

Questions Presented to John P. Murdoch II, Esq. Following September 18, 2024 Webinar on Selected Legal Issues (Corporate Transparency Act, FTC's Rule Banning Non-Competes, and the HIPAA Rule on Reproductive Health Care Privacy and Answers Provided

September 30, 2024

The following answers are provided as general information and do not constitute legal advice. Each practitioner is strongly urged to consult with competent legal counsel licensed in their specific state to provide a thorough answer based on additional facts concerning the specific situation involved.

I. FTC Rule banning non-compete agreements.

1. **Question:** Does Tennessee enforce this noncompete?

Answer: *As I only practice law in New Jersey, I am not familiar with the laws of the State of Tennessee. Please consult with competent legal counsel in Tennessee to obtain an answer to your question.*

2. **Question:** With respect to the new FTC rule topic of Non-compete what does it mean in regards to an acupuncturist working at a facility and a physical therapist using dry needling or a doctor that has taken a weekend acupuncture course and wants to add that to their tool box of treatments?

Answer: *Please consult with competent legal counsel in the state in which this issue has arisen. With respect to the FTC Rule banning non-competes, as of the date of this answer (i.e., September 30, 2024), such rule is not in effect due to a court decision. State law appears to govern the facts that were raised in this question.*

II. HIPAA Privacy Rule to Support Reproductive Health Care Privacy.

1. **Question:** Does this block any attempts to track individual pregnancies?

Answer: *Additional information would be needed to fully answer this question as it is unclear as to what type of person or entity is the person asking the question referring to. By way of example, there is no prohibition against a medical provider with a treatment*

relationship with a patient from tracking pregnancies but there are limitations on the government obtaining such information unless the purpose is permitted by law.

2. **Question:** So if a patient had an abortion and it is illegal in the area one is practicing- and they ask for my records – do I have to submit them? Even though my practice did not do the illegal procedure?

Answer: *The new HIPAA protections governing reproductive health care are complex and any request for patient records containing such information must be carefully reviewed by an attorney not only competent in the laws of the state in which the health care practice is located but also the HIPAA Rules. The complexities arise, in part, based on the identity of the person or entity requesting the patient records. The new rule seeks to limit disclosure of reproductive health information in connection with investigations but does not limit disclosures in certain other instances. The question raised involves very sensitive issues and must be carefully reviewed by an attorney.*

3. **Question:** What kind of verbiage do we need to include in the patient's signed HIPAA/privacy practices notices regarding the RHCP, mental health information and drug/alcohol use in order to be compliant. New practitioner who's in the process of creating all of my legal forms. Thanks!

Answer: *The language to address the changes in the new HIPAA Rule is not required to be included in providers' notices of privacy practices until February 16, 2026. As such, some practices are waiting until the Office of Civil Rights ("OCR") updates its model Notice of Privacy Practices to address the new language requirements.*

Notwithstanding the foregoing, health care practices may wish to consider whether to include language that may address various types of extra sensitive health information. The following language is provided for conceptual purposes only and must be carefully considered by a competent attorney licensed in the provider's state and knowledgeable about HIPAA and other privacy laws:

Notice Regarding Additional State and Federal Law Protections

There are certain types of highly confidential information that are specifically addressed in certain federal and state laws and regulations, and which further restrict the use and disclosure of this type of highly confidential information. This highly confidential information, including alcohol and substance abuse treatment information, HIV and

sexually transmitted disease-related information, mental health information, psychotherapy information, information pertaining to reproductive health care (including but not limited to pregnancy of minors), as well as some other sensitive information, are considered so sensitive that some federal and applicable state laws provide special protections for them. All uses or disclosures of such highly sensitive information must meet the requirements of such applicable law. Therefore, there may be greater protections under applicable law for such highly sensitive information. Ask us if you have questions or concerns about the ways this type of highly confidential information may be used or disclosed.

4. **Question:** Does this apply to routine medical records requests? Ex. if I receive a request for medical records from an insurance company for someone who has at any point mentioned fertility during the course of their treatment should I not send those records? Would I need to get an additional consent form signed from the patient?

Answer: *The new HIPAA Privacy Rule to Support Reproductive Health Care Privacy is not intended to stop all disclosures of health information governing reproductive health care. It would be advisable that the practice's consent form contain an explanation that unless the patient requests a restriction, the practice will provide information to the patient's health insurance company in connection with payment of claims and that such information would include reproductive health care information.*

5. **Question:** Do electronic transactions for credit card payments fall under HIPAA or just insurance if patient records are paper copy?

