

Fundraising Under New HIPAA Regulations



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About Jay Angeletti



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A Development Executive with more than 25 years of experience, Jay launched The Angeletti Group, LLC in 2006 – a consulting firm designed to partner with clients engaged in healthcare and academic medicine, independent and higher education, and community building initiatives. Before doing so, Jay served at Choate Rosemary Hall, Yale University School of Medicine, the University of Pennsylvania Health System, Drew University and New York-Presbyterian Hospital.

Jay's extensive client list includes many of the nation's leading independent schools, universities, medical institutions and other non profits. He is a sought after speaker and writer, and he currently sits on the Advisory Board of Fairleigh Dickinson's non profit leadership program.



About Chris Cloud



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Chris Cloud is a founding principal of Constellation Advancement, LLC, a group of companies serving non profit organizations that includes the Angeletti Group. As a consultant Chris has served as the interim chief fundraising officer for several CUNY colleges and the New York Historical Society. Prior to forming Constellation he was Vice President for College Advancement at Baruch College/CUNY responsible for all aspects of fundraising, alumni relations, public relations, communications and marketing.

Previously, Chris ran a division of fundraising programs at the joint office of New York-Presbyterian Hospital and Weill Cornell Medical College. Chris was one of the chief architects of the fundraising offices' HIPAA compliance plan for the 120-person joint fundraising office. He is a former litigation attorney and has published and presented about the organizational challenges of HIPAA within healthcare fundraising organizations.

About The Angeletti Group



The Angeletti Group, LLC offers philanthropic counsel to the most passionate in Education, Healthcare and Community Building. We offer clients a breadth of services including:

- Campaign Implementation and Management
- Development Assessments
- Planning, Feasibility and Pulsing Studies
- Executive Search, Interim and Outsourced Staffing
- Prospect Research and Wealth Screening
- Information Database Enhancement
- Benchmarking Analytics
- Annual Fund/ Direct Response Solutions
- Metrics-drive Major Gift Programs
- Planned Giving Counsel
- Communications and Events Design and Production
- Board Development and Coaching
- Cross Media Strategies

Today's Discussion



- HIPAA Orientation and Refresher
- What's Changed with the New Omnibus Rule
- Issues to Keep in Mind As We Move Forward
- New Avenues for Healthcare Fundraisers
 - New Sources of Information Permitted
 - Physician Engagement
 - Grateful Patients

The Angeletti Group, LLC is not a law practice. This presentation is an overview of observations based on our work with non-profit clients in the field. The views and information provided are not intended to be used as legal advice. For complete information about your legal requirements and compliance needs concerning HIPAA we encourage all participants to confer with legal counsel and visit government sources including HHS.gov for guidance in information.

About HIPAA



HIPAA is the Health Insurance Portability and Accountability Act of 1996.

- Improve the efficiency and transferability of healthcare
- Standardize electronic data interchange
- Protect confidentiality and security of healthcare data
- A national minimum standard for patient privacy
- Provisions for Security, Transaction Sets and Privacy*

***Patient Privacy concerns healthcare fundraising**

Summarized Historical Timeline



- August 1996 – HIPAA signed into federal law
- April 2003 – Interim enforcement rule
- February 2006 – Final enforcement rule
- February 2009 – The Health Information Technology for Economic and Clinical Health Act (HITECH) expands HIPAA
- July 2010 – Pending changes concerning fund raising
- January 2013 – Long awaited changes announced
- March 26, 2013 – Effective date for new changes
- **September 23, 2013 – Compliance date for new changes**

What Does HIPAA Mean to Fundraising?



- The “Covered Entity” must have a privacy policy
- Language about fundraising within the policy is a predicate required to fundraise
- Communicate and facilitate “opt out” option
- No targeting gift asks based on health info
- Fundraisers can only know “demographic” information about patients, unless the patient signs an authorization

What are the Changes?



