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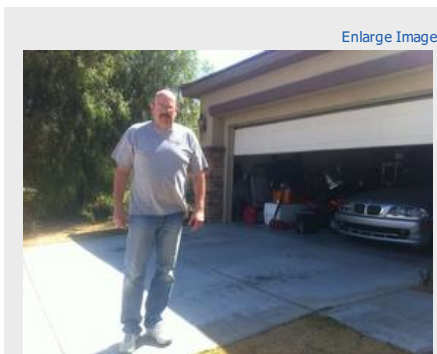
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### Patient privacy and data protection issues lurk in bizarre billing battle

## Kaiser Permanente stuck in odd struggle with tiny Indio vendor

San Francisco Business Times by Chris Rauber, Reporter  
Date: Friday, June 1, 2012, 1:37pm PDT - Last Modified: Friday, June 1, 2012, 4:01pm PDT

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Stephan Dean, a former Kaiser Permanente vendor, says he has hundreds of thousands of Kaiser patient records on servers in his house and garage.

Giant **Kaiser Permanente** has found itself locked in a David-and-Goliath-scale struggle with a tiny Southern California record storage vendor over up to 1 million unencrypted Kaiser patient records the vendor claims remain on servers in his house and garage.

The minuscule husband-and-wife company, **Surefile Filing Systems**, has been engaged in an off-and-on, multi-year dispute with Kaiser over whether the health care giant paid all it owed for Surefile cataloging and storing patient data. It has also reported Kaiser to the California Department of Public Health and other state and federal regulatory agencies for allegedly failing to properly care for and document those electronic records, some of which Surefile's owner said are being kept in his rented tract home in Indio, near Palm Springs.

The California Department of Public Health confirmed to the San Francisco Business Times late last month that it has received the complaint and is conducting an ongoing investigation.

"Kaiser handed over to me several hundred thousand patient records without a written contract" in 2008 and the following year, said **Stephan Dean**, who owns Surefile with his wife, Lisa. Electronic versions of those records remain in his possession, Dean told

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the Business Times, and he wants \$80,000 he says Kaiser owes his company before destroying or returning them.

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Kaiser, not surprisingly, has a different take. At its request, Dean turned over all of its records in 2010 "that had temporarily been stored by this vendor," says Diana Halper, a spokeswoman for Kaiser's Southern California region. She alleges that Dean is "falsely claiming continued possession of medical information as leverage to extract an unearned and unfair settlement from a routine business matter that was properly resolved long ago."

The Oakland-based system is confident Dean no longer has possession of clinical information, according to Halper.

Kaiser has refused to pay "unwarranted compensation to this vendor," Halper said, while noting that "to our knowledge, no others have complained either to (the California Department of Public Health) or to Kaiser Permanente" about the situation.

That could be, of course, because few people outside of Surefile and Kaiser have any idea the tiny vendor and health care giant even had a relationship. By Dean's account, Surefile fell into the business of storing medical records for Kaiser almost accidentally, and did so for several years without a contract.

As Dean tells the story, he first did business with Kaiser while working for a client printing company that provided folders to Kaiser hospitals in Southern California. In the fall of 2008, after Kaiser acquired Moreno Valley Hospital, "I was in the hospital delivering folders, and I made a proposal to catalog records" for the facility, he said. That led to Surefile storing hundreds of thousands of patient records for years, much of that time without a formal contract, business association agreement, proper insurance, data encryption and other standard protections, Dean told the Business Times.

That initial deal netted Surefile between 200,000 and 300,000 Kaiser patient records, Dean said. Later, he collected approximately 345,000 patient records from Kaiser's West Los Angeles Medical Center. His wife, [Lisa Dean](#), reportedly did work for Kaiser's Riverside operations, again allegedly without a contract or business association agreement.

Dean claims that lengthy delays in getting paid by Kaiser for storing the patient records and other work allegedly forced him to sell other assets at "pennies on the dollar" to make ends meet. Kaiser's spokeswoman, meanwhile, also attributed his recent actions to "perhaps his own financial desperation."

After Kaiser allegedly took its time paying Surefile for some of its work, Dean began demanding payment and ultimately reported the health system to the California Department of Public Health and several other regulatory agencies for allegedly failing to properly store the patient records, document their whereabouts and then for failing to report those alleged transgressions.

In July 2010, Surefile returned paper records with hundreds of thousands of patients' data to Kaiser, after receiving \$206,000 in payments, Dean says, but his company still holds an unencrypted data base of Kaiser patient information on three servers stored in his home and garage. Dean says they contain between 600,000 and 1 million patient records, although that can't be independently verified.

