



# Selected Legal Developments Affecting Acupuncture Practices

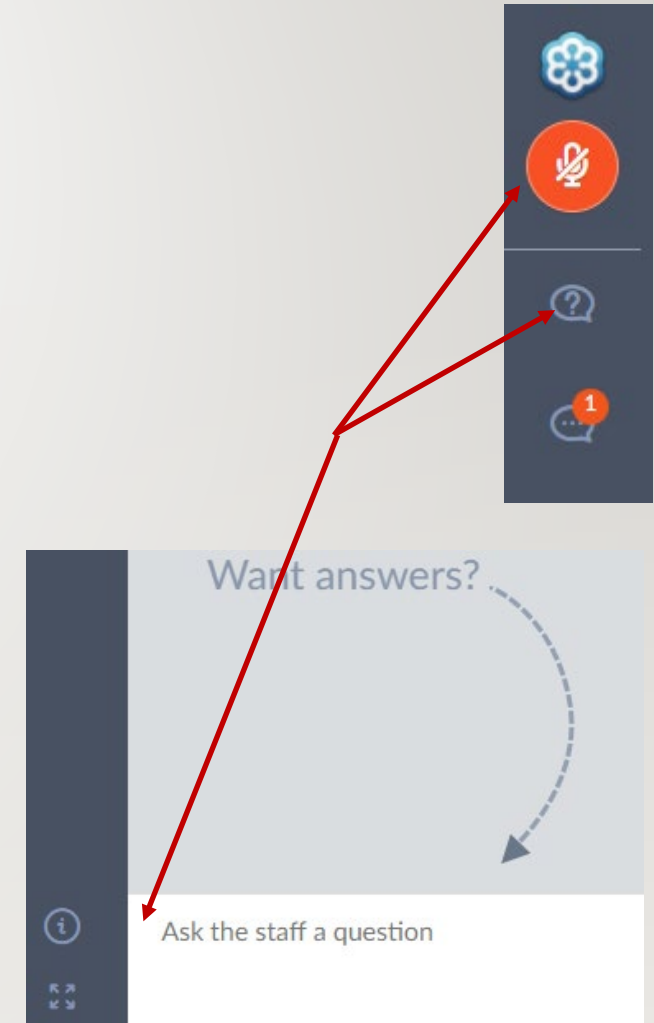
Presented on Behalf of the American Society of  
Acupuncturists (“ASA”)  
September 18, 2024

By: John P. Murdoch II, Esq.



# Quick Participation Tips

- ✓ All Attendees are muted
- ✓ You can ask questions using your dashboard. All questions will be answered during or after the meeting
- ✓ To ensure proper attendance: attendee must be able to see this presentation and the dashboard on their device
- ✓ PDA Certificate of Completion will be distributed within two (2) weeks from the event date



# Quick Participation Tips

- PDA Points will be reported to Diplomate's Recertification Transcript
- In addition, PDA Certificates of Completion will be uploaded to Diplomate's Portal in the Diplomate Benefits => *My Learning Section*
- Attention family and friends! You can watch the presentation together, but each attendee must be logged into the session separately in order to receive PDA points
- **All Attendees!** To receive PDA points, be sure you have registered with your name and NCCAOM ID number as they are recorded in your Certification account
- The webinar is being recorded and will be posted to the ASA website.


	Diplomate Name	NCCAOM ID #
Correct	John Doe	12569
Incorrect	Dr. John Doe	NCC12569
Incorrect	John Doe, L.Ac.	12569FL
Incorrect	John Doe	Doe12569
Incorrect	John Doe, MSOM	12569

## Disclaimer

The information provided in this presentation is for discussion purposes only and may not be considered legal advice. The information presented is a brief summary of selected federal laws as well as other selected issues. Such selected laws, as well as other laws, accreditation, contractual, ethical and other obligations must be carefully analyzed to determine the specific needs and legal obligations of the parties involved in a specific matter. Please consult with competent legal counsel to discuss the specific legal requirements for your matter. THE INTENTION OF THIS PRESENTATION IS TO PROVIDE INFORMATION TO ENABLE ATTENDEES TO UNDERSTAND KEY PRINCIPLES TO HELP COMPLY WITH APPLICABLE LAWS.



