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Risk of Wrongful Data Bank Report

The Grant Regional Health Center terminated Dr. Bashir Sheikh’s employment and medical staff privileges and subsequently filed a National Practitioner Data Bank (NPDB) adverse action report.

Dr. Sheikh sued the hospital for intentional and negligent infliction of emotional distress. He claimed that the information submitted by the hospital to NPDB was false and should have been known to the hospital to be false.

The hospital’s motion to dismiss the suit was denied by a U.S. District Court sitting in Wisconsin.

In its ruling, the court held that a jury could reasonably infer that the hospital intended to cause the physician emotional harm and that in “sabotaging” his prospect of future employment, the hospital had potentially engaged in behavior properly classified as “extreme and outrageous” under Wisconsin law.

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As noted by an attorney in the office of the Inspector General of the United States Department of Health and Human Services, “[t]he court found that a reasonable jury could find a person has suffered sufficiently when false and disparaging information is published on a national data base.”

For further information, please contact Michael A. Kurs, Esq. at (860) 424-4331 or mkurs@pullcom.com, or Elliott B. Pollack, Esq. at (860) 424-4340 or ebpollack@pullcom.com.

Physician Burnout is High

A note in the August 20, 2012 issue of *Archives of Internal Medicine* referenced a survey of more than 7,200 physicians about burnout. Of the physicians surveyed, 45% reported at least one symptom of burnout. Compared with U.S. workers in other fields, physicians were more likely to have symptoms of burnout (38% v 28%) and to be dissatisfied with work life balance (40% v 23%).

Burnout was highest for emergency medicine, internal medicine, neurology and family medicine practitioners. It was lowest for physicians in dermatology, general pediatrics and pathology.

A reviewer lamented that notwithstanding this and similar study results, “(it) never seems to lead to concentrated and effective efforts at prevention and intervention.”

New Connecticut Medical Examining Board Members

Dr. Allyson Duffy, Attorney Kathryn Emmett, Dr. Eric Hodgson, Dr. Edward Monico, Ms. Jean Rexford and Dr. Andrew Salner were appointed by Governor Dannel Malloy to the Connecticut Medical Examining Board and attended their first meeting of the board on October 16, 2012.

Dr. David Goldenberg’s term as a member of the board concluded prior to that meeting.

Must Providers Comply With Flu Shot “Rule”?

Hospitals across the country require members of their medical staff, employed physicians and nurses to be vaccinated against influenza.

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Some individuals have personal issues with the requirement based on libertarian views and difficulties with management. However, as a general proposition, these requirements are reasonable and may be imposed in the interest of patient safety. Many hospitals require vaccinations for other diseases such as measles and impose hand washing mandates and other infection control measures. Some hospitals require masking if the individual is not vaccinated, which is also seen as a reasonable substitute for vaccination by clinicians.

To the extent these sorts of requirements impinge on provider freedom, the interest of the institution and patients, many of whom will be immunologically compromised, trumps the objection.

Health Care Insights editors think it is unlikely that a court would interfere with implementation of a vaccination or masking requirement given the strong likelihood that in a malpractice suit based on transmission of an infectious disease to a patient by a medical staff member or employee, a court would likely hold that a hospital must take reasonable steps to protect patients.

For further information, please contact Karen A. Daley, Esq. at (203) 330-2143 or kdaley@pullcom.com.

"Small" Fine For Small HIPAA Data Breach Reported: Health Care Providers Must Take Caution with All Sensitive Information

Most commentators on health care privacy issues tend to discount concerns about the proper dissemination of protected health information involving a small number of individuals; the focus always seems to be on mega data dumps involving thousands of patients' confidential information.

However, a recent case in Idaho demonstrated that the Office of Civil Rights (OCR) of the Department of Health and Human Services is paying attention to smaller security breaches as well. The Hospital of Northern Idaho reported to OCR that "an unencrypted laptop computer containing the electronic protected health information . . . of 441 patients" had been stolen in June 2010. During the investigation, the OCR determined that the Idaho institution had not addressed "mobile device security" as required by the applicable HIPAA rule, and it fined the hospital \$50,000.

OCR had recently published information to assist health care providers in protecting personally identifiable information of individuals (PII) in the mobile data device arena and apparently concluded that the Idaho hospital had not paid attention to it.

We recommend that any entity that handles PII or electronic protected health information (ePHI) create a process to provide legal review of all vendor contracts for information technology services and create/update a Written Information Security Policy (WISP) and data breach response protocol.

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We have also learned that the Connecticut Attorney General has allocated resources to the investigation of small scale security breaches.

Steven J. Bonafonte, Esq., CIPP, (860) 424-4333 or sbonafonte@pullcom.com can respond to questions about this important topic.

Attorney Notes

Pullman & Comley Energy Department Chair Frederic L. Klein spoke to members of the Association of Long Term Care Financial Managers about energy saving opportunities for long term health care facilities on November 28. To read more about this please [click here](#).

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