

The Office of the National Coordinator for Health Information Technology (ONC) Releases Version 2.0 of its Guide to Privacy and Security of Electronic Health Information: The ONC's updated Guide provides valuable information and offers practical scenarios that help explain, among other things, when a business associate (BA) relationship forms. The Guide offers suggested questions health care providers may want to ask their health IT product developers to ensure practices are HIPAA compliant and secure against cyber threats. The Guide also includes a seven-step approach for implementing a security management process. The Guide can be found at: <http://ow.ly/MWO9q>.

Impact of the Applicability of Antitrust Laws Against Medical Boards Opens Door to Telemedicine Fights: The recent Supreme Court decision in *North Carolina Dental Board v. FTC* held that state licensing boards made up of active members of the profession, such as practicing doctors, are not immune from antitrust laws unless they are actively supervised by the state. In North Carolina, the Dental Board is composed mostly of practicing dentists, which the Supreme Court ruled had no right to tell competing non-dentists in mall kiosks to stop offering teeth-whitening services. The Dental Board was not immune from antitrust laws, as it was not actively supervised by the state, the Justices said. Currently, a telemedicine company, Teladoc, has sued the Texas Medical Board, which is comprised of 19 practicing doctors, alleging that the Medical Board's rule requiring physicians to either meet with patients in person before treating them remotely, or have other providers physically present with patients when treating them remotely for the first time, violates antitrust laws. Specifically, Teladoc alleges in the Complaint that the rule violates antitrust laws in that it would restrict the company's ability to compete and as a result raise prices and reduce access to physicians in the state. While the Medical Board maintains that the rule represents a balance between convenience and patient safety, Teladoc argues that the Medical Board only began to take action to limit the company when it became a competitive threat. The case is likely to turn on whether the court finds that the Texas Medical Board is "actively supervised" by the state of Texas. Although this is the first case of its kind since the North Carolina decision, it is indicative of future litigation that is on the horizon for all non-actively supervised boards across the nation.

Appellate Division Rules Two and One-Half Year Medical Malpractice Statute of Limitations Applies to Negligence Action Against Clinical Laboratory: In *Annunziata v. Quest Diagnostics, Inc.*, the New York State Supreme Court, Appellate Division, First Department (Manhattan and the Bronx) considered whether the three-year statute of limitations for ordinary negligence, or the two and one-half year statute of limitations for medical malpractice, should apply in an action where the plaintiff alleges a clinical laboratory misread a Pap smear tissue sample. The Appellate Division held that the two and one-half year statute of limitations for medical malpractice actions applies, as laboratory services "are integral parts of the process of rendering medical treatment." The appellate court stated that it is well settled that a negligent act or omission "that constitutes medical treatment or bears a substantial relationship to the rendition of medical treatment by a licensed physician constitutes malpractice" and is subject to the medical malpractice statute of limitations. In an effort to have the ordinary negligence statute of limitations applied, the plaintiff made additional claims that the defendant failed to properly employ a plan for error reduction and failed to adequately implement and supervise a quality assurance program. The appellate court held, however, that these claims were indistinguishable from allegations of medical malpractice, and in applying the statute of limitations, courts must look to the reality or essence of a claim rather than its form.

For more information on the above items, contact Kern Augustine Conroy & Schoppmann, P.C. at 1-800-445-0954 or via email at info@DrLaw.com.



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