- Bigger penalties (more enforcement?)
- Notice of Privacy Practice is more important
- More obligations regarding Business Associates
- Stronger “opt out” requirements
- Fundraisers can know more about patients

New Penalties



Tiers	Description	Minimum per Violation	Maximum per Year (for identical violations)
Tier A	"Did not know"	\$100 - \$50,000	\$1,500,000
Tier B	"Reasonable cause – not willful neglect"	\$1,000 - \$50,000	\$1,500,000
Tier C	"Willful neglect" corrected w/in 30 days	\$10,000 - 50,000	\$1,500,000
Tier D	"Willful neglect - uncorrected"	\$50,000	\$1,500,000

Notice of Privacy Practices



Before Omnibus Rule:

- Provide to every patient
- Can include information about intent to fund raise
- No fundraising language = no fundraising
- General notification language

Now:

- Everything from before, plus:
- Beyond notification must describe what you expect to do with the information
- If you want to use patient information in a way not described in the Notice, then you need an authorization

Business Associates



- Before – contract only; now - contract plus statutory liability
- Subcontractors all “down the chain”
- Business Associates must obey security rules – risk analysis, reasonable safeguards
- BAs responsible for breach notifications
 - Before – only disclose if “substantial risk”
 - Now – four-part risk assessment analysis to determine financial, reputational or other harm
 - Notify affected individuals, HSS and sometimes the media

Opt Out Rules



Must provide a “clear and conspicuous” opt out mechanism in all fundraising communications.

- Both written and oral communications.
- Opting out must be simple and not burdensome for patients.
 - Provide multiple ways to opt out: email, phone call, returned postcard
 - Can't require them to write a letter
 - Must state that a request to opt out will have no impact on healthcare services provided

Fundraising Implications



It's the best of times and the worst of times.

What Fundraisers Can Know



Before the Omnibus Rule:

- Patient demographic data
 - Name
 - Address and contact
 - Age
 - Gender
- Health insurance status
- Dates of treatment

Now:

- All the old stuff, plus:
- Patient DOB
- General department of service information
- Treating physician information
- Treatment outcome information

More PHI = More Targeted Outreach



Type of PHI	Clarification	Intent
Treating physician	None offered in rule	Streamline fundraising efforts and ensure communications are meaningful to patient experiences
Department of service	Includes information about the general department of treatment, such as cardiology, oncology, or pediatrics	
Outcome information	Includes information regarding the death of the patient or any sub-optimal result of treatment or services	Screen out and eliminate communications to deceased individuals or those experiencing negative outcomes

Source: The Advisory Board Company, Philanthropy Leadership Council. "Update on Final Omnibus Rule and Implications for Philanthropy," 2013

Physician Engagement Realities



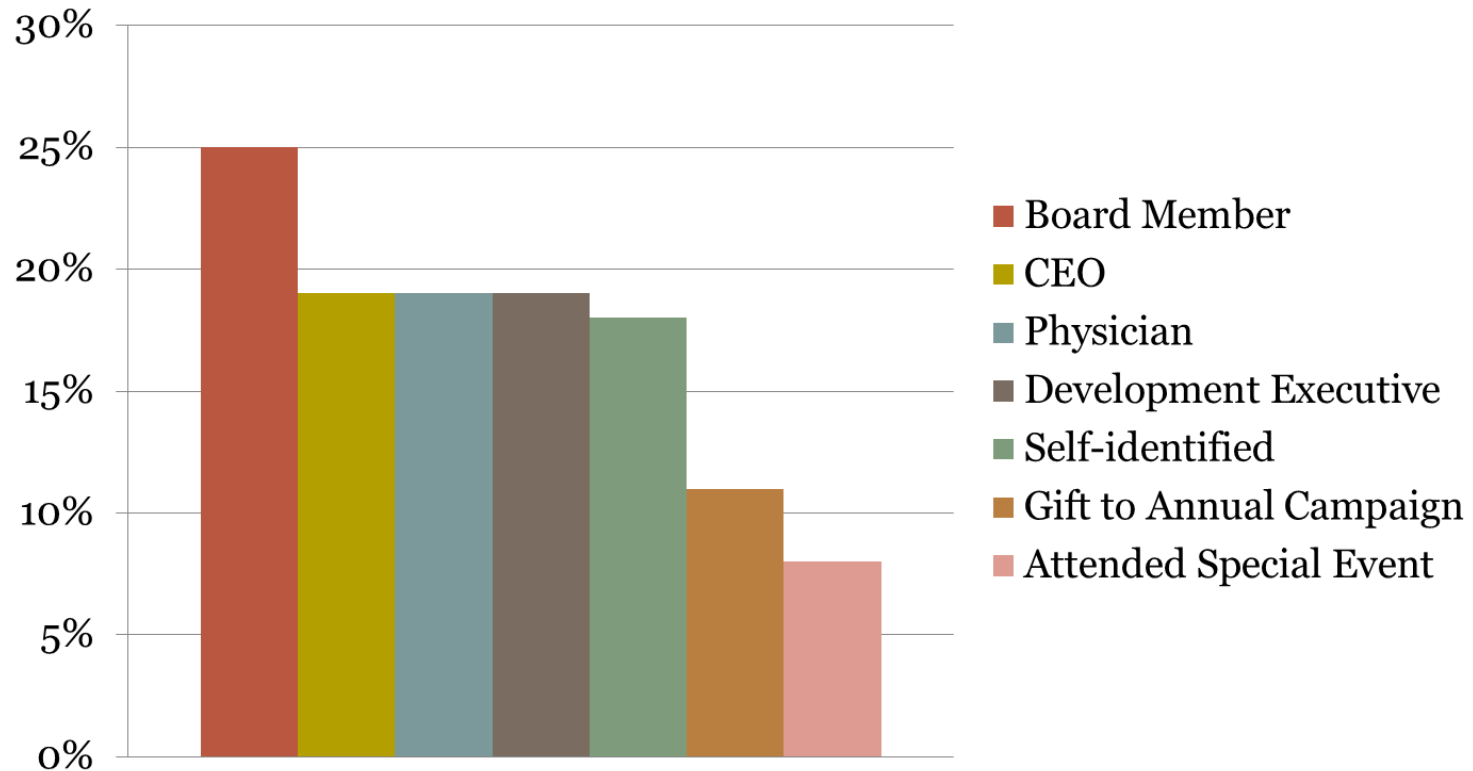
- “My contract is being renewed.”
- “Malpractice rates and reimbursement deterioration have cut into my income at a time when I see hospital administrators reaping bigger paydays than ever before.”
- “HIPAA makes me uncomfortable as does the fact that fundraising jeopardizes the integrity of my relationship with patients; I didn’t become a doctor to ask people for money.”

