

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”) 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. Syracuse ASC, L.L.C. d/b/a Specialty Surgery Center of Central New York (“Syracuse”) is a covered entity, as defined at 45 C.F.R. § 160.103, and therefore is required to comply with the HIPAA Rules. Syracuse is a single-facility, ambulatory surgery center located in Liverpool, New York that provides ophthalmic and ENT surgical services and pain management procedures to patients.

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

2. Factual Background and Covered Conduct.

On October 14, 2021, OCR received a breach notification report from Syracuse reporting that from March 14, 2021, through March 31, 2021, a threat actor gained access to its network and the electronic protected health information (ePHI) of its patients. Syracuse reported that the breach affected 24,891 individuals who were current and former patients of its practice and included patient names, dates of birth, Social Security numbers, financial information, and clinical treatment information.

HHS’ investigation indicated that the following conduct occurred (“Covered Conduct”):

- A. Syracuse failed to conduct an accurate and thorough risk analysis of the potential risks and vulnerabilities to ePHI held by Syracuse. *See* 45 C.F.R. §164.308(a)(1)(ii)(A).
- B. Syracuse failed to provide notification to the individuals affected by the breach in a timely manner. *See* 45 C.F.R. § 164.404(b).
- C. Syracuse failed to provide notification to the Secretary in a timely manner. *See* 45 C.F.R. § 164.408(b).

3. No Admission. This Agreement is not an admission of liability by Syracuse.

4. No Concession. This Agreement is not a concession by HHS that Syracuse is not in violation of the HIPAA Rules and not liable for civil money penalties.

5. Intention of Parties to Effect Resolution. This Agreement is intended to resolve OCR Transaction Number 22-447754 and any violations of the HIPAA Rules related to the Covered Conduct specified in paragraph I.2 of this Agreement. In consideration of the Parties' interest in avoiding the uncertainty, burden, and expense of formal proceedings, the Parties agree to resolve this matter according to the Terms and Conditions below.

II. Terms and Conditions

6. Payment. Syracuse has agreed to pay HHS the amount of \$250,000 ("Resolution Amount"). Syracuse agrees to pay the Resolution Amount in one-lump sum within thirty (30) days of the Effective Date of this Agreement as defined in paragraph II.14 pursuant to written instructions to be provided by HHS.

7. Corrective Action Plan. Syracuse 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 Syracuse breaches the CAP and fails to cure the breach as set forth in the CAP, then Syracuse 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 of and conditioned upon Syracuse's performance of its obligations under this Agreement, HHS releases Syracuse from any actions it may have against Syracuse under the HIPAA Rules arising out of or related to the Covered Conduct identified in paragraph I.2 of this Agreement. HHS does not release Syracuse from, nor waive any rights, obligations, or causes of action other than those arising out of or related to 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. Syracuse 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. Syracuse waives all procedural rights granted under Section 1128A of the Social Security Act (42 U.S.C. § 1320a- 7a) and 45 C.F.R. Part 160 Subpart E, and HHS claims collection regulations at 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 Syracuse 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 the 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 shall be set forth in writing and signed by all Parties.

14. Execution of Agreement and Effective Date. The Agreement shall become effective (i.e., final and binding) upon the date of signing of 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 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, Syracuse agrees that the time between the Effective Date of this Agreement and the date the Agreement may be terminated by reason of Syracuse’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. Syracuse 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.

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 Syracuse represent and warrant that they are authorized by Syracuse 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 Covered Entity

_____/s/_____
Dr. Justin Dexter
Co-Medical Director
Syracuse ASC, L.L.C. d/b/a
Specialty Surgery Center of Central New York

__4/2/2025_____
Date

For U.S. Department of Health and Human Services

_____/s/_____
Jamie R. Ballay, Associate Deputy Director,
Enforcement Division, for
Linda C. Colón
Regional Manager
Eastern and Caribbean Region
Office for Civil Rights

__4/17/2025_____
Date

Appendix A

CORRECTIVE ACTION PLAN

BETWEEN THE

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

AND

SYRACUSE ASC, L.L.C. D/B/A SPECIALTY SURGERY CENTER OF CENTRAL NEW YORK

I. Preamble

Syracuse ASC, L.L.C. d/b/a Specialty Surgery Center of Central New York (hereinafter known as “Syracuse”) hereby enters into this Corrective Action Plan (“CAP”) with the United States Department of Health and Human Services, Office for Civil Rights (“HHS”). Contemporaneously with this CAP, Syracuse is entering into a Resolution Agreement (“Agreement”) with HHS, and this CAP is incorporated by reference into the Resolution Agreement as Appendix A. Syracuse enters into this CAP as part of consideration for the release set forth in paragraph II.8 of the Agreement.

