



Director
Office for Civil Rights
Washington, D.C. 20201

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via Certified Mail
U.S. Postal Service
Special Account Registered

Daniel E. Austin, M.D.
Cignet Health Center
3710 Riviera Street, Suite A1
Temple Hills, Maryland 20784

Re: Our Reference Numbers:

09-93069	09-91526	09-90503	09-96696	09-90182
09-90953	09-90241	09-90424	09-98630	09-92953
09-101250	09-91532	09-96674	09-96603	09-89994
10-107013	09-95813	09-102669	09-100259	09-100874
10-103417	09-101674	09-96357	09-90294	09-93174
09-92307	09-93177	09-94133	09-95812	09-98001
09-96464	09-91923	09-98636	09-102389	
09-93265	09-95273	09-96365	09-96796	

NOTICE OF PROPOSED DETERMINATION

Dear Dr. Austin:

Pursuant to the authority delegated by the Secretary of the United States Department of Health and Human Services (HHS) to the Director of the Office for Civil Rights (OCR), I am writing to inform you that OCR is proposing the imposition of a civil money penalty (CMP) of **\$4,351,600** against Cignet Health d/b/a Uplift Medical, P.C., Cignet Health Center, Cignet Health Plan, and/or Cignet Healthcare (hereinafter referred to as "Cignet").

This action is being taken under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), § 262(a), Pub.L. 104-191, 110 Stat. 1936, as amended, *codified at* 42 U.S.C. § 1320d-5, and under the enforcement regulations at 45 C.F.R. Part 160, subpart D.

I. The Statutory Basis for the Proposed CMP

The Secretary of HHS is authorized to impose CMPs (subject to the limitations at 42 U.S.C. § 1320d-5(b)) against any covered entity, as described at 42 U.S.C. § 1320d-1(a), that violates a provision of Part C (Administrative Simplification) of Title XI of the Social Security Act. *See* 42 U.S.C. § 1320d-5(a), as amended. This authority extends to violations of the regulations commonly known as the Privacy Rule promulgated at 45 C.F.R. Part 160 and subparts A and E of Part 164, pursuant to Section 264(c) of HIPAA. The Secretary has delegated enforcement responsibility for the Privacy Rule to the Director of OCR. *See* 65 Fed. Reg. 82381 (Dec. 28, 2000).

For violations occurring prior to February 18, 2009, OCR is authorized to impose CMPs of up to \$100 for each such violation, provided that the total amount imposed on a covered entity for violations of an identical requirement or prohibition during a calendar year may not exceed \$25,000. For violations of the Privacy Rule occurring on or after February 18, 2009, pursuant to section 13410(d) of the Health Information Technology for Economic and Clinical Health (HITECH) Act, which was enacted as part of the American Recovery and Reinvestment Act, Pub.L. 111-5, 123 Stat. 115 and which amended the penalty amounts established under HIPAA, OCR is authorized to impose a range of CMPs of not less than \$100 to more than \$50,000 for each violation, provided that the total amount imposed on a covered entity for violations of an identical requirement or prohibition during a calendar year may not exceed \$1,500,000. *See* 42 U.S.C. § 1320d-5(a); 45 C.F.R. § 160.404(b); 74 Fed. Reg. 56123, 56131 (Oct. 30, 2009).

II. Findings of Fact

1. Cignet is a covered entity within the definition of that term set forth at 45 C.F.R. § 160.103 and as such is required to comply with the requirements of the Privacy Rule.
2. Cignet maintained medical records containing protected health information related to 41 individuals who received physician services from members of the workforce of Cignet.
3. These 41 individuals (listed in Attachment A) requested copies of their medical records maintained by Cignet. Cignet did not provide them access to obtain a copy of the protected health information about them in the medical records maintained by Cignet. Cignet's failure to provide each individual with access continued each day from the date specified in column 5 of Attachment A for each individual.
4. Cignet did not respond to the 41 individuals (listed in Attachment A) who requested copies of their medical records maintained by Cignet.
5. Several of the individuals informed Cignet that they were requesting copies of their medical records so that they could obtain health care services from physicians other than those who were workforce members of Cignet.

6. OCR notified Cignet in writing of its investigations of 38 complaints related to the access requests of the 41 individuals on the dates specified in column 4 of Attachment A for each individual. The notification letters requested a response from Cignet.

