



Failure to Encrypt ePHI Results in Costly Judgment **Major Cancer Center Faces \$4.3 Million Civil Monetary Penalty**

A federal Department of Health and Human Services ([HHS](#)) administrative law judge [decision](#) this month sent a powerful message about the importance of mitigating risks to electronic protected health information (ePHI) identified in HIPAA security risk assessments. The judge upheld a \$4.3 million civil monetary penalty proposed by the Office for Civil Rights ([OCR](#)) against MD Anderson Cancer Center in Texas for not encrypting its electronic devices. MD Anderson's failure to do so resulted in the breach of ePHI for nearly 35,000 individuals after a laptop was stolen and two USB drives were lost in separate incidents in 2012 and 2013.

The judge's decision noted that while HIPAA does not mandate encryption as the means of protecting ePHI, MD Anderson had chosen to make encryption its policy in 2008, after it identified the need to protect its ePHI. However, MD Anderson had not encrypted every electronic device by 2013- five years later. Nor had it implemented an alternate security method.

This decision further reinforces the position that if a covered entity or business associate identifies risks in its risk assessment, it must take steps to eliminate, manage or mitigate those risks.

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