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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
R.I. DEPARTMENT OF HEALTH

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PUBLIC HEARING IN RE:
RULES AND REGULATIONS FOR
LICENSURE OF PHYSICIANS

original

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R.I. DEPARTMENT OF HEALTH
3 CAPITOL HILL
PROVIDENCE, RI 02908
AUGUST 22, 2018
10:00 A.M.

M.E. HALL COURT REPORTING
108 WALNUT STREET
WARWICK, RI 02888
(401) 461-3331

E X H I B I T S

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
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1 (COMMENCED AT 10:05 A.M.)

2 HEARING OFFICER ROBERTS:

3 Welcome. We are here today regarding to public
4 hearing concerning the Rules and Regulations
5 for Licensure and Discipline of Physicians.
6 This hearing is being conducted under the
7 provisions of Rhode Island General Laws 23-17
8 and 42-35. Today is Wednesday; August 22,
9 2018. My name is Sullivan Roberts, Rules
10 Coordinator for the Rhode Island Department of
11 Health, also known as RIDOH, and I will be the
12 Hearing Officer for today's proceeding.

13 Before we start, and to prevent
14 any interruption of the process, at this time,
15 I would like to ask those of you with cell
16 phones, pagers and watch alarms to turn them
17 off or set them to silent or vibrate.

18 The purpose of the hearing today
19 is to afford interested parties an opportunity
20 to comment on the proposed Regulations, allow
21 as many people as possible to be heard, and to
22 ensure that an accurate record of all comments
23 is obtained. This hearing is intended for your
24 participation only and is not intended to

1 provide a forum for discussing, debating,
2 arguing or otherwise having dialogue on the
3 Regulations before us with RIDOH personnel as
4 part of this public hearing.

5 If you would like to speak, the
6 procedure we will use is as follows.

7 Please register to speak at the
8 rear of the room. Speakers will be taken in
9 order of registration. Up to five minutes will
10 be allowed for your presentation, unless the
11 lack of speakers allows for additional time.
12 Any interruption due to the Stenographer's need
13 to clarify your testimony will not count
14 against your allotted time. I will indicate
15 when you have one minute of time remaining. If
16 you are unable to complete your testimony in
17 the time allotted, you may have an opportunity
18 to speak if any time is remaining after the
19 other speakers who have signed up complete
20 their testimony.

21 When you are called, come to the
22 podium. Identify yourself by name and
23 affiliation, if any. Please spell your name
24 and give the full name of your organization, if

1 you used an acronym, such as NASA. Make your
2 presentation and make sure to conclude within
3 the allotted time of five minutes. If you have
4 a written copy of your statement, we would
5 appreciate if you could provide it for the
6 record.

7 In accordance with the
8 requirements of the Administrative Procedures
9 Act, additional written comments on these
10 proposed amendments will be accepted by Monday,
11 August 27, 2018. After the conclusion of the
12 public comment period, RIDOH has four options
13 under State law.

14 The first option is to file the
15 Regulations as posted with the Secretary of
16 State.

17 The second option is to file
18 with minor technical changes, such as
19 correcting spelling, punctuation, et cetera.

20 The third option is to make
21 non-technical changes in what you see before
22 you today, which would be addressed in RIDOH'S
23 concise explanatory statement filed with the
24 final regulations and could also necessitate a

1 new public hearing and associated public notice
2 posting.

3 And the fourth option is not
4 file the proposed Regulations, in which case
5 the current Regulations would remain in effect.
6 Unless specified by law, regulation or at the
7 discretion of RIDOH, once filed, the
8 Regulations become effective 20 days after
9 filing and have the force of law upon that
10 date.

11 Are there any questions on how
12 the public hearing will be conducted today?

13 (PAUSE)

14 HEARING OFFICER ROBERTS: At
15 this time, for the record, we will have a
16 presentation of exhibits. The first exhibit is
17 the Notice of proposed rule making posted on
18 the Rhode Island Secretary of State's web site
19 on August 7, 2018, which includes a copy of the
20 proposed Regulations with revisions indicated.

21 (EXHIBIT 1, NOTICE OF PUBLIC
22 HEARING, MARKED)

23 HEARING OFFICER ROBERTS: The
24 second exhibit is a copy of the existing Rules

1 and Regulations for Licensure and Discipline of
2 Physicians last filed with the Rhode Island
3 Secretary of State in September, 2017.

4 (EXHIBIT 2, EXISTING RULES AND
5 REGULATIONS, MARKED)

6 HEARING OFFICER ROBERTS: The
7 third exhibit is a copy of Rhode Island General
8 Laws 5-37-1.4 Subsection 5, and 5-19.2-3, the
9 enabling statutes for these Regulations.

10 (EXHIBIT 3, RIGL 5-37-1.4,
11 SUBSECTION 5 AND 5-19.2-3, MARKED)

12 HEARING OFFICER ROBERTS: The
13 fourth and final exhibit is a copy of the
14 e-mail dated July 24, 2018, from the Office of
15 Regulatory Reform to Sullivan Roberts
16 confirming that RIDOH was authorized to move
17 forward with promulgation of these amendments.