[Tom Freeman](#), an attorney for Kaiser at Marion's Inn LLP law firm in Oakland, sent Dean a May 2 email requesting that he destroy the data or return the servers to Kaiser, but didn't threaten him with legal action, even though Kaiser has been demanding their return for years.

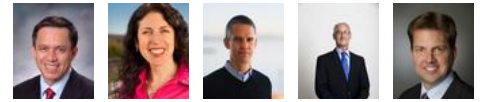
As recently as May 31, Kaiser's Halper argued that Surefile no longer has electronic patient records but in a later email the same day noted that on completing his work for Kaiser "Dean was instructed to destroy any electronic medical information that might be maintained on his computers as a result of providing the services."

Kaiser even "gave him instructions on how to do this in case he didn't know," she said. "We also offered to wipe the computers clean for him and have the computers recycled or scrapped as he had mentioned the computers were sitting in his garage."

There's no evidence, however, that any of that was ever done, despite Kaiser's assurances that Dean no longer has possession of Kaiser records. And Dean insists he still has the data on three servers on his property.

The way Dean sees it, Kaiser stuck him with a bunch of electronic patient records it refuses to recover or pay for (he's demanding \$80,000, effective June 1). As a result, he's reported the

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health care giant to several regulatory agencies, including the California Department of Public Health, the California Office of Health Information Integrity, the federal Department of Health and Human Services and its Region IX Office for Civil Rights in San Francisco.

[Ralph Montano](#), a Department of Public Health spokesman in Sacramento, confirmed May 25 that Dean's complaint against Kaiser "remains under investigation."

"And because the investigation is ongoing, I can't release any further details at this point," Montano said.

Dean says his long convoluted saga with Kaiser is similar to a case the Business Times covered in April 2010 concerning an Alameda Superior Court lawsuit against Kaiser over how the Oakland-based system handled X-rays and other medical images of 2,800 Northern California patients.

That suit, by Phaedrus Internet Development Inc., a Pleasanton-based firm that digitally stores patients' medical images, alleged that Kaiser breached its contract with Phaedrus starting in 2008, owes it about \$1 million, and improperly left 100,000 patient images on Phaedrus' servers without filing a required business associate agreement with federal regulators to fulfill privacy protections.

Phaedrus, which does business as MDConsult.net, alleged in its suit that it started storing Kaiser patients' medical records after an August 2005 agreement at Kaiser's Stockton medical offices and later expanded it to other areas. At the time, in April 2010, Dr. [Lionel Foster](#), Phaedrus' co-founder, said the lawsuit was part of an effort to bring what he alleges were Kaiser violations of HIPAA (Health Insurance Portability and Accountability Act) patient privacy records to the attention of legal and regulatory authorities.

Foster was a former Permanente Medical Group physician, and said that he was terminated in September 2009 for reporting Kaiser's alleged HIPAA violations, and that Kaiser demanded that he promise not to sue for wrongful termination in order to resolve the contract-related lawsuit.

In the spring of 2010, [Derek Davis](#), Kaiser's attorney in the matter and a partner at Cooper & Scully PC in San Francisco, said in a legal filing that Phaedrus failed to bring suit within the applicable statute of limitations, didn't include the terms of its "alleged" oral contract with Kaiser in its suit, and otherwise didn't provide facts to back up its allegations.

Phaedrus now has a new law firm, [Skadden, Arps, Slate, Meagher & Flom LLP](#) in Palo Alto. [Allen Ruby](#), a Skadden, Arps partner, told the Business Times May 23 that the plaintiffs filed an amended complaint April 13 that adds intellectual property-related allegations to the mix. No trial date has yet been set, Ruby said.

Kaiser, meanwhile, hasn't explained why it started doing business with such a small, unsophisticated vendor as Surefile, apparently at the beginning without signed contracts and other documentation. But it's clearly anxious to get the odd saga out of the public eye.

"We apologize for any concern that this incident may cause our members, who should not be caught in the middle of business issues," Kaiser spokeswoman Halper concluded. "We want to assure our members and patients that we are working with all due speed and with the appropriate regulators to swiftly and appropriately resolve this matter."

That said, large numbers of emails and letters have circled back and forth between Dean and Kaiser for several years now, so far without a resolution or any apparent effort by Kaiser to sue or otherwise constrain Dean from doing what it maintains is an attempt to unfairly extract more money from the health care system.

That's because Kaiser "does not wish to prolong or intensify the dispute with this individual," Halper said.

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Chris Rauber's beats include health care, insurance and the wine industry for the San Francisco Business Times.

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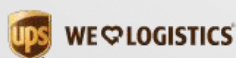
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