



# Privacy breaches and group counseling

**Question:** I am a licensed professional counselor in private practice, and approximately half of my work involves group counseling. I am also a “covered entity” under HIPAA. Could I be liable if one of my group clients takes pictures of other group members by cell phone and then posts them and other identifying information about group members on social media?

**Answer:** Yes, it is possible that you could be held responsible for a privacy breach committed by one of your group clients. It’s beneficial to look at some of the federal government’s settlements with health care providers because they offer some important lessons regarding violations of the Health Insurance Portability and Accountability Act (HIPAA).

For example, this past year, the U.S. Department of Health and Human Services Office for Civil Rights entered into separate resolution agreements with three prominent Boston-area hospitals regarding privacy breaches (for details, see [tinyurl.com/ABCFilmBoston](http://tinyurl.com/ABCFilmBoston)). The settlements were based on alleged privacy violations that occurred when the hospitals allowed ABC film crews on premises to film the documentary series *Save My Life: Boston Trauma*. Although the hospitals did not admit liability, the three settlements totaled nearly \$1 million.

Furthermore, even though these settlements did not involve group counseling, you and other counselors can learn from the information publicized in the settlement agreements and take proactive steps to minimize the risk of HIPAA penalties (plus licensure board actions and civil litigation).

First, make sure your professional liability insurance policy covers HIPAA privacy breaches. If a breach occurs, you should contact your insurance carrier and request that an attorney be assigned to represent you.

Next, review and update your informed consent document and other policies that deal with confidentiality and protection of privacy. In your case, these should specifically address group counseling sessions. In addition to providing a copy of your written informed consent document to your clients, make sure that you fully discuss confidentiality and privacy at the outset of any group session and give periodic reminders of your privacy policies.

Also make sure that your clients know what consequences will follow from a privacy breach. For example, clients could be informed that any breach may need to be reported to the adversely affected clients, the applicable social media site, the U.S. Department of Health and Human Services, and state authorities if your state has a breach notification law. Beyond state breach notification laws, some states have other mental health laws that govern privacy of information. For example, the District of Columbia Mental Health Information Act, which originally was enacted more than 40 years ago, specifically requires mental health professionals to “provide clients in a group session with a written statement of the prohibition against the unauthorized disclosure of mental health information” and the specific penalties provided in the law for unauthorized disclosure of information (see [code.dccouncil.us/dc/council/code/sections/7-1206.03.html](http://code.dccouncil.us/dc/council/code/sections/7-1206.03.html)).

In addition, if a breach actually occurs, you may need to enforce your policies by dismissing the group member. (Of course, you would take steps to avoid abandonment by providing prior notice to the client and suggesting other counseling resources. Individual services may be recommended, especially for a client who is not stable.)

If you become aware that posts have been made to a specific social media site such as Facebook, you might consider contacting the site and requesting that the posts be removed. If the company refuses to do so, explain that the posts may involve a breach of privacy that is protected under HIPAA. Document your attempts to get the site to remove the posts, and ask your attorney to write a letter on your behalf to the social media site. These efforts and accompanying documentation would show a “good faith effort” on your part to mitigate the damage, which could help in a subsequent government investigation. ♦

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