

Privacy Infractions of Medical Records

Introduction

To assist practitioners in understanding the concern about medical privacy, a collection of infractions, glitches, errors and horror stories is offered. These are grouped for easy comprehension by topic:

- Privacy Breaches Leading to Litigation
- Personal Invasion of Privacy
- Police-Related Issues
- Medical Records Improperly Handled
- Use of Records by the Government
- Failure to Keep Medical Records Secure
- Commercial Uses of Medical Records
- Access to Records Not Authorized
- Research
- Litigation Involving Provider-Related Privacy Breaches.

Privacy Breaches Leading To Litigations

Employees Share Information. An employee's psychiatric evaluation, which was done as part of a workers' compensation claim, was shared by other employees. Aggrieved employee sued her employer.

Nurses Records Improperly Accessed. The supervisor accessed a nurse's medical records posing as her attending physician and a lawsuit ensued. The supervisor claimed she wanted access out of concern that she had contracted a nosocomial illness.

Hospital Employees Spread Word of Co-Workers HIV. For this infraction, the local hospital was fined \$125,000. The grapevine was the source of the privacy breach.

Pharmacist Breaches Privacy. The pharmacist told the customer's children that their father had AIDS. The pharmacist was sued successfully.

Approved Release of Information. Patient agreed in writing to a release of medical records for condition not related to AIDS. When his HIV status was revealed, being not relevant to his condition, he sued. Court held against the patient. There was no need to segregate his medical information.

EMT Indiscretion. The EMT worker invaded the patient's medical privacy when such worker told the patient's co-worker of the emergency trip to the hospital. The co-worker then told others. The court held against the EMT who had no right to disclose the details of the hospital care.

Hospital Indiscreet Release of Medical Information. The hospital did not knowingly divulge information to the former friend and business partner of the patient. When the former friend and business partner passed on the medical information (psychiatric in nature) to others, the patient sued the hospital and won.

Personal Invasion Of Privacy

Genetic Disorder. Participant was fired by an employer after being diagnosed with a serious genetic disorder. A few weeks prior, such participant has been given a good work review and a raise.

AIDS. Pharmacist disclosed to B's wife that B was medicating for AIDS. When A's wife threatened to divulge this information in a child custody dispute, B settled out-of-court rather than have the medical information be made public.

Insurer Release of Information. The insurer was sued in court (and lost) when it was shown that the insurer allegedly forged the applicant's name on the release form in order to gain access to his mental health records without his knowledge.

Rx Records Fraudently Obtained. Wife told pharmacy to not release her Rx history to her husband; a divorce was imminent. When the husband went to the pharmacy requesting her Rx records allegedly for tax purposes, he was given such medical records. The husband then divulged her Rx records to her family, friends, state DMV, et al. claiming she was a drug addict and a danger to the public. Litigation ensued.

Altering Medical Release Form. Police chief altered a medical release form to gain access to a police officer's medical records. Police chief's defense in an ensuing lawsuit was a *need-to-know*. Outcome not known.

Political Smear Campaign. In an attempt to hurt the campaign of a political opponent, school board member (or selected members thereon) leaked the medical records of such member to the press. The records showed medical care for depression.

Abortion Related. Woman had a clinic abortion that was done poorly; the woman sought emergency medical care at a charity hospital. The charity hospital released her medical records to anti-abortionist activists who posted them on the Internet, pictures were included. The woman sued the hospital and the activists.

Demand Management. The Rx management firm automatically notified the employer that participant was taking Prozac; participant was upset to find herself in a disease management depression program.

Employment Loss. The insurance company medical records reached the employer who learned that one of its truck drivers had been treated for a drinking problem.

Tennis Player Ashe. Ashe had medical care for AIDS which had been contracted from blood transfusions. His medical records were released to the press by a health care worker without his permission.

Singer Tammy Wynette. A hospital employee sold the medical records of Wynette to several tabloids in violation of hospital rules. Such release was not authorized by the singer. The hospital employee received jail time for such misdemeanor.