7. Cignet did not respond to OCR's written notification of the investigations, numerous follow-up attempts to contact Cignet by telephone, or to two subsequent letters (one of which was from the Region III Manager of OCR and one of which was from the General Counsel's Office of HHS) informing Cignet of its obligation at 45 C.F.R. § 164.524 to provide the individuals access to obtain a copy of the protected health information about them in the designated record sets (medical records) maintained by Cignet.

8. In a first group of 11 of the complaints, the final deadline established in a written letter dated March 1, 2009 by OCR for Cignet's provision of the requested medical records was March 17, 2009. Cignet failed to produce the medical records as directed and failed to respond to OCR in any way regarding the March 1, 2009 letter.

9. In a second group of 16 complaints received by OCR after the first group, the final deadline established in a written letter dated September 1, 2009 by OCR for Cignet's provision of the requested medical records was September 17, 2009. Cignet failed to produce the medical records as directed and failed to respond to OCR in any way regarding the September 1, 2009 letter.

10. On June 26, 2009, OCR issued a subpoena *duces tecum* directing Cignet to produce the medical records of the individuals in the first group of 11 complaints by no later than July 27, 2009. The subpoena was delivered to Cignet by United States Postal Service certified mail, return receipt requested, and was received by Cignet's agent on June 29, 2009.

11. Cignet failed to produce the medical records as directed in the subpoena and failed to respond to OCR in any way regarding the June 26, 2009 subpoena.

12. On August 3, 2009, OCR informed Cignet in writing that it had not received a response as directed in the subpoena. The certified letter, received by Cignet's agent on August 5, 2009 informed Cignet that if it did not respond within 10 days of the receipt of the letter, OCR would proceed with a series of enforcement actions.

13. Cignet failed to produce the medical records as directed and failed to respond to OCR in any way regarding the August 3, 2009 letter.

14. On February 4, 2010, through the representation of the Department of Justice, Civil Division, Federal Programs Branch, OCR filed a petition to enforce its subpoena *duces tecum* in the United States District Court for the District of Maryland (Case 8:10-mc-00059-AW). The Court issued an order for Cignet to show cause and scheduled a hearing for March 29, 2010. Cignet did not appear at the hearing, did not respond to the

petition and did not defend the action.

15. On March 30, 2010, the Court granted a judgment by default against Cignet in accordance with the petition and directed Cignet to produce a copy of the complete designated record sets (medical records) for the 11 individuals listed in the OCR subpoena by April 7, 2010.

16. On April 7, 2010, Cignet delivered 59 boxes of original medical records to the Department of Justice, Civil Division, Federal Programs Branch at 20 Massachusetts Avenue, N.W., Washington, D.C. 20044 to the attention of the attorney representing OCR in the U.S. District Court case.

17. Included in those 59 boxes were the medical records of the 11 individuals listed in the OCR subpoena. In the 59 boxes, OCR also found the medical records of 30 other individuals listed in Attachment A. The 59 boxes also contained the medical records of approximately 4,500 individuals for whom OCR made no request or demand and for whom Cignet had no basis for the disclosure of their protected health information to OCR.

18. On August 19, 2010, OCR informed Cignet in a letter from its Region III Manager that its investigation of these complaints indicated that Cignet failed to comply with the Privacy Rule and that this matter had not been resolved by informal means despite OCR's attempts to do so. The letter stated that pursuant to 45 C.F.R. § 160.312(a)(3), OCR was informing Cignet of the preliminary indications of noncompliance and providing Cignet with an opportunity to submit written evidence of any mitigating factors (45 C.F.R. § 160.408) or affirmative defenses (45 C.F.R. § 160.410) for OCR's consideration in making its determination of a CMP pursuant to 45 C.F.R. § 160.404. The letter stated that Cignet could also submit written evidence to support a waiver of a CMP for violations that were due to reasonable cause and not due to willful neglect (45 C.F.R. § 160.412). Each of Cignet's indicated acts of noncompliance and the potential CMP for the acts of noncompliance were described in the letter. The letter was delivered to Cignet by United States Postal Service certified mail, return receipt requested, and was received by Cignet's agent on August 23, 2010.

