



Board Resolutions: HIPAA Privacy and Security Officer Appointment

A Lexis Practice Advisor® Practice Note by
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FORM SUMMARY

These form board of director resolutions are for appointing a Privacy and Security Officer responsible for compliance with the Privacy Rule and Security Rule under the Health Insurance Portability and Accountability Act (HIPAA). HIPAA requires three delegations in this regard for so-called covered entities (including many group health plans): (1) a privacy official to monitor and enforce policies and procedures relating to protected health information (PHI), (2) a contact person for Privacy Rule complaints and responding to requests regarding HIPAA compliance, and (3) if applicable, a security official responsible for implantation of Security Rule procedures covered entities that handle PHI in electronic form. 45 C.F.R. §§ 164.530(a)(i), (ii) and 164.308(a)(2). This form contains drafting notes and alternate clauses.

For more information on HIPAA Privacy Rule and Security Rule Compliance, see [HIPAA Privacy, Security, Breach Notification, and Other Administrative Simplification Rules](#).

RESOLUTIONS OF THE BOARD OF DIRECTORS OF [company name]

The following resolutions were duly adopted by the Board of Directors (the “Board”) of [company name] (the “Company”) on [date] and have not been modified or rescinded:

Drafting Note to Title and First Paragraph

Use this language for board resolutions adopted at a meeting (for resolutions adopted by written consent, see Alternate Title and First Paragraph).

Alternate Clauses

WRITTEN CONSENT IN LIEU OF A MEETING OF THE BOARD OF DIRECTORS OF [COMPANY]

The undersigned, being [all OR a majority] of the members of the Board of Directors (the “Board”) of [company name], a [state of incorporation] corporation (the “Company”), pursuant to Section [section number] of the [name of state’s corporate law] and Section [section number] of the [bylaws OR articles of incorporation] of the Company, do hereby consent to the adoption of, and do hereby adopt, the following resolutions, effective as of [date]:

WHEREAS, to comply with the requirements under the Health Insurance Portability and Accountability Act of 1996, as amended and the regulations thereunder (“HIPAA”), the Company must have a Privacy and Security Officer for the Company’s group health plans to ensure compliance with the Privacy and Security Rules under part 160 and subparts A, C and E of part 164 of title 45 of the Code of Federal Regulations;

Drafting Note to First Whereas Clause

If the company’s group health plans do not create, handle, or transfer PHI in electronic form, then HIPAA’s Security Rule does not apply. In that case, use the language in the Alternate First Whereas Clause. If the company’s plans do not deal with PHI at all, then designation of a Privacy and Security Officer is not mandatory. However, even fully insured plans may have limited access to PHI (e.g., in enrollment information and summary information used to shop for insurance).

Alternate Clauses

WHEREAS, to comply with the requirements under the Health Insurance Portability and Accountability Act of 1996, as amended and the regulations thereunder (“HIPAA”), the Company must have a Privacy Officer for the Company’s group health plans to ensure compliance with the Privacy Rule under part 160 and subparts A and E of part 164 of title 45 of the Code of Federal Regulations;

WHEREAS, the Board has the power and authority to appoint and remove the officials responsible for HIPAA compliance on behalf of the Company's group health plans; and

WHEREAS, the Board desires to appoint *[name and/or title]* as the Privacy Officer and *[name and/or title]* as the Security Officer for all group health plans (within the meaning of section 160.103 of title 45 of the Code of Federal Regulations) sponsored by the Company and its affiliates listed in Exhibit A (the "Company Health Plans").

Drafting Note to Third Whereas Clause

This clause is phrased for designating different people as Privacy Officer and Security Officer, but one person may fulfill both roles. If no Security Officer is being appointed because the company's group health plans are not subject to HIPAA's Security Rule, modify this language and the resolutions accordingly.

NOW THEREFORE, BE IT RESOLVED, effective *[date]*, *[name and/or title]* is appointed Privacy Officer for the Company Health Plans with all the power and authority granted pursuant to the Company Health Plans' HIPAA Privacy and Security Policies and Procedures, as may be amended from time to time;

RESOLVED FURTHER, effective *[date]*, *[name and/or title]* is appointed Security Officer for the Company Health Plans with all the power and authority granted pursuant to the Company Health Plans' HIPAA Privacy and Security Policies and Procedures, as may be amended from time to time;

RESOLVED FURTHER, that the officers of the Company hereby are authorized, empowered and directed, in the name and on behalf of the Company, to execute and deliver all such documents and instruments and to take all actions as may be necessary or convenient to reflect or carry out the purposes of the foregoing resolutions; and

RESOLVED FURTHER, that all acts, transactions or agreements undertaken prior to the adoption of these resolutions by any of the officers of the Company in connection with the foregoing resolutions are hereby ratified, confirmed and adopted.

IN WITNESS WHEREOF, the Company has caused these resolutions to be duly executed by its President and attested to by its Secretary this *[date]* and placed in the Company's minute records.

[company name]

By: _____

[name of President], President

By: _____

[name of Secretary], Secretary

Drafting Note to In Witness Whereof Clause

For resolutions adopted by written consent, see the Alternate In Witness Whereof Clause.

Alternate Clauses

IN WITNESS WHEREOF, the undersigned, being [all OR a majority] of the members of the Board, have duly executed this Written Consent as of the date first written above.

By: _____

[name of director]

By: _____

[name of director]

By: _____

[name of director]

Exhibit A: Company Health Plans *[names of covered plans]*

Gabriel S. Marinaro

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Gabriel Marinaro serves as special counsel in the Employee Benefits and Executive Compensation group. His practice focuses on all aspects of employee benefits and executive compensation. He regularly counsels publicly traded and privately held companies, tax-exempt organizations, and governmental entities on a variety of employee benefits and executive compensation matters. Gabe regularly advises both employers and executives on a wide range of executive compensation matters, including drafting employment agreements, equity compensation arrangements, severance agreements and bonus plans. Gabe provides guidance on nonqualified deferred compensation plans both for for-profit companies and tax-exempt clients. Gabe regularly drafts nonqualified deferred compensation arrangements, including supplemental executive retirement plans, and change in control agreements. Additionally, Gabe advises employers and executives on issues under Code Sections 409A, 457(f), 457A, 162(m), 280G and 83 regarding compensation arrangements for executives.

Gabe assists both publicly traded and privately held companies with equity compensation matters, including drafting equity incentive plans, securities filings, award agreements, and other documentation surrounding the implementation of an equity incentive plan and the underlying awards. Gabe also has drafted and advised on profits interests plans and unit appreciation rights plans for limited liability companies.

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