II. Contact Persons and Submissions

A. Contact Persons

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

Rowena Ferguson
Specialty Surgery Center of CNY
225 Greenfield, NY 13088

REDATED

REDATED

315-451-1540 (fax)

HHS has identified the following individual as its authorized representative and contact person with whom Syracuse is to report information regarding the implementation of this CAP:

Linda C. Colón, Regional Manager
Eastern and Caribbean Region
Office for Civil Rights
U.S. Department of Health and Human Services
26 Federal Plaza, Suite 19-501
New York, New York 10278

REDATED

REDATED

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

B. 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 Syracuse under this CAP shall begin on the Effective Date of this CAP and end two (2) years from the Effective Date unless HHS has notified Syracuse under Section VIII hereof of its determination that Syracuse 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 Syracuse that it has determined that the breach has been cured. After the Compliance Term ends, Syracuse 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. Nothing in this CAP is intended to eliminate or modify Syracuse’s obligation to comply with the document retention requirements in 45 C.F.R. § 164.316(b) and § 164.530(j).

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 which is not one of the aforementioned days.

V. Corrective Action Obligations

Syracuse agrees to take the corrective action steps specified below.

A. Conduct Risk Analysis

1. Syracuse shall conduct an accurate and thorough assessment of the potential security risks and vulnerabilities to the confidentiality, integrity, and availability of the Syracuse’s electronic protected health information (“ePHI”) (“Risk Analysis”). The Risk Analysis shall incorporate all Syracuse’s locations and facilities and must include an evaluation of the risks to the security of ePHI in electronic equipment, data systems, and programs and applications controlled, administered, owned, or shared by Syracuse, that contain, store, transmit, or receive ePHI. Prior to conducting the Risk Analysis, Syracuse shall develop a complete inventory of all of their facilities, electronic equipment, data systems, programs, and applications that contain or store ePHI, which will then be incorporated into their Risk Analysis.

2. Within sixty (60) days of the Effective Date, Syracuse shall submit to HHS the scope and methodology by which they propose to conduct the Risk Analysis described in paragraph V.A.1. HHS shall notify Syracuse whether the proposed scope and methodology is or is not consistent with 45 C.F.R. § 164.308 (a)(1)(ii)(A).
3. Syracuse shall provide the Risk Analysis, consistent with paragraph V.A.1., to HHS within one hundred twenty (120) days of HHS' approval of Syracuse's methodology described in paragraph V.A.2 for HHS' review. Within ninety (90) days of its receipt of Syracuse's Risk Analysis, HHS will inform Syracuse's Contact in writing as to whether HHS approves of the Risk Analysis or, if necessary to ensure compliance with 45 C.F.R. § 164.308(a)(1)(ii)(A), requires revisions to the Risk Analysis. If HHS requires revisions to the Risk Analysis, HHS shall provide Syracuse's Contact with a detailed, written explanation of such required revisions and with comments and recommendations in order for Syracuse to be able to prepare a revised Risk Analysis. Upon receiving notice of required revisions to the Risk Analysis from HHS and a description of any required changes to the Risk Analysis, Syracuse shall have thirty (30) days in which to revise their Risk Analysis accordingly and submit the revised Risk Analysis to HHS for review and approval. This submission and review process shall continue until HHS approves the Risk Analysis.

B. Develop and Implement a Risk Management Plan

1. Syracuse shall develop a written risk management plan or plans sufficient to address and mitigate any and all security risks and vulnerabilities identified in the Risk Analysis described in Section V.A above ("Risk Management Plan"). The Risk Management Plan shall include a process and timeline for Syracuse's implementation, evaluation, and revision of their risk remediation activities.
2. Within sixty (60) days of HHS' final approval of the Risk Analysis described in Section V.A above, Syracuse shall submit their Risk Management Plan to HHS for HHS' review. Within sixty (60) days of its receipt of the Risk Management Plan, HHS will inform Syracuse's Contact in writing as to whether HHS approves of the Risk Management Plan or, if necessary to ensure compliance with 45 C.F.R. § 164.308(a)(1)(ii)(B), requires revisions to the Risk Management Plan. If HHS requires revisions to the Risk Management Plan, HHS shall provide Syracuse's Contact with detailed comments and recommendations in order for Syracuse to be able to prepare a revised Risk Management Plan. Upon receiving notice of required revisions to the Risk Management Plan from HHS and a description of any required changes to the Risk Management Plan, Syracuse shall have thirty (30) days in which to revise their Risk Management Plan accordingly and submit the revised Risk Management Plan to HHS for review and approval. This submission and review process shall continue until HHS approves the Risk Management Plan.
3. Within thirty (30) days of HHS' approval of the Risk Management Plan, Syracuse shall begin implementation of the Risk Management Plan and distribute the plan to workforce members involved with implementation of the plan.