19. Cignet failed to respond to OCR in any way regarding OCR's August 19, 2010 letter.

20. OCR obtained the authorization of the Attorney General of the United States prior to issuing this Notice of Proposed Determination to impose a CMP.

III. Basis for CMP

Based on the above findings of facts, OCR has determined that Cignet is liable for the following violations of the Privacy Rule and, therefore, is subject to a CMP.

1. *Failure to Provide Access (45 C.F.R. § 164.524)*. Cignet failed to provide 41 individuals listed in Attachment A timely access to obtain a copy of the protected health information about them in the designated record sets (medical records) maintained by Cignet. These failures constitute violations of 45 C.F.R. § 164.524. Cignet's failure to provide each individual with access constitutes a separate violation of 45 C.F.R. § 164.524, and each day that the violation continued (that is, from the date specified in column 5 of Attachment A until April 7, 2010) counts as a separate violation of 45 C.F.R. § 164.524.
2. *Failure to Cooperate with an Investigation (45 C.F.R. § 160.310(b))*. Cignet failed to cooperate with OCR's investigation of 27 complaints regarding Cignet's noncompliance described in paragraph 1 above. These failures to cooperate with an investigation constitute violations of 45 C.F.R. § 160.310(b). Cignet's failure to cooperate with OCR's investigation of each complaint constitutes a separate violation of 45 C.F.R. § 160.310(b), and each day that the violation continued (that is, from the date specified in column 7 of Attachment A until April 7, 2010) counts as a separate violation of 45 C.F.R. § 160.310(b). Each violation of 45 C.F.R. § 160.310(b) was due to Cignet's willful neglect of its obligation to comply with 45 C.F.R. § 160.310(b). Willful neglect means the conscious, intentional failure or reckless indifference to the obligation to comply with the administrative simplification provision violated. *See* 45 C.F.R. § 160.401.

IV. No Affirmative Defenses

By its letter of August 19, 2010 (see Finding #18 above), OCR offered Cignet the opportunity to provide written evidence of mitigating factors or affirmative defenses and/or its written evidence in support of a waiver of a CMP within thirty (30) days from the date of receipt of that letter. No evidence was submitted to OCR by Cignet by September 27, 2010. Therefore, OCR has determined that there is no affirmative defense to and no basis for waiver of the CMP pursuant to 45 C.F.R. §§ 160.410 and 160.412.

V. Factors in Determining the Amount of the CMP

In determining the amount of the CMP for each violation, OCR has considered the following factors in accordance with 45 C.F.R. § 160.408. Each of the factors listed below was considered an aggravating factor in determining the amount of the CMP:

(a) These violations hindered the individuals' ability to obtain continuing health care by delaying their receipt of the protected health information about them when they sought care from physicians other than those at Cignet. 45 C.F.R. § 160.408(b)(3).

(b) OCR was forced by Cignet's inaction to issue a subpoena *duces tecum* and to file a petition with the U.S. District Court to obtain copies of the protected health information of 11 of these individuals, who are guaranteed by the Privacy Rule to receive a copy of the protected health information about them in medical records maintained by a covered entity. 45 C.F.R. § 160.408(f).

VI. Waiver

In considering the imposition of the CMP, OCR has determined that the violation of failure to cooperate with an investigation (45 C.F.R. § 160.310(b)) was due to Cignet's willful neglect of its obligation to comply with this requirement of the Privacy Rule. Therefore OCR may not waive the CMP, in whole or in part, for this violation pursuant to 45 C.F.R. § 160.412 even if the payment of the penalty would be excessive relative to the violation.

VII. Amount of the CMP

Based on the foregoing, OCR finds that Cignet is liable for the following CMP amounts for the violations described in Section III:

A. Amount of CMP per Violation

1. *Provision of Access (45 C.F.R. § 164.524):*

The CMP is **\$1,351,600.**

The computation of this CMP amount is shown in Attachment B. This CMP amount is based on

45 C.F.R. § 160.404(b)(1) for the violations that occurred prior to February 18, 2009 and on 45 C.F.R. § 160.404(b)(2)(i) for the violations that occurred on or after February 18, 2009.

