#2016-17

RECEIVED

per

State Records Committee: 3-31-16

Re: University of Utah Medical Center GRAMA Appeal

On 1-11-16 and 1-18-16 I mailed two separate GRAMA requests to UMC. I received responses dated 2-19-16 and 3-1-16 denying my requests. I then appealed the denial to Mr. Gregory Thompson. On 3-24-16 he sent a notice of denial as well. I now wish to appeal this denial to the State Records Committee.

Ms. Kelley Marsden argues that GRAMA does not apply to records governed by HIPAA. UCA § 636-2-107 states: "Notwithstanding the provisions of Subsections 636-2-201(6)(a) and (b)..." UMC has failed to refer to those subsections, which state: "(a) The disclosure of a record to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation. (b) This Chapter applies to records described in Subsection (6)(a) insofar as this chapter is not inconsistent with the statute, rule, or regulation." (UCA §636-2-201(6)) According to this as long as GRAMA is consistent with HIPAA. Fortunately, it is. Unless UMC can cite a specific section of HIPAA which bars them from releasing information they must comply. Nothing contained in the GRAMA statute, related to my request, is inconsistent with HIPAA. Subsection 201(6)(a) and (b) is instrumental in properly comprehending the

Next, UCA §636-2-302 (3)(b) states that there are certain instances where "Medical records in the possession of the University of Utah Hospital" are not private or controlled records. Had the Legislature chosen to insinuate by the implementation of Section 107 that no records in the possession of UMC would be subject to GRAMA there would be no need for Section 302(3)(b). Again, the Section contradicts UMC's argument that they are not subject to GRAMA.

Furthermore, even if I were to agree with UMC's argument (which I do not); it would only apply to records which are controlled and "governed by 45 § C.F.R., Parts 160 and 164." (UCA §636-2-107(2)) CFR §164.524(a) states that an individual has a right of access to "protected health information about the individual in a designated record set." Emails sent and received by UMC employees are not part of this "record set." Therefore, they are not governed by HIPAA. While I agree there is some overlap between records governed by both GRAMA and HIPAA; emails are not included.

states that my request doesn't include the core elements and requirements. Again, this is not true. On 5-26-15 I sent a notarized HIPPA release to UMC. That authorization expires 5-1-18. Since UMC

has that release on file and it's still valid, releasing the requested records would not violate HIPAA. Also, 45 C.F.R. § 164.508 (c) (vi) states the request must include "Signature of the individual and date." It does not require that the request be notarized. Nothing about my GRAMA request violates HIPAA. My GRAMA request was signed by me and dated.

The request I sent also requested the names of all orthopedic surgeons/residents who worked the Prison Telemed Clinic on 9-22-14. I was told by that no responsive record exists. Again, this record would not be governed by HIPAA, but it is governed by GRAMA as UMC employees' names are classified as public. The UMC has failed to adequately search for the requested information. UMC's Telemedicine system is managed by the University of Utah's IT Department. Each user has a unique username and password. The IT Department would surely log this information and detail when each user logs in and out. The Health Information Department ( ) would not have direct access to these records.

Respectfully,

Patrick Sullivan #210357
PO Box 250
Draper, UT 84020