

**UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT**

STATE OF VERMONT

Plaintiff

v.

Civil No. _____

**HEALTH NET, INC., AND
HEALTH NET OF THE NORTHEAST, INC.**

Defendants

CONSENT DECREE, FINAL ORDER AND JUDGMENT

1. The State of Vermont ("Vermont"), by and through Attorney General William H. Sorrell, ("AG") and Health Net, Inc., ("HN") and Health Net of the Northeast, Inc., ("HNNE") agree to settle the AG's claims arising from a missing portable hard drive of HNNE's and stipulate that this Consent Decree, Final Order and Judgment ("Judgment") may be entered by the Court as set forth below.
2. The terms of this Judgment represent a voluntary settlement of disputed allegations of facts and law. *The parties have consented to the entry of this Judgment for the purpose of settlement only and agree that it does not constitute an admission of the violation of any law, rule, or regulation. Nothing in this Judgment shall be construed to limit HN and/or HNNE's ability or right to assert any legal, factual, or equitable defenses in any pending or future proceeding of any kind, except with respect to enforcement of this Judgment by the AG.*

3. HN and HNNE consent to entry of this Judgment with full knowledge and understanding of the nature of the proceedings and obligations imposed upon them and waive any formal service requirements of the Complaint and Judgment.
4. The Court, having considered the pleadings and proposed Judgment executed by the parties, and with good cause appearing,

HEREBY ORDERS, ADJUDGES AND DECREES that Judgment may be entered in this matter as follows:

Jurisdiction

5. Jurisdiction of this Court over HN and HNNE and the subject matter of this Judgment is admitted for purposes of entering into and enforcing this Judgment pursuant to 42 U.S.C. § 1320d-5(d)(1), 28 U.S.C. § 1331, and 28 U.S.C. § 1367. Jurisdiction is retained by this Court for the purpose of enabling the parties to apply to this Court for further orders and directions as may be necessary or appropriate, or for execution of this Judgment, including further relief for any violation of this Judgment.

Parties

6. Vermont, by and through the AG, is charged, *inter alia*, with enforcement of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Pub. L. No. 104-191, 110 Stat. 1936, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH Act”), Pub. L. No. 111-5, 123 Stat. 226 (codified in part at 42 U.S.C. § 1320d-5(d)), the Vermont Security

Breach Notice Act, 9 V.S.A. §§ 2430-2435, and the Vermont Consumer Fraud Act, 9 V.S.A §§ 2451-2466.

7. HN is a publicly traded Delaware corporation with its main office located at 21650 Oxnard Street, Woodland Hills, CA 91367.
8. HNNE is a wholly owned subsidiary of HN with its main office located at One Far Mill Crossing, Shelton, CT 06484. At all times relevant to this matter, HNNE, through its subsidiaries, provided health insurance plans, including Medicare Advantage plans, to Vermont residents.

Recitals

9. On or about May 14, 2009, HNNE learned that a portable computer hard drive had disappeared from the desk of an IT associate at its Shelton, Connecticut office.
10. Before May 14, 2009, the hard drive had been shipped from HNNE's Shelton, Connecticut office to Rancho Cordova, California, to be copied onto HN's servers in Rancho Cordova. When the planned data migration could not be completed in California, the hard drive with all of its original contents was shipped back to Shelton, Connecticut. The drive was discovered missing after its return to Connecticut.
11. HNNE represents that the hard drive was shipped in a secure lock box during the trips to and from California. The information contained on the hard drive, however, was not encrypted, contrary to company policy, during either the trip to or from California.

12. HNNE did not create a log file of the collection and transfer of the data included on the hard drive.
13. The hard drive contained approximately 27.7 million scanned pages of documents related to the medical, personal, and financial information of approximately 1.5 million members of HN's health plan subsidiaries.
14. Included in the contents of the hard drive was the protected health information ("PHI" as that term is defined under HIPAA, 45 C.F.R. § 160.103), and personal information ("PI" as that term is defined under Vermont law, 9 V.S.A. § 2430(5)) of approximately 525 Vermont residents.
15. Neither HNNE nor HN reported the missing hard drive to the Connecticut police.
16. In order to determine the scope of the information contained on the missing hard drive and identify the members referenced therein, HNNE retained the forensic expert, Kroll, Inc., to conduct an investigation. Kroll's investigation included searching for the hard drive, interviewing relevant employees, duplicating the contents of the hard drive, determining the type and volume of information that was contained on the hard drive and issuing a report on its findings.
17. The data on the missing hard drive was saved in files with proprietary file extensions created by HNNE's document management system. Inside these files were TIF ("Tagged Image File") images that were scanned into the system.
18. HNNE represents that the images on the hard drive could only be viewed with appropriate viewing software.