C. Policies and Procedures

1. Syracuse shall review and, to the extent necessary, revise, its current Privacy, Security and Breach Notification Rule Policies and Procedures (“Policies and Procedures”) based on the findings of the risk analysis and the implementation of the risk management plan, as required by Sections V.A. and V.B. above. Syracuse’s Policies and Procedures must comply with the HIPAA’s Privacy and Security Rules. Syracuse’s policies and procedures shall include, but not be limited to, the minimum content set forth in Section V.E.
2. Syracuse shall provide the Policies and Procedures, consistent with paragraph 1 above, to HHS within 60 days of the implementation of the Risk Management Plan for review and approval. Upon receiving any recommended changes to the Policies and Procedures from HHS, Syracuse shall have 30 days to revise them accordingly and provide the revised Policies and Procedures to HHS for review and approval.
3. Syracuse shall implement such policies and procedures within 30 days of receipt of HHS’ final approval.

D. Distribution and Updating of Policies and Procedures

1. Syracuse shall distribute the Policies and Procedures identified in Section V.C. to all members of the workforce within thirty (30) days of HHS approval of such policies and to new members of the workforce within thirty (30) days of their beginning of service.
2. Syracuse shall require, at the time of distribution of the Policies and Procedures, a signed written or electronic initial compliance certification from all members of the workforce stating that the workforce members have read, understand, and shall abide by such policies and procedures.
3. Syracuse shall assess, update, and revise, as necessary, the Policies and Procedures at least annually (and more frequently if appropriate). Syracuse shall provide such revised policies and procedures to HHS for review and approval. Upon receiving any recommended changes to the Policies and Procedures from HHS, Syracuse shall have thirty days to revise such policies and procedures accordingly and provide the revised Policies and Procedures to HHS for review and approval. Within thirty days of the effective date of any approved substantive revisions, Syracuse shall distribute the revised Policies and Procedures to all members of its workforce, and to new members as required by Section V.D.1 and shall require new compliance certifications.
4. Syracuse shall not provide access to ePHI to any member of its workforce if that workforce member has not signed or provided the written or electronic certification required by paragraphs 2 and 3 of this Section.

E. Minimum Content of the Policies and Procedures

The Policies and Procedures shall include measures to address the following Privacy, Security, and Breach Notification Rule provisions:

1. Risk Analysis- 45 C.F.R. §164.308(a)(1)(ii)(A)
2. Risk Management- 45 C.F.R. §164.308(a)(1)(ii)(B)

3. Information System Activity Review – 45 C.F.R. §164.308(a)(1)(ii)(D)
4. Data backup plan - 45 C.F.R. §164.308(a)(7)(ii)(A) Data Backup Plan
5. Breach Notification to Individuals - 45 C.F.R. § 164.404
6. Breach Notification to the Media - 45 C.F.R. § 164.406
7. Breach Notification to the Secretary - 45 C.F.R. § 164.408

F. Reportable Events

During the Compliance Term, Syracuse shall, upon receiving information that a workforce member may have failed to comply with its Privacy, Security or Breach Notification Rule Policies and Procedures, or that a business associate may have failed to comply with the provisions of the business associate agreement, as applicable, promptly investigate this matter. If Syracuse determines, after review and investigation, that a member of its workforce, or a business associate that has agreed to comply with policies and procedures under Section V.D.3, has failed to comply with these policies and procedures, Syracuse shall notify in writing HHS within thirty (30) days. Such violations shall be known as Reportable Events. The report to HHS shall include the following information:

- a. complete description of the event, including the relevant facts, the persons involved, and the provision(s) of the policies and procedures implicated; and
- b. A description of the actions taken and any further steps Syracuse plans to take to address the matter to mitigate any harm, and to prevent it from recurring, including application of appropriate sanctions against workforce members who failed to comply with its Privacy, Security, or Breach Notification Rule Policies and Procedures.

G. Training

1. Syracuse shall provide HHS with training materials addressing the requirements of the Privacy, Security, and Breach Notification Rules, intended to be used for all workforce members within sixty (60) days of the implementation of the Policies and Procedure required by Section V.C. above.
2. Upon receiving notice from HHS specifying any required changes, Syracuse shall make the required changes and provide revised training materials to HHS within thirty (30) days.
3. Upon receiving approval from HHS, Syracuse shall provide training using the approved training materials for all workforce members within sixty (60) days of HHS' approval and at least every twelve (12) months thereafter. Syracuse shall also provide such training to each workforce member within thirty (30) days of the commencement of such workforce member's service.
4. 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.

