

PATIENT PRIVACY-LOOKING BEYOND THE BARE ESSENTIALS

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What happens when a health-care provider turns over protected health information in response to an improper or unenforceable records request? The answer could be that, beyond the bare HIPAA violation, they may incur civil liability for the damage they cause their patient. A number of cases have been reported in the last few years of health-care providers who have released medical records that were improperly provided, and the courts are holding them responsible.

In a Maryland case, a urologist, was sued by his patient. The Plaintiff's attorney retained an expert witness to testify against the physician. The physician obtained treatment information about one of the expert's patients and used this information to discredit the expert at arbitration. The patient then sued the physician for improperly accessing his medical information via a hospital data base. The Supreme Court of Maryland held that the physician could face civil liability for violating Maryland's Confidentiality of Medical Records Act.

In Wisconsin, a pharmacist who disclosed an employee's prescription history to his employer in a personal injury action arising out of the employment was sued by the employee for the unauthorized disclosure of his prescription profile. The pharmacy admitted that it released Hannigan's pharmacy records to his employer's attorneys, but plead ignorance of Wisconsin's Patient Privacy statutes. The Court found that even though the employer's attorneys may have used false pretenses to obtain the information from the pharmacy, this was a "knowing and wilful" release of protected information, and charged the pharmacist with the responsibility of being familiar with the technical requirements of a subpoena duces tecum, as it pertained to his profession.

In a New Jersey case, the Court held that the doctor who released a patient's records to opposing counsel pursuant to an improper subpoena could be liable to the patient for damages, even though the subpoena's defects were of a technical nature, which a health-care professional might not notice. The Court seemed to follow the reasoning of the *Hannigan* court, and held the health-care provider to a high standard regarding knowledge of the law where it concerns patient privacy. The court specifically placed the burden upon the doctor to consult with his personal legal counsel before sending out responsive documents to a third-party without a release from the patient.

A Virginia case held a hospital liable for an unauthorized internal dissemination of medical records in preparation for defending a medical malpractice case where the patient did not manifestly place her medical condition at issue.

Improper requests for medical records occur from time to time. All requests for patient medical records should be checked by legal counsel to make certain of compliance with the applicable laws.