19. HNNE represents that the data on the missing hard drive was randomly saved and not searchable. HNNE further represents that, because of the format of the data and the fact that data was randomly saved on the drive, HNNE could not readily determine the drive's content when it went missing. After Kroll recreated the missing hard drive, according to HNNE, the only way that it could have reviewed the images contained therein was to manually review page by page all twenty-seven million pages of images, which would have extended the amount of time necessary to identify and notify the members of HN's subsidiaries whose information was on the drive.
20. Accordingly, HNNE retained Navigant Consulting, Inc. ("Navigant"), to develop a computer program to mine the contents of the recreated drive for data necessary to identify and notify the members whose information was contained therein. Navigant's computerized process identified the majority of the documents on the recreated drive and the members of HN's subsidiaries referenced therein, but was not able to identify all such members referenced on the hard drive, necessitating further manual review which HNNE represents has now been completed.
21. HNNE and HN began mailing notice letters to Vermont residents whose PHI and PI was, or was reasonably believed to have been, contained on the hard drive on approximately November 30, 2009, more than six months after the drive was discovered missing.
22. The last notice letter to an affected Vermont resident was sent on approximately July 22, 2010.

23. No law enforcement agency requested that the consumer notice letters be delayed.
24. HNNE represents that it concluded there was a low risk of harm to Vermont residents because the data was randomly saved and not searchable, there were a large number of individuals referenced in the drive of which Vermont residents constituted a small percentage, it took HNNE approximately six (6) months to identify the majority of members referenced on the drive and no identity theft attributable to the loss of the hard drive has ever been brought to HN or HNNE's attention.
25. The November 30, 2009 notification letter to affected Vermont residents stated in part:

The purpose of this letter is to inform you of a matter involving an unencrypted portable computer disk drive that was discovered missing from a Health Net office. The information on the disk drive is in the form of scanned images rather than raw data and covers the period from 2002 to mid-2009. Because of the nature of the files saved on this portable computer disk drive, we were initially unable to determine what information was on the disk drive. The investigation to make this determination was very lengthy and required a detailed forensic review by computer experts. However, we have now been able to determine that the disk drive contained your personal information such as your name, address, Social Security number and possibly your protected health and financial information.

Fortunately, the files on the missing drive were not saved in a format that can be easily accessible and therefore, we believe the risk of harm to you is low.

26. To date, there is no evidence that any member of any HN subsidiary, including HNNE, has been victimized by fraud or identity theft as a result of the loss of the hard drive.

27. HNNE has provided credit monitoring services, credit restoration services, and up to \$1 million dollars in personal internet identity insurance to all individuals referenced on the missing hard drive.
28. Since the date of this incident, HNNE has encrypted or will encrypt all external hard drives and other portable media used to transfer PHI or PI.
29. Since the date of this incident, HNNE has encrypted or will encrypt all desktop computers and hard drives of company laptops.
30. Since the date of this incident, HNNE has implemented or will implement technology that automatically logs all transfers and actual or attempted access of PHI and PI.
31. Since the date of this incident, HNNE has implemented or will implement a combination of hardware and software that resides between the email server and the email client that is designed to identify email or attachments containing PHI or PI and automatically encrypt email containing such identified information before transmission.
32. HNNE represents that it has spent in excess of \$7 million dollars to remediate this incident for all affected members.

Injunctive Provisions

33. In addition to the remedial measures HNNE has and will undertake as set forth above, HNNE shall:
 - a. Retain IBM as a third-party data security auditor to evaluate the extent to which HNNE's information security programs and practices ensure the

security, confidentiality, and integrity of PHI and PI and protect against future security breaches.

- b. Provide the AG a written report that describes the auditor's assessment of HNNE's information security programs, describes the auditor's conclusions, identifies any of the auditor's recommended steps to improve HNNE's information security programs and practices, and identifies HNNE's plan for implementing the auditor's recommended steps.
- c. Provide the AG an initial report outlined above by January 31, 2011, and a follow-up report by January 31, 2013. Each report shall be submitted to the AG consistent with the Notice provisions set forth below.