Error by Physician's Clerk. The patient authorized the release of her carpal-tunnel problems for workers' compensation reasons. What the physician's office gave to the employer was the patients entire file going back numerous years in time. Such release was hurtful to the patient.

Politically-Motivated. On the eve of the election, the medical records of a congresswoman were faxed from the hospital to the press: The records disclosed her bout with depression and attempted suicide.

Police-Related Issues

Fraud Investigation. In a legal brief, the medical records of hundreds of patients were released by a U.S. Attorney even though these patients were not involved in any criminal activities or investigation.

Stolen Car from Clinic Parking Lot. In the police investigation thereof, they seized for purposes of investigation many of the clinic's medical records; their actions were justified for reasons of criminal investigation. The police backed down after complaints were filed.

Public Protection Programs. The police were authorized to keep records on persons with severe mental problems. Even though personal freedom advocates argue to the contrary, the police continue to legally maintain such records for public protection reasons.

FBI Agent Loses Job Unfairly. A mental health therapist was under investigation for fraud. In the course thereof, the medical records of the FBI agent were found and forwarded to the FBI. The FBI, in turn, fired the agent as being unfit. The agent was later reinstated.

Medical Records Improperly Handled

Computer Hard Drives. A state's Medicaid office sold its surplus equipment as a result of which two privacy infractions occurred:

- Discarded computer hard drives were not erased. These hard drives contained sensitive medical information.
- Old file cabinets still had sensitive medical records when they were auctioned off.

Bad publicity resulted but no litigation.

Unexplained Records in a Parking Lot. In a parking lot near a medical clinic were found many patient medical records. The records were from more than one clinic. Bad publicity resulted.

Misplaced Medical Records. An HMO donated some file cabinets to a public service company. In the cabinets some medical files had fallen behind the drawers and gone unnoticed. For this bit of sloppy records discipline, the HMO was sued.

Transportation Glitch. Thousands of medical records, being transported to the incinerator, were blown off the truck in a wide geographic area. No litigation resulted but the incident resulted in some unfavorable publicity for the providers.

Unsecured Dumpsters. According to the bad press which resulted, it is obvious that putting medical records in an unsecured dumpster is an infraction of medical privacy.

Shredding of Documents. Standard practice should be that medical records are shredded *before* they go to an unsecured dumpster or are hauled to an incinerator.

Indiscreet Medical Student. As part of a research/study project, a medical student took home some old medical records for analysis. Instead of returning them, he trashed them in a convenience store trash can. They were discovered and reported to the medical school, which disciplined the student.

Use of Records by the Government

Medical Records. The intention of the state government was to force certain Medicaid recipients into substance abuse rehab programs. Since the Medicaid and welfare program data bases were connected, the plan was to make welfare benefits conditioned on being in a substance abuse rehab program. The program was discontinued when the potential medical-privacy issue surfaced.

State – Federal INS Cooperative Efforts. The idea was for the state to give the Immigration and Naturalization Service sensitive information from the state's Medicaid files. The idea was dropped for reasons of medical privacy.

Failure to Keep Medical Records Secure

Medical Records Posted on a Web site. A large number of records showing the names, ages and the results of psychological testing were accidentally posted on a university Web site in error.

Rx Company E-Mail Glitch. The Rx company sent e-mails to a large number of regular mail order users of a drug which was associated with a mental illness. The addressing was done so as to give the names of all of addressees for public review. The FTC filed a complaint which was settled when the Rx Company agreed to some stiff remedial changes. Because the breach was not intentional, the Rx Company avoided any monetary punishment.

Web Site Exposure of Names. Thousands of persons requested pamphlets and brochures on substance abuse. Such persons had their names, addresses, telephone numbers and e-mails posted on the Web site of a federal agency.

Physician's Laptop Stolen. The laptop contained the names and medical histories of all of his patients.

