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April 14, 2016

Dear Madam Chair and members of the House Committee on Judiciary,

Thank you again for the opportunity to testify on the health care privacy portion of S.155. I am writing to follow-up on two questions from the committee:

- 1) **Complaints our office receives about HIPAA violations.** We track two issues that fall under HIPAA, “Confidentiality Issues” and “Access to Medical Records.” Below are the number of calls we received on each of these issues. This data does not capture those individuals who receive information from our website on how to file a HIPAA complaint.

Access to Medical Records

- 2015- 61 cases
- 2014- 60 cases
- 2013- 59 cases
- 2012- 45 cases
- 2011- 50 cases
- 2010- 41 cases

Confidentiality Issues

- 2015- 15 cases
- 2014- 28 cases
- 2013- 17 cases
- 2012- 14 cases
- 2011- 18 cases
- 2010- 26 cases

- 2) **Prohibition on disclosure of sexually explicit images without consent.** I have reviewed 13 V.S.A. §2606, Disclosure of sexually explicit images without consent, and believe that the Chair is correct. It does appear that this statute would allow for a private right of action in cases where an employee of a health care provider posts nude pictures of a patient on social media without the patient’s consent when the patient is identifiable and the disclosure causes the patient harm. The private right of action is specific to “an identifiable visual image of the plaintiff while he or she is nude or engaged in sexual conduct.” It would therefore not cover situations where an individual’s private information is disclosed or when a humiliating image of a patient is disclosed but the patient is not nude or engaged in sexual conduct.

Feel free to contact me if you would like me to provide any further information.

Sincerely,

Kaili Kuiper, Staff Attorney