Payment to the State

34. HN and HNNE shall pay to the State of Vermont \$55,000.00 (Fifty-Five Thousand Dollars), which shall be made payable to "The State of Vermont" and shall be provided by wire transfer in accordance with instructions provided by Vermont's counsel no later than five (5) business days after receipt by HN or HNNE of notice of entry of this Judgment.

Release

35. In exchange for the consideration set forth herein, the AG agrees to release HN and HNNE, their subsidiaries, affiliated entities and successors, and the officers, directors, members, agents, employees, and shareholders of each from all civil claims and causes of action for violations of the federal and state laws set forth in the Complaint, including any and all claims and causes of action for violations of

the federal and state laws alleged in the Complaint that the AG could have asserted or of which it was or is aware up to and including the effective date of this Judgment.

Enforcement, Costs, and Liquidated Damages

36. The terms of this Judgment shall be governed by the laws of the State of Vermont.

The parties agree that the exclusive forum for resolving any disputes to enforce the terms of this Judgment shall be the United States District Court for the District of Vermont.

37. The AG shall not bring an action to enforce the terms of this Judgment until it has:

- a. provided notice to HN and/or HNNE that describes the manner in which the relevant entity is claimed to have violated the terms of the Judgment, and
- b. provided HN and/or HNNE a period of thirty (30) days from the date of the notice in which to cure the claimed violation.

38. The AG's obligation to provide notice and the right to cure under this section does not preclude the AG from seeking injunctive relief pursuant to the standards for obtaining such relief in this jurisdiction.

39. If the AG is required to commence a proceeding to enforce any provision of this Judgment, HN and/or HNNE agree to pay all reasonable costs and reasonable attorney's fees incurred in such enforcement in the event and to the extent that the AG prevails in any such enforcement action.

40. If the Court enters an order finding HN and/or HNNE to be in violation of paragraphs 33 and/or 34 of this Judgment, the parties agree that the penalty to be assessed by the Court shall be a minimum of \$5,000.00 and a maximum of \$10,000.00 for each violation of paragraphs 33 and/or 34.

Notice

41. Notices and reports to be provided under this Judgment shall be sent by nationally recognized overnight courier service or certified mail (return receipt requested) to the named party at the address below:

a. If to HN and/or HNNE:

Attorney Jeffrey L. Poston
Crowell & Moring, LLP
1001 Pennsylvania Ave, NW
Washington, D.C. 20004-2595

b. If to the AG:

Sarah E.B. London
Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609-1001

General Provisions

42. No waiver, modification, or amendment of the terms of this Judgment shall be valid or binding unless made in writing, signed by the party to be charged, and approved by this Court and then only to the extent set forth in such written waiver, modification, or amendment.

43. Failure by any party to this Judgment to insist upon the strict performance by any other party of any provision of this Judgment shall not be deemed a waiver of any

provisions of this Judgment, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all provisions of this Judgment and the imposition of any applicable penalties for failure to comply.

44. If any clause, provision, or section of this Judgment is held to be illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Judgment, and this Judgment shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

45. Nothing in this Judgment shall be construed as relieving HN and/or HNNE of the obligation to comply with all state and federal laws, regulations, or rules.

46. Nothing in this Judgment shall be construed as limiting the AG's right to obtain documents, records, testimony, or other information pursuant to any law, regulation, rule, or other legal authority.

47. Nothing in this Judgment shall be construed to waive the sovereign immunity of the State of Vermont or any of its officers, agencies, agents, employees, or anyone else authorized to act on behalf of the State.

SO ORDERED, ADJUDGED and DECREED.

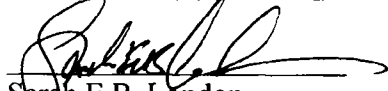
Entered this ___ day of _____, 2010

By the Court:

Presiding Judge

Date: 1/14/11

STATE OF VERMONT
ATTORNEY GENERAL
WILLIAM H. SORRELL



Sarah E.B. London
Assistant Attorney General
109 State Street
Montpelier, VT 05609-1001

Date: 1/11/11

Health Net, Inc.



Linda V. Tiano, President
Regional Health Plans

Date: 1/11/11

Health Net of the Northeast, Inc.



Linda V. Tiano, President