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FOR YOUR EYES ONLY

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Patients of a Burbank optometrist who also happens to be a city councilman say their eye doctor apparently used his patient lists to distribute campaign literature supporting two council candidates.

David Gordon, whose optometry office is on Hollywood Way, did a lot to promote and support the ultimately unsuccessful city council campaigns of Phil and Carolyn Berlin. His efforts included speaking from the dais during televised council meetings to endorse and cheerlead for the Berlins, appearing in advertisements for them, and even stringing a gigantic banner across the front of his store above the entrance, a reproduction of the Berlin's campaign sign with their photo.

But some clients of Gordon's are wondering whether he also violated a federal regulation that prohibits improper use or distribution of confidential patient information to help the pair who helped with his campaign in January, 2006. Neither Gordon, nor the Berlins replied to multiple requests for comment on the complaints. Informed in writing that patients had complained to me about use of their medical records, Gordon didn't deny or confirm the patient information was used. He simply didn't respond.



David Gordon, City Councilman and optometrist.

“I knew something was up when my two children, who are years away from being old enough to vote, both received a Berlin campaign flyer on the same day I did,” said one woman who asked not to be named. “Three pieces of mail came to our house the same day, and [David Gordon] had examined all of us. That’s the first thing one of my kids noticed. Our eye doctor was on the flyer.”

In April, 2001 a new federal regulation was enacted that, among other changes, drastically limited the ability of health providers, insurers and others in the industry to share, sell or misuse information about patients in their care. The “Health Insurance Portability and Accountability Act,” commonly known as HIPAA – and pronounced hip-ah – bars those who collect information about patients from sharing it without the patient’s prior approval. HIPAA also mandates that patient information can only be used, even by health care

providers or insurance companies, in a manner related to the treatment of the patient.

Of those who contacted me to say they suspected they were added to the literature mailing list because they had been Gordon's patients, none wanted their names used for this story. But two have told me they are filing complaints with the Office of Civil Rights for the Health and Human Services Department, the agency that oversees enforcement of HIPAA.

"The first time I went to the office there was a silly mistake with the spelling of my first name," one of the complainants told me. "I never complained about it. I didn't care. But when that campaign mail showed up, it had the very same misspelling of my name that I've only seen one other place; my records at Dr. Gordon's office."

That patient also said it's unlikely his name was gleaned from lists of registered voters. "I've never voted in California in my life," he said. "And I couldn't tell you the name of anyone on the city council."

The mother who complained noted that the names and addresses of her children certainly wouldn't show up on the lists of registered voters that many candidates purchase for a variety of campaign purposes.



Phil Berlin, unsuccessful candidate endorsed by Gordon.

With the candidates and the councilman not talking, there's no way to know if Gordon provided a list of his patients' names and addresses to the Berlins or the mail house they used for the mailing, or if he mailed campaign materials himself directly from his office. But either instance would appear to violate "marketing" provisions of HIPAA.

According to the Department of Health and Human Service's Office of Civil Rights in San Francisco, the address, e-mail address and telephone numbers of patients are all considered part of a patient's "confidential medical record." Unless a patient gives permission for a disclosure or use, a health care provider may not divulge those details, or use them themselves for anything unrelated to the patient's treatment.

Two in the trio of patients and parents of patients I spoke to say they called Gordon's office to complain.

"They said the doctor wasn't there," one woman told me. "But the guy I talked to apologized and said it was a mistake that the literature went to kids, because nobody checked the ages."

The patient whose name was misspelled told me, "They said they were sorry about the mistake in my name. They obviously just didn't get it."

One of the complainants whose children were briefly Gordon's patients told me they never returned because, "He really was kind of weird about politics and the city."

"We saw him right around the time he was elected, and he kept talking about being on the planning board and being a councilman," she said. "He said there were a lot of terrible things going on and how he was worried about it. That's all he talked about the whole time, and we were really uncomfortable with it."

The woman also said she was concerned because Gordon ultimately recommended treatments that other optometrists before then and since haven't recommended. "Between that and all the weird talk about how important he was in the city, there was no way we were going back."