2. *Failure to Cooperate with an Investigation (45 C.F.R. § 160.310(b)):* The CMP is **\$3,000,000.**

The computation of this CMP amount is shown in Attachment C. This CMP amount is based on

45 C.F.R. § 160.404(b)(2)(iv).

B. Total Amount of CMP

The total amount of the CMP for which OCR finds Cignet liable for the violations of the Privacy Rule described in Section III and for which OCR hereby proposes Cignet pay is: **\$4,351,600.**

VIII. Right to a Hearing

Cignet has the right to a hearing before an administrative law judge to challenge this proposed CMP. To request a hearing to challenge this proposed CMP, Cignet must mail a request, via certified mail with return receipt request, under the procedures set forth at 45 C.F.R. Part 160 within 90 days of your receipt of this letter. Such a request must: (1) clearly and directly admit, deny, or explain each of the findings of fact contained in this

notice; and (2) state the circumstances or arguments that you allege constitute the grounds for any defense, and the factual and legal basis for opposing the proposed CMP. See 45 C.F.R. § 160.504(c). If you wish to request a hearing, you must submit your request to:

Theodore Kim, Esquire
Chief, Civil Remedies Division
Departmental Appeals Board, MS 6132
330 Independence Ave, SW
Cohen Building, Room G-644
Washington, D.C. 20201
Telephone: (202) 565-9462

A failure to request a hearing within 90 days permits the imposition of the proposed CMP without a right a hearing under 45 C.F.R. § 160.504 or a right of appeal under 45 C.F.R. § 160.548. If you choose not to contest this proposed CMP, you should submit a written statement accepting its imposition within 90 days of receipt of this notice.

If Cignet does not request a hearing within 90 days, then we will notify you of the imposition of the CMP through separate letter, including instructions on how Cignet can make payment, and the CMP will become final upon receipt of such notice.

If you have any questions concerning this letter, please contact Paul Cushing, Regional Manager, Region III, at 215-861-4441.

Sincerely,

^ \s\ ^

Georgina C. Verdugo
Director

cc: Darrell Allen

Enclosures:
Attachments A, B, and C

Attachment A

Critical Dates

OCR Transaction #	Last Name	First Name	Column 4 Investigation Notification	Column 5 Access Deadline	Column 6 Notice of Access Request	Column 7 OCR Cooperation Deadline
09-93069			3/1/2009	11/30/2008	9/30/2008	3/17/2009
09-90953			12/5/2008	12/17/2008	10/17/2008	3/17/2009
09-101250			8/13/2009	10/13/2009	8/13/2009	n/a
10-107013			1/19/2009	11/14/2009	9/14/2009	n/a
10-107013			1/19/2009	11/14/2009	9/14/2009	n/a
10-103417			10/13/2009	12/13/2009	10/13/2009	n/a
09-92307			2/2/2009	12/7/2008	10/7/2008	3/17/2009
09-96464			5/19/2009	7/19/2009	5/19/2009	9/17/2009
09-93265			3/1/2009	12/30/2008	10/30/2008	3/17/2009
09-91526			5/19/2009	7/19/2009	5/19/2009	9/17/2009
09-90241			12/5/2008	11/25/2008	9/25/2008	3/17/2009
09-91532			12/5/2008	12/31/2008	10/31/2008	3/17/2009
09-95813			5/19/2009	7/19/2009	5/19/2009	9/17/2009
09-101674			9/9/2009	8/12/2009	6/12/2009	n/a
09-101674			9/9/2009	8/12/2009	6/12/2009	n/a
09-101674			9/9/2009	8/12/2009	6/12/2009	n/a
09-93177			2/2/2009	2/8/2009	12/8/2008	3/17/2009
09-91923			2/2/2009	1/21/2009	11/21/2008	3/17/2009
09-95273			5/19/2009	3/21/2009	1/19/2009	9/17/2009
09-90503			12/5/2008	7/19/2009	5/19/2009	9/17/2009
09-90424			5/19/2009	7/19/2009	5/19/2009	9/17/2009
09-96674			5/19/2009	7/19/2009	5/19/2009	9/17/2009
09-102669			9/14/2009	11/30/2008	9/30/2008	n/a
09-96357			5/19/2009	6/3/2009	4/3/2009	9/17/2009

