

UC San Diego Health

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## Academic Medical Center Compliance: Tips, Traps, and Emerging Best Practice

Daniel J. Weissburg, JD, CHC  
Chief Compliance & Privacy Officer  
University of California San Diego Health

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## University of California Health

**5 UC MEDICAL CENTERS**



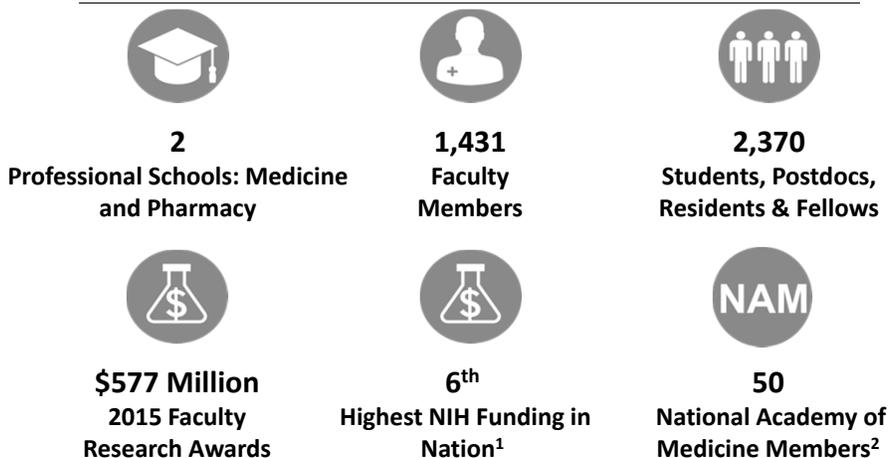
TRAINS **50%**  
OF STATE'S MEDICAL  
STUDENTS & RESIDENTS

GENERATES **\$16.7B**  
IN ECONOMIC ACTIVITY

PERFORMS **50%**  
OF ALL TRANSPLANT  
SURGERIES IN CA

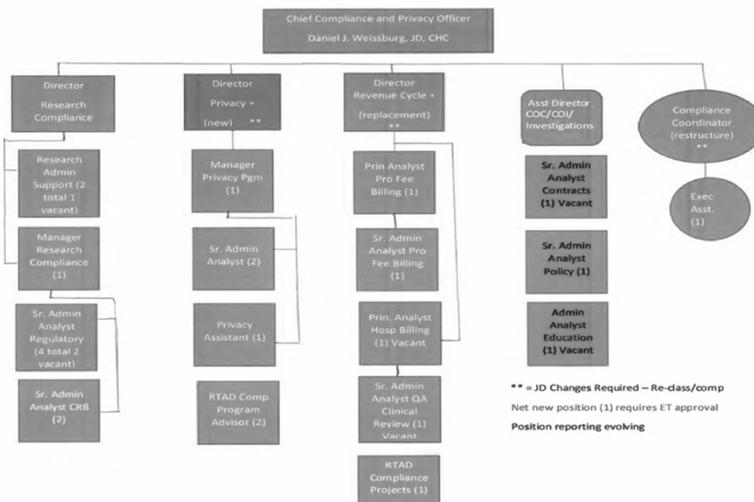
**60%** OF PATIENTS ON  
MEDICARE, MEDI-CAL OR  
LACK INSURANCE

## UC San Diego Health – Academic Enterprise



1. Based on total campus NIH awards  
 2. Based on total campus members, current and emeritus

## Compliance Organizational Structure



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## Daniel J. Weissburg, JD, CHC

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- UC San Diego Health Chief Compliance & Privacy Officer since 2016
- University of Wisconsin Health Compliance and Privacy Officer 2007-2016
- Healthcare regulatory/compliance attorney since 1991
- Started in law firm practice: Epstein Becker & Green in Washington, DC; then McDermott Will & Emery in Chicago
- Creator and Editor-in-Chief of the CCH Healthcare Compliance Portfolio
- White House Intern

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## Revenue Cycle Compliance at an AMC

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- Research Studies: Study Coordinators and Coverage Analysts
  - To whom do they report, and is that a problem?
    - The ever-present gap between “optimal” research study (and “optimal” care generally) and compliant reimbursement
- How to build an interdisciplinary team across the enterprise (RAC Pack & ProDCROC)
  - Patient Business Services
  - Internal/External Audit
  - Information Technology
  - Compliance

## Case Study: Overlapping surgeries and a FCA Whistle Blower

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- Ganesh Elangovan, M.D., a resident at Medical College of Wisconsin
- Became a whistleblower after he allegedly was put in the position of operating on patients without the presence of the teaching physician.



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## Case Study: Overlapping surgeries and a FCA Whistle Blower

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- Medical College of Wisconsin agreed to pay \$840,000 to settle a false claims allegations that two of its teaching physicians charged Medicare for performing more than one neurosurgery at the same time.
- Dr. Elangovan received up to **30%** of the government's recovery



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## Case Study: Overlapping surgeries and a FCA Whistle Blower

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- Allegation: Medical College of Wisconsin scheduled two neurosurgery patients at the same time and billed Medicare and TRICARE as if teaching physicians performed the surgeries and were immediately available during them.

