Healthcare Employer Lands in Patient-Privacy Predicament

Insights
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Healthcare providers are required by law to maintain the privacy of most patient information, and there are good business reasons for medical practices to protect patients' personal information. But in a recent case, a medical practice group found itself unwittingly having to disclose what it considered to be private information of its patients in order to defend a lawsuit brought by former employees. *Peace v. Premier Primary Care Physicians, S.C.*

Overtime Pay And Retaliation Claims

Wendy Vera and Suzanne Peace, two former employees of Premier Primary Care, sued the operators of that suburban medical facility (the doctors) for overtime wages and retaliation. Regarding the retaliation claim, the doctors maintained that they had terminated Vera and Peace for a legitimate reason – poor job performance. When they terminated the two women, the doctors gave them letters outlining the specific problems with their performance, including: "Patients have complained that you are rude and unhelpful to them on the phone and when they are at the office." The doctors did not identify the patients who made the complaints.

Patient-Privacy Predicament

During the discovery phase of the lawsuit, Peace and Vera sought the names and contact information of Premier's patients, as well as office schedules showing patient names and appointment times. The ex-employees wanted to interview the patients who were alleged to have complained about them or were alleged to have witnessed their unprofessional behavior, in an effort to verify or discredit the doctors' alleged reasons for terminating them. The doctors refused to answer questions about the identity of patients, arguing that their patients' privacy rights outweighed the plaintiffs' interests in obtaining the information.

Patient Contact Information Discoverable

A federal district court found the doctors' invocation of their patients' privacy rights to be "odd," in light of the fact that the doctors themselves had contacted several "loyal" patients for help in discrediting the employees' claims that they performed their jobs satisfactorily. Since Vera and Peace sought only the patients' contact information, and not their medical records or medical information, the court found that any privacy concerns were "minimal" and were outweighed by the employees' rights to have the information relating to the reasons for their terminations. The court directed Premier to provide the contact information for 25 patients of the plaintiffs' choosing.

Takeaway For Healthcare Providers

This decision raises the question of how a healthcare provider can maintain a defense while at the same time preserving the privacy of patients who might not want to serve as witnesses in a dispute. If the termination letter had not been so specific, perhaps the court-ordered contact with individual patients could have been averted. On the other hand, termination documents that are vague and nonspecific sometimes raise questions about the employer's "true" motives. In this case, it did not help that the doctors themselves reached out to certain patients to back their version of events.

The case serves as a good reminder to be consistent in handling patient-privacy issues and, when terminating a poor performer, carefully consider the extent to which you refer to patient information during the process. If patient information must be used, procedural mechanisms exist for doing so without violating patient rights or HIPAA privacy rules. Let us know if you'd like additional information.

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