OCR Transaction #	Last Name	First Name	Column 4 Investigation Notification	Column 5 Access Deadline	Column 6 Notice of Access Request	Column 7 OCR Cooperation Deadline
09-94133	██████	██████	5/19/2009	7/19/2009	5/19/2009	9/17/2009
09-98636	██████	██████	6/23/2009	7/5/2009	5/5/2009	n/a
09-96365	██████	██████	5/19/2009	11/30/2008	9/30/2008	9/17/2009
09-96696	██████	██████	5/19/2009	7/19/2009	5/19/2009	9/17/2009
09-98630	██████	██████	6/23/2009	4/20/2009	2/20/2009	n/a
09-96603	██████████	██████	5/19/2009	7/19/2009	5/19/2009	9/17/2009
09-100259	██████	██████	7/31/2009	3/30/2009	1/28/2009	n/a
09-90294	██████	██████	12/5/2008	12/1/2008	10/1/2008	9/17/2009
09-95812	██████	██████	5/19/2009	7/19/2009	5/19/2009	9/17/2009
09-102389	██████	██████	9/9/2009	11/9/2009	9/9/2009	n/a
09-96796	██████	██████	5/19/2009	7/19/2009	5/19/2009	9/17/2009
09-90182	██████	██████	5/19/2009	7/19/2009	5/19/2009	9/17/2009
09-92953	██████	██████	2/2/2009	1/12/2009	11/12/2008	3/17/2009
09-89994	██████████	██████	12/5/2008	12/13/2008	10/13/2008	3/17/2009
09-100874	██████	██████	9/23/2009	11/23/2009	9/23/2009	n/a
09-93174	██████	██████	2/2/2009	10/31/2008	8/31/2008	3/17/2009
09-98001	██████	██████	6/23/2009	2/1/2009	12/1/2008	n/a

Attachment B**Computation of CMP for Failure to Permit Access to Protected Health Information – Violations of 45 C.F.R. § 164.524**

Violations were not corrected within 30 days of when Covered Entity knew or with the exercise of reasonable diligence would have known of the violations. Violations were continuing violations from the dates shown in column 5 of Attachment A until April 7, 2010.

Individual # from Att. A	Penalty Per Day	2008 Days*	2008 Penalty	2009 Days*	2009 Penalty	2010 Days*	2010 Penalty
1	\$100	31	\$3,100	365	\$36,500	97	\$9,700
2	\$100	14	\$1,400	365	\$36,500	97	\$9,700
3	\$100	0	0	79	\$7,900	97	\$9,700
4	\$100	0	0	47	\$4,700	97	\$9,700
5	\$100	0	0	47	\$4,700	97	\$9,700
6	\$100	0	0	18	\$1,800	97	\$9,700
7	\$100	24	\$2,400	365	\$36,500	97	\$9,700
8	\$100	0	0	165	\$16,500	97	\$9,700
9	\$100	1	\$100	365	\$36,500	97	\$9,700
10	\$100	0	0	165	\$16,500	97	\$9,700
11	\$100	36	\$3,600	365	\$36,500	97	\$9,700
12	\$100	0	0	365	\$36,500	97	\$9,700
13	\$100	0	0	165	\$16,500	97	\$9,700
14	\$100	0	0	141	\$14,100	97	\$9,700
15	\$100	0	0	141	\$14,100	97	\$9,700
16	\$100	0	0	141	\$14,100	97	\$9,700
17	\$100	0	0	326	\$32,600	97	\$9,700
18	\$100	0	0	344	\$34,400	97	\$9,700
19	\$100	0	0	284	\$28,400	97	\$9,700
20	\$100	0	0	165	\$16,500	97	\$9,700
21	\$100	0	0	165	\$16,500	97	\$9,700
22	\$100	0	0	165	\$16,500	97	\$9,700
23	\$100	31	\$3,100	365	\$36,500	97	\$9,700
24	\$100	0	0	211	\$21,100	97	\$9,700
25	\$100	0	0	165	\$16,500	97	\$9,700
26	\$100	0	0	179	\$17,900	97	\$9,700
27	\$100	31	\$3,100	365	\$36,500	97	\$9,700
28	\$100	0	0	165	\$16,500	97	\$9,700
29	\$100	0	0	255	\$25,500	97	\$9,700
30	\$100	0	0	165	\$16,500	97	\$9,700
31	\$100	0	0	276	\$27,600	97	\$9,700
32	\$100	31	\$3,100	365	\$36,500	97	\$9,700
33	\$100	0	0	165	\$16,500	97	\$9,700
34	\$100	0	0	52	\$5,200	97	\$9,700