The Good News



- Philanthropy is more important in healthcare than in any other time in recent memory.
- HIPAA is returning us to the “good old days.”
- Health systems are employing physicians at an unprecedented pace.

How Top Donors Were First Identified

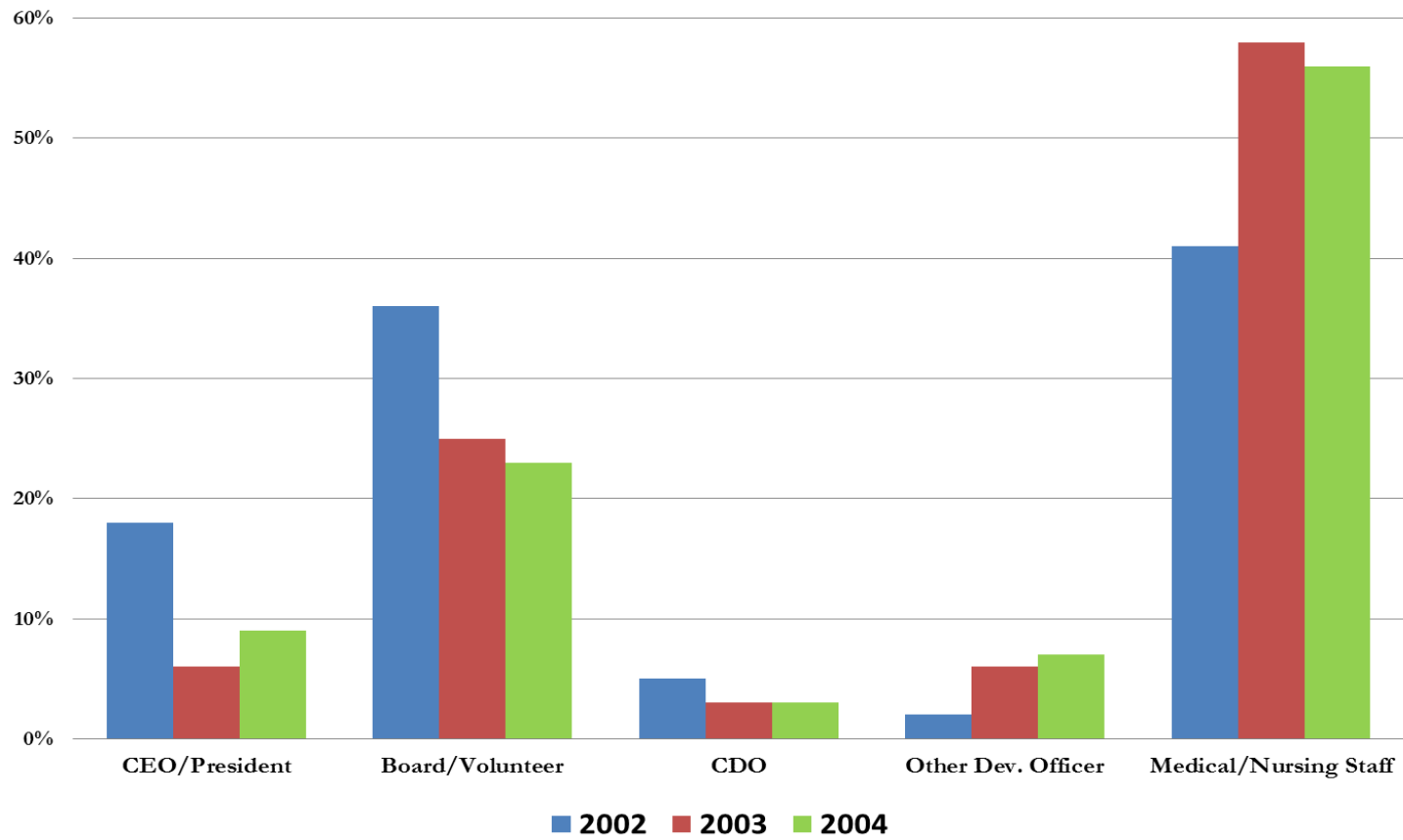


Source: 2006 Advisory Board Survey of Hospitals' Largest Gifts

Why Physician Participation Matters



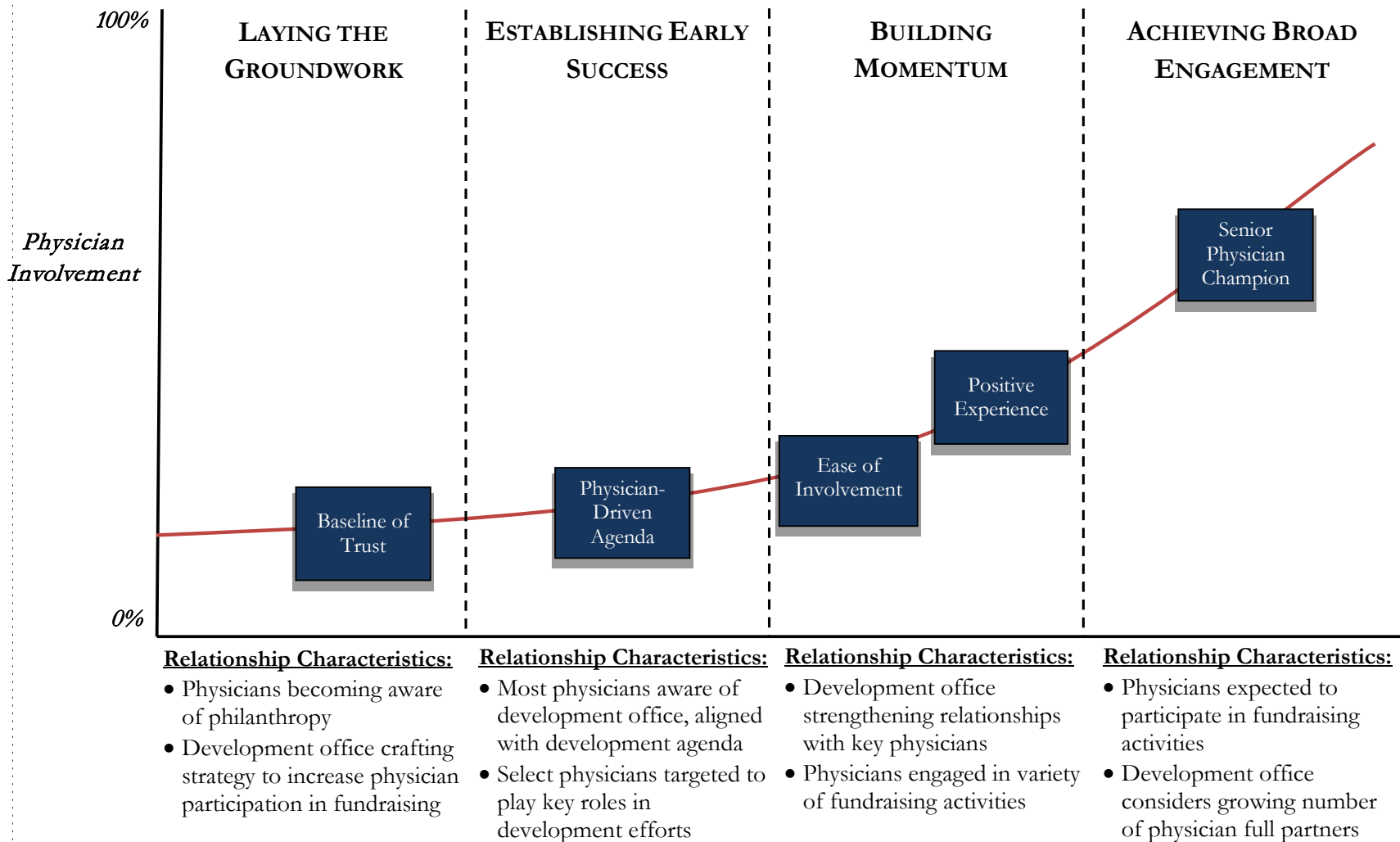
Primary Influence on Giving Decisions



Source: Bentz Whaley Flessner, Zoomerage Survey

ELEVATING PHYSICIAN PARTNERSHIPS

Stages of Physician Enfranchisement



Source: The Advisory Board