Answer: *The key distinction in HIPAA for health care providers is whether a provider conducts a "covered electronic transaction". Once a provider conducts one 91) of these transactions then ALL of the individually identifiable health information of all patients are protected by HIPAA regardless whether such information is electronic, on paper, or even verbal. Additional information regarding this can be found here:*

[Covered Entities and Business Associates | HHS.gov](#)

[Are You a Covered Entity? | CMS](#)

*Specific information regarding covered electronic transactions can be found here:
[Transactions Overview | CMS](#)*

6. **Question:** Is the new HIPAA Reproductive Health Care Privacy Rule and Fact Sheet available to download?

Answer: *Yes. Please see:*

1. [HIPAA and Reproductive Health | HHS.gov](#) (retrieved September 29, 2024).
2. [HIPAA Privacy Rule Final Rule to Support Reproductive Health Care Privacy: Fact Sheet | HHS.gov](#) (retrieved September 29, 2024).

III. Corporate Transparency Act and Filing Beneficial Ownership Information (“BOI”).

1. **Questions:** Purpose of BOI? Why do we need to do this? Who is it for? Does this apply to all states practices or NJ only?

Answer: *Please see “A.2.” in the Beneficial Ownership Information Frequently Asked Questions document available at: [BOI FAQs Q&A \(fincen.gov\)](#) (viewed on September 29, 2024) that provides the following. Please note that the reporting requirements are pursuant to a federal law and applicable to all states and U.S. jurisdictions:*

A.2. Why do companies have to report beneficial ownership information to the U.S. Department of the Treasury?

In 2021, Congress passed the Corporate Transparency Act on a bipartisan basis. This law creates a new beneficial ownership information reporting requirement as part of the U.S. government’s efforts to make it harder for bad actors to hide or benefit from their ill-gotten gains through shell companies or other opaque ownership structures.

2. **Question:** Does everyone have to file BOI with FinCEN?

Answer: No. Please see “C.1.” in the *Beneficial Ownership Information Frequently Asked Questions* document available at: [BOI FAQs Q&A \(fincen.gov\)](https://www.fincen.gov/boi-faqs) (viewed on September 29, 2024) that provides:

C.1. What companies will be required to report beneficial ownership information to FinCEN?

*Companies required to report are called **reporting companies**. There are two types of reporting companies:*

- *Domestic reporting companies are corporations, limited liability companies, and any other entities created by the filing of a document with a secretary of state or any similar office in the United States.*

- *Foreign reporting companies are entities (including corporations and limited liability companies) formed under the law of a foreign country that have registered to do business in the United States by the filing of a document with a secretary of state or any similar office.*

There are 23 types of entities that are exempt from the reporting requirements (see Question C.2). Carefully review the qualifying criteria before concluding that your company is exempt.

3. **Questions:** Note, there were several questions asking is a sole proprietor is required to comply with the Corporate Transparency Act (“CTA”) and file information regarding the Beneficial Ownership Information (“BOI”) of such sole proprietorship.

Answer: No (generally but see the information provided below). Please see “C.6.” in the *Beneficial Ownership Information Frequently Asked Questions* document available at: [BOI FAQs Q&A \(fincen.gov\)](https://www.fincen.gov/boi-faqs) (viewed on September 29, 2024) that provides:

Is a sole proprietorship a reporting company?

No, unless a sole proprietorship was created (or, if a foreign sole proprietorship, registered to do business) in the United States by filing a document with a secretary of state or similar office. An entity is a reporting company only if it was created (or, if a foreign company, registered to do business) in the United States by filing such a document. Filing a document with a government agency to obtain (1) an IRS employer identification number, (2) a fictitious business name, or (3) a professional or occupational license does not create a new entity, and therefore does not make a sole proprietorship filing such a document a reporting company

4. **Question:** For the Corporate Transparency Act, is the residency information private?

Answer: *Please see “A.3.” in the Beneficial Ownership Information Frequently Asked Questions document available at: [BOI FAQs Q&A \(fincen.gov\)](https://www.fincen.gov/boi-faqs) (viewed on September 29, 2024) that provides:*

A.3. Under the Corporate Transparency Act, who can access beneficial ownership information?

FinCEN will permit Federal, State, local, and Tribal officials, as well as certain foreign officials who submit a request through a U.S. Federal government agency, to obtain beneficial ownership information for authorized activities related to national security, intelligence, and law enforcement. Financial institutions will have access to beneficial ownership information in certain circumstances, with the consent of the reporting company. Those financial institutions’ regulators will also have access to beneficial ownership information when they supervise the financial institutions. FinCEN published the rule that will govern access to and protection of beneficial ownership information on December 22, 2023. Beneficial ownership information reported to FinCEN will be stored in a secure, non-public database using rigorous information security methods and controls typically used in the Federal government to protect non-classified yet sensitive information systems at the highest security level. FinCEN will work closely with those authorized to access beneficial ownership information to ensure that they understand their roles and responsibilities in using the reported information only for authorized purposes and handling in a way that protects its security and confidentiality.

