

Case Study

HEALTHCARE DATA

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The following is based on fact, but the companies and individuals mentioned are fictional.

In early 2019, the tech company Infinity entered into negotiations with Providence, a large non-profit healthcare system, regarding a potential partnership. The idea was that Infinity, in exchange for compensation, would help to modernize the way Providence used and stored data, allowing Providence to better serve patients and get ahead of the competition. Present at the meeting were, among others, an executive from Infinity, an executive from Providence, and a lawyer representing each company.

Infinity's proposal for the partnership was three-fold. It would move Providence's on-site data warehouse to a private and secure cloud environment, it would help shift Providence's workflow to a suite of Infinity's software, and it would build tools for Providence to help improve the company's patient care. This third piece, stated the Infinity executive, would require Infinity to access some of Providence's real patient data, including protected health information (PHI), but only a limited number of Infinity employees would ever see it.

"What about patient data privacy concerns?" the Providence executive wanted to know. Infinity's lawyer explained that if the two companies entered into a Business Associate Agreement (BAA), which would limit Infinity's usage of the information in accordance with the standards for protecting health information set out in the Health Insurance Portability and Accountability Act (HIPAA), then the exchange of data would be entirely legal. For example, Infinity would not be able to use the patient data from Providence for advertising or combine it in any way with consumer data. The lawyer for Providence confirmed that, if the requirements of such an agreement were abided by, it appeared that the arrangement would be permitted under HIPAA.

The Providence executive was not satisfied. "Legality aside, don't we have a further responsibility to our patients? Shouldn't we get their consent before we share their information with a third party? And wouldn't we be putting their data at risk by sharing it more widely? How can we really be sure it'll be safe?" The data would be completely secure, assured the Infinity executive. Given Infinity's security measures, which would include storing the data in a virtual private space just for Providence and protecting it with encryption, the risk of a breach was very small. As far as consent, he continued, the concern was that patients would not understand the nature of the agreement due to the complex terms of the data exchange, and as a result would not provide it. Given that the terms of the partnership were already legal and secure, there was no reason to need to seek consent. And this partnership, he continued, could be



very important for both companies—financially, and also for establishing them as key players in the technological modernization of healthcare—so it was important to avoid such obstacles and secure its success. Besides, the tools Infinity would develop for Providence using the data would provide plenty of long-term benefits for the patients themselves, which would offset any concerns about consent. Therefore, argued the Infinity executive, they had a responsibility to their respective companies and to the patients across the country served by Providence to make this deal happen.

The Providence executive left the meeting with some lingering concerns. Was it okay to justify not seeking consent from the subset of patients whose PHI would be seen by Infinity employees by pointing to the long-term benefits of the new tools for all of Providence's patients? But the decision was not up to only him. He brought the proposal back to the board of Providence executives and ultimately, the decision was made to accept Infinity's terms. The board felt that this sort of partnership leveraging data to improve patient outcomes was the future of healthcare. As a result, the benefits to both Providence and to its patients could be huge. Considering the legality of the agreement with respect to PHI, they mostly dismissed additional concerns about consent.