# Summary of Topics to Be Covered

- I. Federal Trade Commission's Rule Banning Non-Competes
  - II. HIPAA Rule Change Regarding Reproductive Health Care
  - III. Corporate Transparency Act
- 



# I. Federal Trade Commission's Rule Banning "Non-Competes"

# Federal Court Issued a Nationwide Injunction Blocking Enforcement of the FTC's Rule Banning "Non-Competes"

On August 20, 2024, the Honorable Ada Brown of the U.S. District Court for the Northern District of Texas ruled that:

(i) the FTC's Non-Compete Rule (*that was to go into effect on September 4, 2024*) exceeds the FTC's rulemaking authority under the Federal Trade Commission Act ("FTC Act"); and

(ii) the FTC's Non-Compete Rule is "arbitrary and capricious" in violation of the Administrative Procedures Act ("APA").

Judge Brown ordered that the FTC's Non-Compete Rule "shall not be enforced or otherwise take effect." *Ryan, LLC v. Federal Trade Commission*, Case No. 3:24-cv-986 (N.D. Tex. Aug. 20, 2024)

The FTC's Non-Compete Rule would have banned nearly all non-competition agreements as of September 4, 2024 ("Effective Date").

# Following the Ban on the FTC's Rule, Are Non-Compete Agreements Enforceable?

- Depends on each state.
- Consider employee's role/position.
- Consider time and geographic scope in any non-compete.
- Consider prohibitions on soliciting other employees, contractors, and patients (HIPAA).
- Consider the County in which enforcement of the non-compete agreement would be sought.
- What other protections can be put into place?





## II. HIPAA Rule Change Regarding Reproductive Health Care Privacy ("RHCP")

# HIPAA Privacy Rule to Support Reproductive Health Care Privacy

- RHCP Rule (Codified at 45 C.F.R. parts 160 & 164):
  - One of many actions taken by HHS to protect access to and privacy of reproductive health care after the U.S. Supreme Court decision in *Dobbs v Jackson Women's Health Organization*.
  - Supports President Biden's Executive Orders on protecting access to reproductive health care.

# HIPAA Privacy Rule to Support Reproductive Health Care Privacy (“RHCP”)

- **Key Dates for final RHCP Rule**

- Issued by OCR. **April 22, 2024.**
- Published in Fed. Reg. **April 26, 2024.**
- Effective. **June 25, 2024.**
- **Compliance Dates.**
  - Compliance with RHCP Rule, **except for Notice of Privacy Practices (“NPP”) requirements.** **December 23, 2024.**
  - Compliance with **NPP requirements under RHCP Rule.** **February 16, 2026.**

# What is “Reproductive Health Care” Under the New RHCP?

- ***“Reproductive health care”*** means health care, as defined in this section, that affects the health of an individual in all matters relating to the reproductive system and to its functions and processes. This definition shall not be construed to set forth a standard of care for or regulate what constitutes clinically appropriate reproductive health care.” 45 C.F.R. 106.103.
- ***Non-exclusive list of examples that fit within the definition of Reproductive Health Care:***

- **Contraception, including emergency contraception**
- **Preconception screening and counseling**
- **Management of pregnancy and pregnancy-related conditions**
- **Fertility and infertility diagnosis and treatment**

- **Diagnosis and treatment of conditions that affect the reproductive system**
- **Other types of care, services, and supplies used for the diagnosis and treatment of conditions related to the reproductive system**

# What Does the New RHCP Rule Do?

## 1. Enhanced Privacy Protections for Reproductive Health Information:

- **Limitations on Disclosure:** Healthcare providers are prohibited from disclosing reproductive health information (such as abortions or fertility treatments) to law enforcement or others without the patient's explicit authorization unless required by federal law.
- **Stricter Protections in Certain States:** In states with restrictive reproductive health laws, the rule ensures that individuals' health information related to reproductive care is more protected from being disclosed to authorities or other entities that could use it to penalize patients or providers.

## 2. Patient Rights:

- **Right to Access and Control PHI:** Patients have greater control over their Protected Health Information (PHI) related to reproductive care and can request restrictions on the use and disclosure of such information.
- **Increased Transparency:** Providers and payors must ensure patients are informed about how their reproductive health data is used and shared (this involves Notice of Privacy Practices).

## 3. Healthcare Providers' Responsibilities:

- **Attestation for Lawful Use of Data and Other Requirements:** Providers must ensure they comply with the updated rules regarding the handling of reproductive health information, particularly in states with laws that conflict with federal protections.

