with section VII below.

4. CPT shall review the training annually, and, where appropriate, update the training to reflect changes in Federal law or HHS guidance, any issues discovered during internal or external audits or reviews, and any other relevant developments.

3. CPT shall not involve any member of its workforce in the use or disclosure, including disposal, of PHI if that workforce member has not provided written or electronic training certification required by Paragraph V.D.3 of this section.

E. Reportable Events.

1. During the Compliance Term, CPT shall, upon receiving information that a workforce member may have failed to comply with any provision of the policies and procedures required by section V.A.1 of this CAP, promptly investigate the matter. If CPT determines, after review and investigation, that a member of its workforce has failed to comply with its Policies and Procedures or that there has otherwise been a violation of the HIPAA Rules, CPT shall notify HHS in writing within thirty (30) days. Such violations shall be known as “Reportable Events.” The report to HHS shall include the following:

- a. A complete description of the event, including the relevant facts, the persons involved, and the provision(s) of CPT’s Policies and Procedures or HIPAA Rules implicated; and

b. A description of the actions taken and any further steps CPT plans to take to address the matter, to mitigate any harm, and to prevent it from recurring, including the application of appropriate sanctions against workforce members who failed to comply with its Policies and Procedures.

2. If no Reportable Events occur within the Compliance Term, CPT shall so inform OCR in its Annual Reports.

F. Removal of PHI from CPT Website.

1. Within 10 days of the Effective Date of this Agreement, CPT shall remove from its website, www.completept.com, and all its affiliated web domains, any PHI for which it has not obtained a valid authorization from the individual who is the subject of the PHI, or their personal representative, pursuant to 45 C.F.R. 164.508. Within 10 days of the Effective Date of this Agreement, CPT shall also use its best efforts to remove all cached versions of its website from the Internet that contain this PHI. If CPT is unable to remove all cached versions within 30 days of the Effective Date of this Agreement, CPT shall provide HHS with documentation explaining its “best efforts” and the reason that the PHI remains accessible on the Internet. CPT’s compliance with this corrective action will be based on HHS’ review and approval of the documentation explaining its “best efforts” and the reason that this PHI remains accessible.

2. Within 60 days of the Effective Date of this Agreement, Complete PT shall notify any individual, or the individual’s personal representative, whose PHI was disclosed by CPT on the CPT website without a valid authorization, that their PHI has been breached, pursuant to 45 C.F.R. 164.404.

VI. Implementation Report and Annual Reports

A. Implementation Report. Within 60 days after receiving HHS’ approval of the Policies and Procedures required by section V.A., CPT shall submit a written report to HHS summarizing the status of its implementation of the obligations of this CAP. The Implementation Report shall include:

1. An attestation signed by CPT’s owner attesting that the Policies and Procedures required by section V.A.: (a) have been adopted; (b) are being implemented; (c) have been distributed to all members of the workforce, in accordance with Paragraphs V.B; and (d) that CPT obtained all the compliance certifications in accordance with Paragraph V.B.2 and V.B.3;

2. A copy of all training materials used for the training required by this CAP, a description of the training, including a summary of the topics covered, the length of the session(s), and a schedule of when the training(s) were held;

3. An attestation signed by the owner of CPT attesting that all members of the workforce have completed the initial training required by this CAP and have executed the training certifications required by section V.E.3;

4. An attestation signed by the owner of CPT listing all CPT locations, the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, and attesting that each location has complied with the terms of the CAP; and

5. An attestation signed by CPT's owner or designee stating that they have reviewed the Implementation Report, have made a reasonable inquiry regarding its content and believe that, upon such inquiry, the information contained therein is accurate, truthful, and complete.

B. Annual Reports. The one-year period beginning on the Effective Date and each subsequent one-year period during the course of the period of compliance obligations shall be referred to as the Reporting Periods. CPT shall submit to HHS Annual Reports with respect to the status of and findings regarding CPT's compliance with this CAP for each of the annual Reporting Periods. CPT shall submit such Annual Reports to HHS no later than 45 days after the end of each corresponding Reporting Period. The Annual Report shall include:

1. A schedule, topic outline, and copies of the training materials for the training programs attended or provided in accordance with this CAP during the Reporting Period that is the subject of the report.

2. An attestation signed by CPT's owner or designated Privacy Officer attesting that it is obtaining and maintaining written or electronic training certifications from all workforce members and that such persons received training pursuant to the requirements set forth in this CAP.

3. A summary of Reportable Events, as defined in section V.E.1, identified during the Reporting Period and the status of any corrective or preventive action relating to all such Reportable Events.

4. An attestation signed by CPT's owner or designated Privacy Officer attesting that he or she has reviewed the Annual Report, has made a reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate, truthful, and complete.

VII. Document Retention

CPT shall maintain for inspection and copying, and shall provide to OCR upon request, all documents and records relating to compliance with this CAP for six (6) years from the Effective Date.

VIII. Requests for Extension and Breach Provisions

CPT is expected to fully and timely comply with all provisions of this CAP.

A. Timely Written Requests for Extensions. CPT may, in advance of any due date set forth in this CAP, submit a timely written request for an extension of time to perform any act or file any notification or report required by this CAP. A "timely written request" is defined as a

request in writing received by HHS at least five days prior to the date by which any act is due to be performed.

B. Notice of Breach and Intent to Impose CMP. The Parties agree that a breach of this CAP by CPT constitutes a breach of the Agreement. Upon a determination by HHS that CPT has breached this CAP, HHS may notify CPT of: (a) CPT’s breach; and (b) HHS’ intent to impose a civil money penalty (CMP) pursuant to 45 C.F.R. Part 160 for the Covered Conduct set forth in Paragraph I.2 of the Agreement and any other conduct that constitutes a violation of the HIPAA Rules (this notification is hereinafter referred to as the “Notice of Breach and Intent to Impose CMP”).

C. CPT’s Response. CPT shall have 30 days from the date of receipt of the Notice of Breach and Intent to Impose CMP to demonstrate to HHS’ satisfaction that:

1. CPT is in compliance with the obligations of the CAP cited by HHS as being the basis for the breach;
2. The alleged breach has been cured; or
3. The alleged breach cannot be cured within the 30-day period, but that: (i) CPT has begun to take action to cure the breach; (ii) CPT is pursuing such action with due diligence; and (iii) CPT has provided to HHS a reasonable timetable for curing the breach.

D. Imposition of CMP. If at the conclusion of the 30-day period, CPT fails to meet the requirements of Section VIII.C to HHS’ satisfaction, HHS may proceed with the imposition of a CMP against CPT pursuant to 45 C.F.R. Part 160 for any violation of the HIPAA Rules related to the Covered Conduct set forth in Paragraph I.2 of the Agreement and for any other act or failure to act that constitutes a violation of the HIPAA Rules. HHS shall notify CPT in writing of its determination to proceed with the imposition of a CMP.

For Complete P.T., Pool & Land Physical Therapy, Inc.

_____/s/_____/ _____ 02/01/2016
Lynda Huey Date
Owner

For the Department of Health and Human Services, Office for Civil Rights

_____/s/_____/ _____ 02/02/2016
Michael Leoz Date
Regional Manager
Office for Civil Rights, Pacific Region

