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HEALTH CARE LAWYERS & ADVISORS

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## HHS Fines Massachusetts Provider \$150,000 for Stolen Thumb Drive

By Paul T. Smith

The Department of Health and Human Services has announced the settlement for \$150,000 of a case that it says is the first involving a provider's failure to implement policies and procedures under the HITECH Act's data breach notification rule. HHS levied the fine even though the provider evidently reported the breach in compliance with the rule, despite the asserted lack of policies and procedures – an irony on which the press release does not comment.

The press release and the accompanying resolution agreement are available [here](#). The incident involved the theft from an employee's car of an unencrypted thumb drive containing information about 2,200 patients of a dermatology practice. The thumb drive was never recovered. The practice notified affected patients, the press and HHS's Office for Civil Rights within 30 days.

The report to OCR triggered an investigation, which OCR says revealed that the practice did not implement policies and procedures and train employees on the data breach notification rule or conduct a comprehensive risk assessment until after the incident. This – and the failure to protect the thumb drive – triggered the penalty. The medical group did not admit any violation.

The case highlights the importance of documenting a risk analysis and risk management plan, and of updating policies and procedures and workforce training to address security vulnerabilities. And it draws attention once again to the risks of storing patient information on unencrypted portable media.

Hooper, Lundy and Bookman helps clients with health information privacy and security compliance, including policies and procedures, workforce training and data breach analysis and reporting. For more information, please contact: In San Francisco, Paul Smith, Steve Phillips or Clark Stanton at 415.875.8500; in Los Angeles, Hope Levy-Biehl or Karl Schmitz at 310.551.8111; and in Washington, D.C., Bob Roth at 202.580.7700.