

Presenter Name: Tatyana Norman-Webler

Talk Title: A Prescription for Ineffective Notice in mHealth

Presenter Short Bio: Tatyana Norman-Webler is an ICU nurse turned law student. Her experience throughout the COVID-19 pandemic pushed her beyond the bedside in hopes of becoming a better advocate for her patients and our healthcare system. She is a 3L at The University of Akron School of Law in Ohio, where she concentrates her studies on health law and dedicates her time to building a culture of wellness on campus. Throughout law school, she has discovered an interest in health information privacy and medical device regulation. Next semester, she will serve as a legal extern at the Federal Trade Commission. After graduation, Tatyana will join BakerHostetler as an associate in the Cleveland office. Much like she enjoyed patient advocacy and education at the bedside, she has found a passion for consumer advocacy and consumer education. In her student note, a *Prescription for Ineffective Notice in mHealth*, forthcoming publication in Volume 58 of the *Akron Law Review*, Tatyana advocates for the implementation of privacy facts labels, a short-form privacy policy that allows consumers to make informed decisions about which mHealth service providers they trust with their personal health information.

Short Talk Abstract: While consumers increasingly rely on mobile health applications and wearable devices (mHealth) to manage health and wellness, they fail to appreciate that sharing health data with corporate health service providers poses risks to privacy. Surveys reveal that most consumers believe that HIPAA protects *all* health information, and most consumers do not read privacy policies—this is a dangerous combination. Insufficient legal protections for consumer health data, compounded with consumer misconceptions about privacy, result in deeply personal information becoming vulnerable to unauthorized use and abuse. Because privacy policies have proven ineffective in communicating with consumers about privacy, my Note expands on Lorrie F. Cranor’s proposal for a standardized “privacy nutrition label,” specifically in the context of health data exchange between consumers and non-HIPAA-covered providers. I embrace FTC best practices and fine-tune existing models with features that may solve the “unread and unreadable” problem with traditional privacy policies. To achieve *effective* notice, industry and government should collaborate to create a multi-layered, minimally standardized—both in content and form—privacy facts label. The content of the label should include key information dictated by a reasonable consumer standard. The privacy facts label should take a familiar form, like the FDA’s nutrition facts label, adhere to mobile health app best practices, and incorporate “privacy by design” features like readability and unavoidability. Creating a standardized privacy facts label can ensure informed consent, engender brand trust, give mHealth providers explicit guidance on their notice and “affirmative express consent” obligations, and serve as an innovative instrument of transparent dialogue with consumers.