

*For Strafford
Bonus Slides
November 3, 2011*

Data Security Breaches: Social-Media Leakage



THESE MATERIALS ARE MEANT TO ASSIST IN A GENERAL UNDERSTANDING OF CURRENT LAW AND PRACTICES.

THEY ARE NOT TO BE REGARDED AS LEGAL ADVICE.

THOSE WITH PARTICULAR QUESTIONS SHOULD SEEK ADVICE OF COUNSEL.

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Compliance's Three E's *(c't'd)*



- **Train on rules of behavior for access, nondisclosure and safeguarding**
- **Review pertinent segments of certain Employee Handbook policies, e.g.**
 - **Code of Conduct**
 - **Confidentiality Policy**
 - **Technology-Acceptable-Use-Policy (TAUP)/No-Employee-Expectation-of-Privacy Policy (NoEEP)**
 - **Separating Employee Policy (& related checklists from IT Dep't, HR Dep't, etc.)**

Compliance's Three E's *(c't'd)*



- **EXAMPLE = Social-Media use, addressed in:**
 - TAUP segment; or
 - separate policy

- **Some topics:**
 - Disclosures of protected: PII; or PHI
 - Sock-Puppeting (Anonymous or Pseudonymous posts)

Social-Media – Ex. 1: Photo/Video Tags

MISTAKEN
IDENTITY

- TAG You're it



- See ARMA, [EU Investigates Facebook, Google Tagging](#), Info. Mgmt. (7/1/10)
- See also Stephanie Bodoni, [Facebook to Be Probed in EU for Facial Recognition in Photos](#) (Bloomberg BusinessWeek 6/8/11); Kevin J. O'Brien, [Germany Investigating Facebook Tagging Feature](#), N.Y. Times (8/3/11)

Social-Media Privacy?

Photo/Video Tags *(c't'd)*



- **Recent developments:**
 - **Facebook settings have changed**
 - Facebook, [Making It Easier to Share With Who\[m\] You Want](#) (8/23/11)
 - **EU countries' probes of tagging and facial recognition**
 - **But, in U.S., one court – in a divorce/custody case – OK'd tags**
 - [Lalonde v. Lalonde](#), No. 2009-CA-002279-MR (Ky. Ct. App. 2/25/11)

Social-Media – Ex. 2: PII Breach



■ Battle Creek, Mich. Mayor:

- In June 2009, he tweeted a link to a City check-registry posted on web
- That public document contained PII on 65 city employees, including Social Security No. for 6 of them
- His explanation: An employee had mistakenly given him the wrong item
- Taken down quickly (within a day)
- But affected employees offered free identity protection for 1 year

See article linked [here](#)

Social-Media – Ex. 3: PHI Breach



- **HIPAA concerns in Virginia
Henschel, *Facebook Terminations:
Friends Don't Let Friends Talk
Smack About Their Job*, LexisNexis
Applied Discovery Blog (4/12/10)**

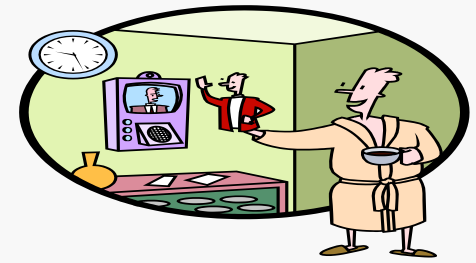
<<http://Facebook-HIPAA-4-12-10.notlong.com>>

Social-Media – Ex. 4: Sock-Puppeting



- “[Wild] OATS [Markets] has lost their way and no longer has a sense of mission or even a well-thought-out theory of the business. They lack a viable business model”
- “Perhaps the OATS Board will wake up and dump [C.E.O. Perry] Odak and bring in a visionary and highly competent C.E.O.”
- “I like [OATS rival Whole Foods Markets Chair and C.E.O. John P.] Mackey’s haircut. I think he looks cute!”
 - **Some of 7 years of postings by Whole Foods co-founder Mackey himself on Yahoo Finance’s bulletin board**

Three E's – Example *(c't'd)*



- **Anonymous or Pseudonymous Posts**
 - *PG&E SmartMeter Exec. Resigns (11/11/10)*
<http://articles.sfgate.com/2010-11-11/business/24826008_1_smartmeter-program-discussion-group-resignation>
- **May Violate:**
 - *Federal Antitrust Laws*
 - *Federal Securities Laws*
 - *Federal Trade Commission online-advertising guidelines as to Endorsements & Testimonials*
 - *FTC Pursues Online Endorsements by Undisclosed Insiders, Fenwick & West Litigation Alert (9/2/10)*
<www.fenwick.com/docstore/Publications/Litigation/Litigation_Alert_09-02-10.pdf>
- **Compare FDA issue**
 - *articles' links available on request*

Conclusion/ Questions



- *Let's be careful out there . . .*
- Q+A:



- Robert D. Brownstone

<www.fenwick.com/attorneys/4.2.1.asp?aid=544>

(including extensive bibliography)



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