5. **Question:** Is the Current US Address the office or home address? For ex, I used my home as my main mailing address, yet I do have a physical office location. Which would be used? Thank you!

Answer: *The instructions for reporting BOI includes the following (emphasis added):*

Instructions for Items 11 – 15 – Reporting company address:

*Enter the reporting company's **complete current street address** information, including city, State, ZIP Code, and select in item 13 whether the address is in the United States or a specific U.S. Territory. If the reporting company has a principal place of business in the United States or U.S. Territory, the street address should be that of the principal place of business. Otherwise, the street address should be the primary location in the United States or U.S. Territory where the reporting company conducts business. If a U.S. Territory is selected in item 13, then item 14 is automatically populated with the relevant U.S. Territory.*

6. **Question:** And... if on the previous page, if that earlier address was the Location of Business, does this form need to be updated with each office address change?

Answer: *Yes. See “M.5.” in the Beneficial Ownership Information Frequently Asked Questions document available at: [BOI FAQs Q&A \(fincen.gov\)](https://www.fincen.gov/boi-faqs) (viewed on September 29, 2024) that provides:*

M.5. Do I need to update or correct the information I submitted to obtain a FinCEN identifier?

Yes. Individuals must update or correct information through the FinCEN identifier application that is also used to request a FinCEN identifier.

- Individuals must report any change to the information they submitted to obtain a FinCEN identifier no later than 30 days after the date on which the change occurred.*

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- If there is any inaccuracy in this information, an individual must correct the information no later than 30 days after the date the individual became aware of the*

inaccuracy or had reason to know of it. Reporting companies with a FinCEN identifier must update or correct the company's information by filing an updated or corrected beneficial ownership information report, as appropriate.

7. **Question:** Can we put a P.O. box for address of the company when doing the BOI, or does it have to be the actual address of the office/practice.

Answer: *The instructions for reporting BOI includes the following (emphasis added) from [BOI E-FILING \(fincen.gov\)](http://fincen.gov):*

Instructions for Items 11 – 15 – Reporting company address:

*Enter the reporting company's **complete current street address** information, including city, State, ZIP Code, and select in item 13 whether the address is in the United States or a specific U.S. Territory. If the reporting company has a principal place of business in the United States or U.S. Territory, the street address should be that of the principal place of business. Otherwise, the street address should be the primary location in the United States or U.S. Territory where the reporting company conducts business. If a U.S. Territory is selected in item 13, then item 14 is automatically populated with the relevant U.S. Territory.*

8. **Question/Comment:** I filed my BOI back in spring but never got a confirmation email or receipt number.

Answer: *Try contacting FinCEN at: [FinCEN Virtual Assistant](http://fincen.gov). If you do not receive confirmation that your filing was successful you should refile to make sure that your entity is complying with the reporting requirements.*

9. **Question:** I am a disregarded entity since I went from partnership to sole proprietor. I have an EIN associated with my LLC but have been filing fed taxes with my Social Security number. For the Fincen registration would use my SSN?

Answer: *It appears that the key question is whether there is a reporting obligation for your practice. The points in your question appear to indicate that you are operating*

your practice using an LLC which went for tax purposes from a partnership to a sole proprietorship. If you are in fact operating from an LLC you should be providing the EIN number for such entity when the question requests the EIN for your entity. HOWEVER, please consult with competent legal counsel to ensure that you are correctly answering all questions as required to complete the filing of the BOI with FinCEN.

- 10. Question:** I have a question regarding the filing of BOI. I received an email last week informing me that I would be liable for a \$10,000 fine and up to 2 years of jail time if I did not file a BOI. I was not aware of this new law so I went ahead and followed the link. The website at no point in time stated it was a third party and I ended up paying them \$499. I have tried to contact them to cancel and request a refund and have been unsuccessful. Is there anything that I can do to report this company for not disclosing? It was not after the fact that I found out that the filing is absolutely free.

Answer: *It is unfortunate that this happened. Please contact competent legal counsel in your state to discuss this matter. You may also want to consider filing a complaint with your State's consumer protection agency. As this involves a business, I am not certain if such consumer protection agencies would be able to help.*

IV. General Questions.

- 1. Question:** Does an acupuncturist put "Dr." in front if they have a legitimate doctor title under name or name of business?

Answer: *This is a question that is governed by applicable state law. Some states permit the use of "Dr." before an acupuncturist's name provided that the specific credentials pertaining to "Dr." are identified. You must contact your licensing board as well as consult with competent legal counsel to obtain guidance in this matter.*