## 4. Civil Penalties for unauthorized disclosures of sensitive reproductive health data.

# DHSS HIPAA Privacy Rule Final Rule to Support Reproductive Health Care Privacy: Fact Sheet:

## “Prohibition

The Final Rule strengthens privacy protections by prohibiting the use or disclosure of protected health information (PHI) by a covered health care provider. . . —for either of the following activities:

- To conduct a criminal, civil, or administrative investigation into or impose criminal, civil, or administrative liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care, where such health care is lawful under the circumstances in which it is provided.
- The identification of any person for the purpose of conducting such investigation or imposing such liability.”

# DHSS HIPAA Privacy Rule Final Rule to Support Reproductive Health Care Privacy: **Fact Sheet:**

“Under the Final Rule, the prohibition applies where a covered health care provider . . . has reasonably determined that one or more of the following conditions exists:

- The reproductive health care is lawful under the law of the state in which such health care is provided under the circumstances in which it is provided.
  - For example, if a resident of one state traveled to another state to receive reproductive health care, such as an abortion, that is lawful in the state where such health care was provided.
- The reproductive health care is protected, required, or authorized by Federal law, including the U.S. Constitution, regardless of the state in which such health care is provided.
  - For example, if use of the reproductive health care, such as contraception, is protected by the Constitution.
- The reproductive health care was provided by a person other than the covered health care provider, health plan, or health care clearinghouse (or business associates) that receives the request for PHI and the presumption described below applies.”

# DHSS HIPAA Privacy Rule Final Rule to Support Reproductive Health Care Privacy: Fact Sheet:

**“The Final Rule continues to permit covered health care providers. . . to use or disclose PHI for purposes otherwise permitted under the Privacy Rule where the request for the use or disclosure of PHI is not made to investigate or impose liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care.** For example:

- A covered health care provider could continue to use or disclose PHI to defend themselves in an investigation or proceeding related to professional misconduct or negligence where the alleged professional misconduct or negligence involved the provision of reproductive health care.
- A covered health care provider. . . could continue to use or disclose PHI to defend any person in a criminal, civil, or administrative proceeding where liability could be imposed on that person for providing reproductive health care.
- A covered health care provider. . . could continue to use or disclose PHI to an Inspector General where the PHI is sought to conduct an audit for health oversight purposes.”

**Presentation note: To discuss treatment, payment, and healthcare operations.**



# DHSS HIPAA Privacy Rule Final Rule to Support Reproductive Health Care Privacy: Fact Sheet:

## “Presumption

The Final Rule includes a presumption that the reproductive health care provided by a person other than the covered health care provider. . . receiving the request was lawful. In such cases, the reproductive health care is presumed to be lawful under the circumstances in which it was provided unless one of the following conditions are met:

- The covered health care provider. . . has actual knowledge that the reproductive health care was not lawful under the circumstances in which it was provided.
  - For example, an individual discloses to their doctor that they obtained reproductive health care from an unlicensed person and the doctor knows that the specific reproductive health care must be provided by a licensed health care provider.
- The covered health care provider. . . receives factual information from the person making the request for the use or disclosure of PHI that demonstrates a substantial factual basis that the reproductive health care was not lawful under the circumstances in which it was provided.
  - For example, a law enforcement official provides a health plan with evidence that the information being requested is reproductive health care that was provided by an unlicensed person where the law requires that such health care be provided by a licensed health care provider.”

# DHSS HIPAA Privacy Rule Final Rule to Support Reproductive Health Care Privacy: **Fact Sheet:**

## “Attestation

To implement the prohibition, the Final Rule requires a covered health care provider. . . , when it receives a request for PHI potentially related to reproductive health care, to obtain a signed attestation that the use or disclosure is not for a prohibited purpose. This attestation requirement applies when the request is for PHI for any of the following:

- Health oversight activities.<sup>1</sup>
  - Judicial and administrative proceedings.<sup>2</sup>
  - Law enforcement purposes.<sup>3</sup>
  - Disclosures to coroners and medical examiners.<sup>4</sup>
  - The requirement to obtain a signed attestation gives a covered health care provider, health plan, or health care clearinghouse (or business associates) a way of obtaining written representations from persons requesting PHI that their requests are not for a prohibited purpose. Additionally, it puts persons making requests for the use or disclosure of PHI on notice of the potential criminal penalties for those who knowingly and in violation of HIPAA obtain individually identifiable health information (IIHI) relating to an individual or disclose IIHI to another person. We intend to publish model attestation language before the compliance date of this Final Rule.” **Presentation**
- Note: See: [HHS OCR Model Attestation Form re Reproductive Health Care Use of Attestation Required](#)**

# DHSS HIPAA Privacy Rule Final Rule to Support Reproductive Health Care Privacy: **Fact Sheet:**

## **“Notice of Privacy Practices (NPP)**

The Final Rule requires covered health care providers, health plans, and health care clearinghouses to revise their NPPs to support reproductive health care privacy. . .”