Vulnerability of Medical Records. To demonstrate the poor security of medical records, a hacker downloaded thousands of medical records for a university medical center.

E-Mails Gone Astray. An HMO sent e-mails to wrong addresses in error. The e-mails contained sensitive patient information.

Insurance On-Line Marketing Computer Error. The on-line sales program failed to make secure sensitive applicant or insured data that could be viewed by subsequent users.

Medical Center Web Site Error. The actual medical records of a small number of patients were actually posted on the medical center's Web site.

Health Products Company. This company accidentally revealed their customer's names, phone numbers and bank/credit card number on the company's Web site.

Buried Medical Records Unearthed. By error, medical records were not deleted from the University Medical Center Web site. They lay unnoticed for many months until someone accidentally found them. The university received some very bad publicity.

Commercial Uses of Medical Records

Web Site Lists. Names and addresses on an Internet database listing persons with allergies, bladder control problems, etc., was clearly an invasion of privacy if such

records were used commercially. The major managers of these databases are the large Rx companies, who assemble them when a prescription is filled.

Major Pharmacy Chain Flim-Flam. When prescription was completed, the Rx customer signed a *sticky* indicating whether the customer wanted Rx counseling from the pharmacists. The *sticky* was then transformed to a form which authorized the pharmacy chain to use the Rx records for commercial or marketing reasons. No customer or store employee was aware of this action by the pharmacy chain. The state's attorney general stopped the *flim-flam*.

Rx Records for Commercial Reasons. Several of the giant Rx companies use their Rx records for mailing purposes. Their direct purpose was to monitor customers so as to help them be better users. When the Rx companies were met with public outrage, they discontinued their program.

Rx Drug Care Plan. The Rx plan bought computer lists so as to solicit business for its owner, one of the big Rx firms. Patients were asked to switch from their present Rx company to their own Rx firm.

Release of Data by a Physician. The physician, it was believed, gave a patient a courtesy Rx for cholesterol. Shortly thereafter, the patient began getting solicitations from the Rx firm who gave the physicians the free samples. Evidently, the price of the free Rx was the divulging of the patients' name to the Rx firm.

Access to Records Not Authorized

Stealing Records for Nonmedical Reasons. A temporary employee of a clinic stole medical records for their phone and credit card numbers.

Banker Uses Medical Records for Commercial Reasons. While serving on his county's health board as a trustee, he got the names of the county's cancer patients and cross-referenced them with his bank's mortgage files. The bank either refused to make a loan or called in the loans of those customers with cancer.

Stolen Computer Disk. Public health worker stole the disks containing the names of the county's identified AIDS patients. The disks were given to the local press.

Not-Funny Teenage Prank. The teenager got the patients' names of those in the hospital when she visited her hospitalized mother. The teenager made crank phone call to such patients telling them that they had been diagnosed as HIV-positive.

Sensitive Medical Information on Hospital Computer without Security. Anyone could access the hospital's computer and printout sensitive medical information. After some very unfavorable publicity, the HMO modified the security of their computer.

Research

Release of Research Data Caused Embarrassment. Person permitted his cancer cell slides to be used for research having been promised anonymity. When the slides and his name were entered onto a computer, his condition became public information. The problem surfaced when some people called to offer condolences.

Donor Names Revealed. A communication piece mistakenly gave the name of the kidney donor to the donee. While many already knew the donee's name, many did not.

Framingham Study. For more than 50 years, the Framingham Heart Study has performed research. When the Boston University sold their data through a commercial venture, they came under considerable criticism and had to abandon the commercial project. The original Framingham project was designed to be altruistic.

University's Research Project Shutdown. The reason for the shutdown was that it failed to gain adequate consent statement and to provide sufficient security on the data.

Litigation Involving Provider-Related Privacy Breaches

Privacy Where There is No Living Will. Estate of deceased sued the hospital for heroic but unauthorized care. Such care resulted in patient going into a chronic vegetative state. Cause of complaint was that deceased's privacy had been invaded by the hospital. The court held for the hospital.