18 (EXHIBIT 4, OFFICE OF REGULATORY
19 REFORM E-MAIL, MARKED)

20 HEARING OFFICER ROBERTS: At
21 this time, I would like to call the first
22 speaker, Kyle Probst.

23 MR. PROBST: Thank you. My name
24 is Kyle Probst, K-Y-L-E, P-R-O-B-S-T. I'm the

1 director of Government Relations for Ciox,
2 that's C-I-O-X, Health out of Alpharetta,
3 Georgia. We are a national medical records
4 disclosure company working on behalf of covered
5 institutes throughout the country to produce
6 medical records to third-party requesters and
7 other medical providers when they are properly
8 requested under federal and state law.

9 We pride ourself with complying
10 with federal and state privacy laws and
11 insuring patient privacy. I'm here to comment
12 today on Sections 1.5.12, parenthetical B,
13 parenthetical one and parenthetical two. These
14 deal with the fees that can be charged for a
15 copy of a patient's medical record.

16 It is my understanding and the
17 understanding of Ciox is that part of the
18 Department's intent was to be consistent with
19 HIPAA, as there's a reference to the 45 CFR
20 164.524, which is the fee provisions for a
21 patient requesting their own records.

22 We previously submitted a letter
23 from Adler, Pollock & Sheehan, who's our
24 representation in this matter; and stated that

1 if we are going to be can consistent with
2 HIPAA, we believe the focus should be on a
3 patient requesting their own record. HIPAA
4 only regulates the fees that a covered entity
5 or business associate may charge to a patient
6 or their personal representative, and there's
7 case law that clearly defines who that personal
8 representative is, and it is limited to someone
9 who generally can make health care decisions
10 for the patient or represents the estate.

11 So, in that respect, we believe
12 Paragraph 1 may go a little bit further and be
13 a little bit confusing with its choice of
14 language. We would like to have the language
15 focus on who is actually requesting the record,
16 so that the fee provisions under HIPAA would
17 only apply if a patient or their personal
18 representative request the record. Again, we
19 want to focus on the request not on actually
20 providing the record.

21 Because in HIPAA and in the
22 February 25, 2016 OCR Guidance, the focus is on
23 who's requesting the record. HIPAA, again,
24 does not regulate the fees that can be charged

1 for a third party such as an auditor, an
2 insurance company or an attorney.

3 Second, in Subparagraph 2, there
4 is a reiteration that retrieval and
5 certification fees for duplicating records
6 cannot be charged to the patient; and in our
7 written statement, we acknowledge that if
8 you're going to say HIPAA applies, then
9 reiterating part of what is already in HIPAA is
10 not necessary. So, we believe Paragraph 2
11 could actually be struck in its entirety; but if
12 you're going to include that language, we would
13 like it to be clearer that you can only
14 limit -- I'm sorry, that you shouldn't be able
15 to charge a patient only a retrieval or
16 certification fee. That a third-party should
17 be able to be charged those fees and that would
18 be consistent with the HIPAA language.

19 Once again, our intent is really
20 to make sure that we are aren't doing anything
21 in Rhode Island that is contrary to the
22 language in HIPAA with respect to the fees that
23 can be charged to the patient or a personal
24 representative, and we are not broadening the

1 scope in giving other third parties the benefit
2 of the fees established in HIPAA, which is
3 actually a restriction to the reasonable
4 cost-based fee charged to a patient or personal
5 representative. Thank you.

6 HEARING OFFICER ROBERTS: Thank
7 you. The next speaker is Leslie Parker.

8 MS. PARKER: Good morning.
9 Leslie Parker, L-E-S-L-I-E, P-A-R-K-E-R, from
10 Adler, Pollock & Sheehan. My office represents
11 Share Care, Inc. and Ciox Health. On August 6,
12 2018, Richard Berretta, from my office,
13 submitted written comments on behalf of Ciox
14 and Share Care, and those comments,
15 specifically the comment related to Sections
16 1.5.12(B)(1) are consistent with the Department
17 of Health practice and other regulations,
18 specifically Department of Health regulations
19 often reference and/or incorporate federal
20 CFRs. By way of example, the following
21 regulations include and incorporate federal
22 CRFs by citation into the regulation. The
23 state laboratory regulations, the licensing
24 home nursing care providers and home care

1 providers regulations, the licensing of nursing
2 facility regulations, the licensing of
3 optometrists regulations, and the licensing of
4 patient safety organizations regulations.

5 Thank you.

6 HEARING OFFICER ROBERTS: Thank
7 you. Are there any other personal present who
8 would like to make a statement concerning the
9 proposed Regulations?

10 (PAUSE)

11 HEARING OFFICER ROBERTS: Seeing
12 no additional speakers present, this hearing is
13 now closed.

14 (HEARING CLOSED AT 10:16 A.M.)

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C E R T I F I C A T E

I, Mary Ellen Hall, hereby certify that the foregoing is a true, accurate and complete transcript's of my notes taken at the above-entitled hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of August, 2018.

Mary Ellen Hall/Notary Public

MARY ELLEN HALL, NOTARY PUBLIC/
CERTIFIED COURT REPORTER

DATE: AUGUST 22, 2018

IN RE: LICENSURE AND DISCIPLINE OF PHYSICIANS

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