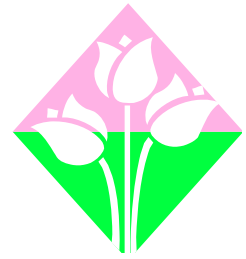




*Happy Spring!*



## Mesmer & Deleault, PLLC

41 Brook Street, Manchester, NH 03104  
Seacoast Office: One New Hampshire Ave., Suite 125  
Portsmouth, NH 03801

# “Tip of the Month”

## Business Associate Agreements

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) established national standards for protecting the confidentiality of Protected Health Information (PHI). With the publishing in 2013 of the finalized HIPAA Omnibus Rule, the Act governs how covered entities and business associates store, maintain, use, distribute, and safeguard PHI.

Covered entities include healthcare providers, health plans, and healthcare clearinghouses. Business associates are individuals or entities who perform, or assist in performing, a function or activity that involves the use or disclosure of PHI on behalf of a covered entity. Under the Act, covered entities may disclose PHI to business associates upon obtaining satisfactory assurances that the business associate will use the information for legitimate purposes and safeguard such information from misuse. This is accomplished by a written agreement known as a Business Associate Agreement (BAA); a contract that protects PHI in accordance with HIPAA guidelines.

The HIPAA Privacy Rule sets out mandatory and optional clauses to include in a BAA. For example, the elements specified in 45 CFR 164.504(e) of the Rule provide that a BAA must:

1. Outline the permitted uses and disclosures of PHI;
2. Establish the business associate will not use or disclose the PHI other than as permitted or as required by law;
3. Require the business associate to implement appropriate safeguards to prevent unauthorized access or disclosure of the PHI;
4. Detail that the business associate must report to the covered entity any breaches in security or uses of the information for functions not covered in the contract;
5. Require the business associate to share the PHI with the covered entity to satisfy an individual's request for copies of the individual's own health information;
6. Require the business associate to comply with the HIPAA Privacy Rule to the extent necessary to fulfill its obligation to the covered entity;
7. Necessitate that the business associate makes its internal practices, books, and records relating to the use of PHI available to the United States Department of Health and Human Services (HHS);
8. Require that any subcontractors used by the business associate that have access to PHI agree to the same restrictions;
9. At the termination of the contract, the business associate must return or destroy all PHI received from, or created on behalf of the covered entity; and
10. Authorize the termination of the contract by the covered entity if the business associate, or any subcontractors of the business associate, violates any of the terms.

When it comes to Business Associate Agreements, there are a number of issues to consider.

If you need assistance or advice with respect to a Business Associate Agreement or other HIPAA-related issues, give us a call at (603) 668-1971 or contact us by email at [mailbox@biz-patlaw.com](mailto:mailbox@biz-patlaw.com).

---

Frank B. Mesmer, Jr.  
Robert R. Deleault  
Ross K. Krutsinger  
Joshua N. Mesmer  
Steven H. Slovenski – *of Counsel*  
0415



(603) 668-1971

Fax (603) 622-1445

E-mail: [mailbox@biz-patlaw.com](mailto:mailbox@biz-patlaw.com)

Website: [www.biz-patlaw.com](http://www.biz-patlaw.com)