Estate of Leach v. Shapiro,
469 N.E. 2d 1047 (Ohio App 1984)

TV News Airing. Person was in a pharmacy while the news/camera crew did a brief story. Person was shown along with others in the story. Person sued newspaper for invasion of privacy. Court held for the newspaper because it was brief, not embarrassing and facial features were not clearly discernible.

Mark v. Seattle Times, 635 P.2d 1081
Wash. 1981); Mark v. King Broadcasting Co.
618 P.2d 512 (Wash. App. 1980).

Drivers License Competency Hearing. At a regulatory hearing, the driver's psychiatrist produced medical records that established the driver's competency to drive. The driver sued the psychiatrist for a privacy infraction. The court held for the psychiatrist; the state's needs were more vital than the driver's privacy.

McKay v. Commonwealth, 415 A.2d 910
(Pa. Comm. 1980).

Physician's Knowledge and Public Safety. The patient had disclosed intimate details to his psychiatrist who, on the grounds of safety to others, disclosed them to the man's

spouse. What followed was (a) loss of family, (b) loss of job and (c) emotional distress. Patient sued the psychiatrist. Whatever grounds there may be, the court did not hold privacy invasion as one of them.

McDonald v. Clinger, 446 N.Y.S.2d
801 (N.Y. App. Div. 1982).

Medical Advice in Marital Situation. Patient of psychiatrist had substance abuse problem and other problems that were verbally reported to the spouse of the patient. Knowing a divorce was pending, the physician confirmed his knowledge to the spouse in writing. No one else saw the letter. The court said that this was not medical privacy invasion.

Mikel v. Abrams, 541 F.Supp. 591
(D. Mo. 1982).

Nursing Home Privacy Breach. Nursing home evidently wished life support withdrawn for an ESRD patient. To bolster their case, they exceeded their authority in having patient's records released as well as having the patient interviewed and examined by people who were not authorized to do so.

Spring v. Geriatric Authority of Holyoke,
475 N.E. 2d 727
(Mass 1985).

Medical Records and Legal Orders. The production of medical records for legal reasons (depositions, subpoenas, etc.) is not medical privacy invasion.

Jones v. Thorton, 323 S.E.2d 217
(Ga. Ct.App. 1984).

Release of Improper Rx Information. The Rx card manager gave a state's transportation department data on the Rx usage of its employees. This in effect notified the state of its AIDS-infected employees. Court held for the state even though it gained information of a private nature.

Doe v. SEPTA, 72 F.3d 1133
(3d Cir. 1995),

Medical Records that are Subpoenaed. Where the records are captured as a matter of law, the aggrieved person has no claim of privacy. Such records, however, must be protected while under court order; an example would be the grand jury secrecy rule.

Doe v. DiGenova, 642 F.Supp.
624 (D.D.C. 1986)

Abortion Lobbying. Using publicity and/or harassing tactics as a method of protesting against abortion was held to be invasion of privacy.

*Chico Feminist Womans Health
Center v. Butte Glenn Medical Society*,
557 F.Supp. 1190 (C.D.Cal. 1983).

Employment-Related Issue. Hospital nurse involuntarily resigned over an employment issue unrelated to privacy. The nurse sued on the grounds of medical privacy invasion because of the constant questions as to why she resigned. Court held for the nurse's employer.

Avallone v. Wilmington Medical Center, Inc.
553 F.Supp. 931 (D.Del. 1982).

Psychiatrist's Breach of Privacy. The psychiatrist was held by the court to have invaded the patient's privacy by divulging his medical records in the marital dispute of the patient. What made his breach egregious was that the psychiatrist did so without legal compulsion or permission of the patient.

Cutler v. Brownbridge, 228 Cal.
Rpr. 545 (Cal. App. 1986).