35	\$100	0	0	165	\$16,500	97	\$9,700
36	\$100	0	0	165	\$16,500	97	\$9,700
37	\$100	0	0	353	\$35,300	97	\$9,700
38	\$100	18	\$1,800	365	\$36,500	97	\$9,700
39	\$100	0	0	38	\$3,800	97	\$9,700
40	\$100	61	\$6,100	365	\$36,500	97	\$9,700
41	\$100	0	0	334	\$33,400	97	\$9,700
Total	\$100	278	\$27,800	9,261	\$926,100	3,977	\$397,700
Penalty Total by Year	-----	-----	\$27,800	-----	\$926,100	-----	\$397,700
Total Penalty for Access Violations (add amounts in row 43)	\$1,351,600						

*Number of days in 2008, 2009 and 2010 for each individual's access is computed from the start date (deadline for compliance with access requirement) shown in column 5 of Attachment A and ending April 7, 2010.

Attachment C

Computation of CMP for Failure to Cooperate with Complaint Investigation by OCR - Violations of 45 C.F.R. § 160.310(b)

Violations were due to willful neglect not corrected within 30 days of when Covered Entity knew or with the exercise of reasonable diligence would have known of the violations. Minimum penalty is \$50,000 per violation. Violations continued each day from the 2009 dates in column 7 of Attachment A until April 7, 2010. Penalty may not exceed \$1.5 million for identical violations in a calendar year. (45 C.F.R. § 160.404(b)(2)(iv)).

Individual # from Att. A	Penalty Amount Per Day	2009 Days*	2009 Penalty	2010 Days*	2010 Penalty
1	\$50,000	289	\$14,450,000	97	\$4,850,000
2	\$50,000	289	\$14,450,000	97	\$4,850,000
7	\$50,000	289	\$14,450,000	97	\$4,850,000
8	\$50,000	105	\$5,250,000	97	\$4,850,000
9	\$50,000	289	\$14,450,000	97	\$4,850,000
10	\$50,000	105	\$5,250,000	97	\$4,850,000
11	\$50,000	289	\$14,450,000	97	\$4,850,000
12	\$50,000	289	\$14,450,000	97	\$4,850,000
13	\$50,000	105	\$5,250,000	97	\$4,850,000
17	\$50,000	289	\$14,450,000	97	\$4,850,000
18	\$50,000	289	\$14,450,000	97	\$4,850,000
19	\$50,000	105	\$5,250,000	97	\$4,850,000
20	\$50,000	105	\$5,250,000	97	\$4,850,000
21	\$50,000	105	\$5,250,000	97	\$4,850,000
22	\$50,000	105	\$5,250,000	97	\$4,850,000
24	\$50,000	105	\$5,250,000	97	\$4,850,000
25	\$50,000	105	\$5,250,000	97	\$4,850,000
27	\$50,000	105	\$5,250,000	97	\$4,850,000
28	\$50,000	105	\$5,250,000	97	\$4,850,000
30	\$50,000	105	\$5,250,000	97	\$4,850,000
32	\$50,000	105	\$5,250,000	97	\$4,850,000
33	\$50,000	105	\$5,250,000	97	\$4,850,000
35	\$50,000	105	\$5,250,000	97	\$4,850,000
36	\$50,000	105	\$5,250,000	97	\$4,850,000
37	\$50,000	289	\$14,450,000	97	\$4,850,000
38	\$50,000	289	\$14,450,000	97	\$4,850,000
40	\$50,000	289	\$14,450,000	97	\$4,850,000
Total of 27 individual complaints	\$50,000	4,859 days	Total exceeds calendar year limit - see below	2,619 days	Total exceeds calendar year limit—see below

Calendar Year Limit on Penalty	-----	-----	\$1,500,000	-----	\$1,500,000
Total Penalty for Access Violations (add amounts in row 42):	\$3,000,000				

* Number of days in 2009 and 2010 is computed from the start date (deadline for compliance with Cooperation requirement) shown in column 7 of Attachment A and ending April 7, 2010.