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## Case Study: Overlapping surgeries and a FCA Whistle Blower

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- The Medicare teaching physician billing rule allows separate billing only if the teaching physician personally performs the service or is physically present for at least the key portions of the service and immediately available when the resident performs the service.
- A single teaching physician cannot be responsible for two simultaneous surgeries.

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## Case Study: Overlapping surgeries and a FCA Whistle Blower

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- The resident-turned-whistleblower found himself in the middle of the alleged misconduct.
- Ten examples of two surgeries scheduled simultaneously by neurosurgeons who were named in the complaint.

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## Case Study: Overlapping surgeries and a FCA Whistle Blower

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- Allegation: Dr. Elangovan personally witnessed the routine occurrence of simultaneous surgeries and was forced to participate in the fraud — frequently performing one of those surgeries without any back-up.

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**Department of Justice**  
U.S. Attorney's Office  
Eastern District of Wisconsin

FOR IMMEDIATE RELEASE  
Friday, January 9, 2015

**Medical College of Wisconsin, Inc. Pays \$840,000 to Settle Alleged False Claims for Neurosurgeries**

United States Attorney James L. Santelle of the Eastern District of Wisconsin announced today that the Medical College of Wisconsin, Inc. (MCW) has paid the federal government \$840,000 to resolve allegations that it violated the False Claims Act. MCW is alleged to have knowingly billed federal healthcare programs for neurosurgeries involving residents who did not receive the required level of supervision from teaching physicians.

MCW is a medical school in Milwaukee, Wisconsin, that employs teaching physicians who provide medical care to patients and supervise residents. The civil settlement resolves a lawsuit filed under the *qui tam*—or whistleblower—provisions of the False Claims Act, which allows private citizens with knowledge of fraud to bring a civil action on behalf the United States and share in any recovery. As part of the resolution, the whistleblower will receive a share of the settlement.

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## The Government's Goal

"The settlement we are announcing today reflects the focused, sustained, and purposeful efforts of the Justice Department, together with our partnered federal agencies, to investigate and redress fraud in our healthcare system....Under the authority of the False Claims Act, we are aggressive yet even-handed in pursuing health care fraud to ensure that taxpayer dollars are spent lawfully and that federal monies that should not have been paid are returned with an appropriate penalty."

- US Attorney's Office, Eastern  
District of Wisconsin (January 9, 2015).



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## COI vs COC

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- Related challenges best managed from a single data set/single process?
  - Faculty satisfier: Ease/efficiency of interface
  - Sunshine is the best disinfectant, but to what extent and for how long will the Physician Payments Sunshine Act be a paper tiger?
  - If the future is “uber-transparency,” should AMCs go there fast and make a marketing tool out of it?

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## Privacy & Data Security vs Academic Freedom

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- The joys of being a HIPAA Hybrid Entity: How to get tangential “healthcare people” to think and act like people who are under or close to a Healthcare Component.
- Broad-based tumor boards and like conferences: Technology is not quite our friend (yet?)
- The power of the boogie man – case study-driven privacy compliance education.

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## Case Study: NY Presbyterian and Columbia U

- Columbia University College of Physicians and Surgeons:
  - 655 Students
  - \$1.46 billion annual budget
  - \$1.6 billion endowment
  - First MD graduate in 1769
  
- New York Presbyterian Hospital:
  - 2,478 beds (six locations)
  - \$4.3 billion annual revenue (2013)
  - 6<sup>th</sup> on America's Best Hospitals (U.S. News)



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## Case Study: NY Presbyterian and Columbia U

- Physician had a **personally-owned computer server** on the network containing NYP patient PHI.
- Due to a lack of technical safeguards, PHI was accessible on internet search engines, including **Google**.
- An individual found the PHI of their deceased partner, a former patient of NYP, on the internet and complained.
- Breach report to HHS – Office for Civil Rights (OCR) regarding the disclosure of the PHI of **6,800 individuals**, including patient status, vital signs, medications, and laboratory results.

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## Case Study: NY Presbyterian and Columbia U

- Neither entity:
  - made efforts prior to the breach to assure that the network was secure and that it contained appropriate software protections.
  - had conducted an accurate and thorough risk analysis that identified all systems that accessed PHI.
  - had developed an adequate risk management plan that addressed the potential threats and hazards to the security of PHI.
- NYP failed to implement appropriate policies and procedures for authorizing access to its databases and failed to comply with its own policies on information access management.

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## Case Study: NY Presbyterian and Columbia U

- NYP and Columbia agreed to settle charges that they violated HIPAA
- NYP paid \$3.3 million
- Columbia paid \$1.5 million
- Largest HIPAA settlement to date (May 2014)

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## Case Study: NY Presbyterian and Columbia U

- Both NYP and Columbia agreed to a 3 year Corrective Action Plan, which includes:
  - Undertaking a risk analysis
  - Developing a risk management plan (submitted to the OCR for approval)
  - Revising policies and procedures (submitted to the OCR for approval)
  - Training staff (within 30 days and annually)
  - Providing incident and annual progress reports to the OCR

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## What does all this mean?

- Deep violation of patient privacy
- Massive reputational harm to both entities
- High cost of privacy/data security compliance, on a compressed time table

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