Incentives for Physicians to Participate



- The ability to raise funds for endowments/programs that live within their Service Lines
- Allowing physicians who raise monies to be cosigners on philanthropy accounts
- Providing matching funds to physicians who raise philanthropy for System-endorsed Service Line priorities

Physician Engagement Program in a Box



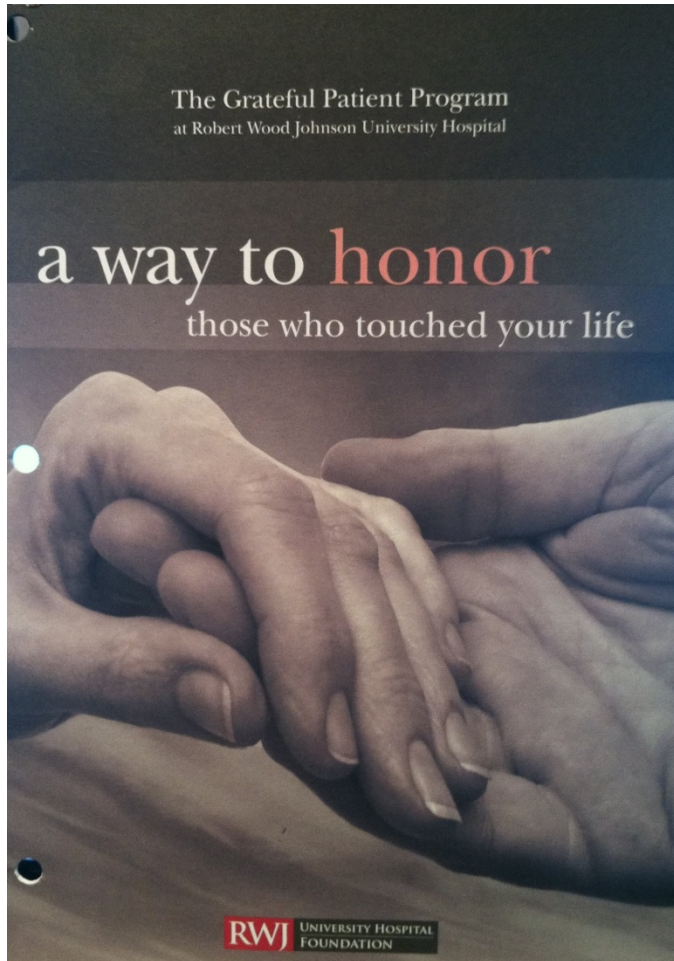
- Recruit senior, revered physician as well as up-and-coming clinical star to co-chair Physician's Philanthropy Council.
- Convene bi-annual meetings with "celebrity" involvement (board member's estate or ranch, athletes, business people, actors...).
- Begin by highlighting broad successes that have impacted the hospital as a whole as well as specific programs.
- Develop themed program including collateral that encompasses annual, major and planned giving.
- Educate and cultivate "your colleagues on the floor."
- Develop transparent vehicle/leadership presentations to disseminate HIPAA policies.

Grateful Patient Fundraising



Physician's
meetings...parking...VIP
visits from
leadership...brochures...
crowdfunding...physician
training...

*They're all good ideas, and
there is no silver bullet.*



Thank you.



QUESTIONS?

Slides will be available at www.TheAngelettiGroup.com.