

Facebook and HIPAA: Strange Bedfellows

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As a social media user, you may have experienced Facebook's targeted advertising. Mere moments after searching for a specific item on Google or visiting another website, your Facebook ads reflect your recent browsing history. Facebook uses cookies to track its users' online activities and then develops marketing profiles that companies use for targeted advertising, earning Facebook nearly \$11.5 billion in annual advertising revenues. While the use of cookies is not uncommon in the cyberworld, one attorney has filed suit against Facebook and multiple health care providers, including Adventist Health System, Cleveland Clinic, and University of Texas MD Anderson Cancer Center, alleging the named health care providers are covered entities under the Health Insurance Portability and Accountability Act (HIPAA) and made unauthorized disclosures of protected health information in violation of HIPAA. The personally-identifying information allegedly disclosed included device identifiers, IP addresses, and geographic information, transmitted by the health care providers' websites to Facebook without the individuals' express consent. The plaintiffs argue that the named health care organizations did not disclose their relationship with Facebook to users, including a Facebook plug-in on their websites, and the users did not consent to transmitting tracking information containing personally-identifying information to Facebook. The lawsuit specifically points to a chart Facebook uses to sell advertisements, which places more than 225 million users into 154 separate medical categories including pregnancy, cancer, diabetes, mental illness, and HIV/AIDs. If the allegations are proven, the HIPAA covered entities could face a fine of between \$100 and \$50,000 for each violation with an aggregate cap of \$1.5 million "for identical violations during a calendar year." Health care providers must be cognizant of hidden disclosures of protected health information, particularly in the vast depths of cyberspace, and institute appropriate safeguards to either prevent such disclosures or obtain the requisite consents prior to making them.

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