# DHSS HIPAA Privacy Rule Final Rule to Support Reproductive Health Care Privacy: Fact Sheet:

## “Disclosures to Law Enforcement

The Privacy Rule permits uses or disclosures of PHI without an individual’s authorization only where such uses or disclosures are expressly permitted or required by the Privacy Rule. As explained in [OCR guidance](#), the **Privacy Rule permits, but does not require, certain disclosures to law enforcement and others, subject to specific conditions. Thus, covered health care providers . . . are only permitted to disclose PHI for law enforcement purposes where they suspect an individual of obtaining reproductive health care (lawful or otherwise) if the covered entity . . . is required by law to do so and all applicable conditions are met.** Accordingly, under the Final Rule, such disclosure is only permitted where all three of the following conditions are met:

- The disclosure is not subject to the prohibition.
- The disclosure is required by law.
- The disclosure meets all applicable conditions of the Privacy Rule permission to use or disclose PHI as required by law.”

# HIPAA Privacy Rule to Support Reproductive Health Care Privacy

## • Resources

- **HHS/OCR Special Topics: HIPAA and Reproductive Health** - <https://www.hhs.gov/hipaa/for-professionals/special-topics/reproductive-health/index.html> (last accessed July 25, 2024)
- **HIPAA Privacy Rule to Support Reproductive Health Care Privacy** -
  - **April 2024 Press Release** - <https://www.hhs.gov/about/news/2024/04/22/biden-harris-administration-issues-new-rule-support-reproductive-health-care-privacy-under-hipaa.html> (last accessed July 25, 2024)
  - **Model Attestation for a Requested Use or Disclosure of Protected Health Information Potentially Related to Reproductive Health Care** - <https://www.hhs.gov/sites/default/files/model-attestation.pdf> (last accessed July 25, 2024)
- **Guidance on the HIPAA Privacy Rule and Disclosures of Information Relating to Reproductive Health Care** - <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/phi-reproductive-health/index.html> (last accessed July 25, 2024)



# III. Corporate Transparency Act

# New Federal Reporting Requirement for Beneficial Ownership Information (“BOI”)

- In accordance with the federal Corporate Transparency Act, Effective January 1, 2024, many “Reporting Companies” must report information about their “beneficial owners” – the individuals who ultimately own or control the company – to the Financial Crimes Enforcement Network (“FinCEN”), a bureau of the U.S. Department of the Treasury.
- Beneficial ownership information reporting is not an annual requirement and unless a Reporting Company needs to update or correct information, a report only needs to be submitted once.
- No filing fee.
- “Reporting companies” are required to report BOI and include: corporations, a limited liability companies (LLCs), or other businesses that were otherwise created in the United States by filing a document with a secretary of state or any similar office under the law of a state or Indian tribe, or a foreign company and was registered to do business in any U.S. state or Indian tribe.
- An individual and a company can request a unique FinCEN “identifier” number.
- See additional information at: [www.fincen.gov/boi](http://www.fincen.gov/boi)

# Beneficial Owner

A “Beneficial owner” is an individual who either directly or indirectly exercise substantial control over the reporting company, or owns or controls at least 25% of the reporting company’s ownership interest.

## **Substantial Control:**

- The individual is a senior officer (the company’s president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer who performs a similar function).
- The individual has authority to appoint or remove certain officers or a majority of directors (or similar body) of the reporting company.
- The individual is an important decision-maker for the reporting company.
- The individual has any other form of substantial control over the reporting company as explained further in FinCEN’s Small entity compliance guide.



# REPORTING DEADLINES

- A reporting company created or registered to do business **before** January 1, 2024, will have **until January 1, 2025**, to file its initial BOI report.
- A reporting company created or registered **in 2024** will have **90 calendar days** to file after receiving actual or public notice that its creation or registration is effective.
- A reporting company created or registered **on or after January 1, 2025**, will have **30 calendar days** to file after receiving actual or public notice that its creation or registration is effective.

# Filing BOI with FinCEN

[www.fincen.gov/boi](http://www.fincen.gov/boi)

**Let's review the FinCEN website!**



Questions?