5. Syracuse 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.
6. Syracuse shall not provide access to ePHI to any workforce member if that workforce member has not signed or provided the written or electronic certification required by paragraph V.G.4 within a reasonable period of time after completion of such training.

VI. Implementation Report and Annual Reports

- A. **Implementation Report.** Within one hundred and twenty (120) days after the receipt of HHS' approval of the policies and procedures required by Section V.C., Syracuse shall submit a written report to HHS summarizing the status of its implementation of the requirements of this CAP. This report, known as the "Implementation Report," shall include:
 1. An attestation signed by an owner or officer of Syracuse attesting that the Policies and Procedures are being implemented, have been distributed to all appropriate members of the workforce, and that Syracuse has obtained all of the compliance certifications in accordance with paragraphs V.D.2 and V.D.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 session(s) were held;
 3. An attestation signed by an owner or officer of Syracuse attesting that all workforce members have completed the initial training required by this CAP and have executed the training certifications required by Section V.D.2;
 4. An attestation signed by an owner or officer of Syracuse listing all Syracuse locations (including locations and mailing addresses), the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, and attesting that each such location has complied with the obligations of this CAP; and
 5. An attestation signed by an owner or officer of Syracuse stating that he or she has reviewed the Implementation Report, has made a reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.
- B. **Annual Reports.** The one-year period beginning on the Effective Date and the subsequent one-year period during the course of the period of compliance obligations shall be referred to as "the Reporting Periods." Syracuse also shall submit to HHS Annual Reports with respect to the status of and findings regarding Syracuse's compliance with this CAP for each of the two (2) year Reporting Periods. Syracuse shall submit each Annual Report to HHS no later than sixty (60) 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 in accordance with this CAP during the Reporting Period that is the subject of the report;

2. An attestation signed by an owner or officer of Syracuse attesting that it is obtaining and maintaining written or electronic training certifications from all persons that require training that they received training pursuant to the requirements set forth in this CAP;
3. A summary of Reportable Events (defined in Section V.F) identified during the Reporting Period and the status of any corrective and preventative action relating to all such Reportable Events;
4. An attestation signed by an owner or officer of Syracuse 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 and truthful.

VII. Document Retention

Syracuse 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. Breach Provisions

Syracuse is expected to fully and timely comply with all provisions contained in this CAP.

A. Timely Written Requests for Extensions

Syracuse 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 required by this CAP. A “timely written request” is defined as a request in writing received by HHS at least five (5) days prior to the date such an act is required or due to be performed. The requirement may be waived by OCR only.

B. Notice of Breach of this CAP and Intent to Impose Civil Monetary Penalty.

The parties agree that a breach of this CAP by Syracuse constitutes a breach of the Agreement. Upon a determination by HHS that Syracuse has breached this CAP, HHS may notify Syracuse of: (1) Syracuse’s breach; and (2) HHS’ intent to impose a civil money penalty (“CMP”) pursuant to 45 C.F.R. Part 160, or other remedies for the Covered Conduct set forth in paragraph I.2 of the Agreement and any other conduct that constitutes a violation of the HIPAA Privacy, Security, or Breach Notification Rules (“Notice of Breach and Intent to Impose CMP”).

C. Syracuse’s Response.

Syracuse shall have thirty (30) days from the date of receipt of the Notice of Breach and Intent to Impose CMP to demonstrate to HHS’ satisfaction that:

1. Syracuse is in compliance with the obligations of the CAP that HHS cited as the basis for the breach;
2. The alleged breach has been cured; or

3. The alleged breach cannot be cured within the thirty (30) calendar day period, but that: (a) Syracuse has begun to take action to cure the breach; (b) Syracuse is pursuing such action with due diligence; and (c) Syracuse has provided to HHS a reasonable timetable for curing the breach.

D. Imposition of CMP.

If at the conclusion of the thirty (30) calendar day period, Syracuse fails to meet the requirements of Section VIII.C. of this CAP to HHS' satisfaction, HHS may proceed with the imposition of a CMP against Syracuse pursuant to 45 C.F.R. Part 160 for any violations of 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 Syracuse in writing of its determination to proceed with the imposition of a CMP pursuant to 45 C.F.R. Part 160.

For Syracuse

____/s/_____
Dr. Justin Dexter
Co-Medical Director
Syracuse ASC, L.L.C. d/b/a
Specialty Surgery Center of Central New York

__4/2/2025_____
Date

For United States Department of Health and Human Services

____/s/_____
Jamie R. Ballay, Associate Deputy Director,
Enforcement Division, for
Linda C. Colón, Regional Manager
Eastern and Caribbean Region
Office for Civil Rights

__4/17/2025_____
Date