

HIPAA Violations: Nurse Looked At Her Mother's, Sister's Charts, Termination Upheld.

A registered nurse worked as a clinical affiliate in the hospital's cardiology department. Her position required her, among other things, to access patients' medical records to review lab values and other diagnostic test results ordered by the physicians and to write progress notes in the charts.

When she was hired she signed an agreement she would protect patient confidentiality by not seeking or obtaining information regarding a patient which was not required to perform her duties.

When the US Health Insurance Portability and Accountability Act (HIPAA) went into effect she signed a revised confidentiality agreement that she would not access or view information other than what was required to do her job, would immediately ask her supervisor for clarification if she had any questions whether information was required for her job and acknowledged that violation of the facility's confidentiality policy could result in disciplinary action up to and including termination.

Nurse Accessed

Family Members' Charts

An anonymous complaint prompted an investigation by the facility's HIPAA compliance officer. The nurse was found to have accessed her mother's and sister's charts on forty-four and twenty-eight separate occasions respectively.

They were never cardiology department patients. There were no guardianship papers, HIPAA releases or power of attorney releases in the files giving the nurse legal authority to access their charts.

When confronted by human resources, the nurse admitted she did it but did not believe it was wrong. She was fired for violation of the patient-privacy policy.

After her termination the nurse sued for age discrimination, discrimination on the basis of association with a disabled person (her sister), intentional infliction of emotional distress, defamation, negligence and invasion of privacy.

The US District Court for the Northern District of Ohio dismissed her case. **So-mogve v. Toledo Clinic**, 2012 WL 2191279 (N.D. Ohio, June 14, 2012).

The nurse explained that the two individuals whose medical records she accessed were her mother and her sister.

Her mother has Parkinson's, takes a number of meds and frequently falls. Her sister, who lived with her, has Down syndrome.

When asked if she needed to access information from their medical charts to do her job as a clinical affiliate in the cardiology department, the nurse had to admit she did not.

The nurse's age discrimination case is not on solid ground, one reason being that system-wide the hospital had terminated a number of employees for HIPAA violations, more than half of the individuals terminated being under forty years of age at the time.

Some of the younger individuals were terminated specifically for accessing their own family members' medical charts.

The facility had a strict policy on its books and enforced it uniformly that intentionally accessing a family member's chart not required to do one's job was grounds for termination.

UNITED STATES DISTRICT COURT
OHIO
June 14, 2012

Jail Nursing: No Deliberate Indifference.

The patient was a detainee not yet proven guilty who was being held in the county jail pending trial on felony charges of dealing controlled substances and creating a public nuisance.

The patient suffers from a blood clotting disorder which causes him chronic pain. He was on OxyContin. The jail physician instead put him on Vistaril, clonidine and Donnatal to manage his narcotic withdrawal, started ibuprofen and Tylenol for his pain and continued the metoprolol, Coumadin and Nexium he had been taking. The jail nurses administered his medications per the physician's orders.

The inmate sued the county sheriff, jail physician and jail nurses for violation of his Constitutional rights.

Nurses cannot blindly defer to the physician's judgment in circumstances in which following the physician's chosen course exposes the patient to apparent and imminent harm.

Doing so in the corrections context could amount to deliberate indifference to an inmate's serious medical needs, a violation of the inmate's Constitutional rights by a nurse.

UNITED STATES DISTRICT COURT
INDIANA
June 5, 2012

The US District Court for the Southern District of Indiana acknowledged that nurses in the corrections context have the same obligation as nurses elsewhere to advocate for their patients when there is an obvious problem with how the physician's action or inaction is not meeting the patient's needs. However, although the patient disagreed, there was nothing wrong with the physician's plan and no problem here with the nurses following his orders. **Holloway v. Delaware Co.**, 2012 WL 2013214 (S.D. Ind., June 5, 2012).