

DECISION DIGEST

Actual cases and rulings from Princeton Claims Management

NOVEMBER 2022

ACCESSING A MEDICAL RECORD WITHOUT CONSENT OR A BUSINESS REASON RISES TO MISCONDUCT

Background

A medical assistant (employee) was placed on an unpaid suspension while an investigation was conducted into an incident that had occurred the previous month. The employee worked within the surgical unit of a physician practice and had access to the hospital's medical records. She was only permitted to access records for patients within the practice and had to have a business connected reason. An acquaintance of the employee's son (not a patient of the practice) filed a complaint alleging that the medical assistant accessed her medical record without her consent and shared the information with others. The employer's investigation focused on the employee's computer activity and concluded that the medical assistant had accessed the individual's medical records numerous times without authorization or a business reason. Although the employee contended, she had consent to access the record, her actions were deemed to be reason for immediate discharge under the employer's confidentiality policy and the Health Insurance Portability and Accountability Act (HIPAA).

Process

The medical assistant (claimant) filed a claim for unemployment and was held disqualified due to misconduct for violation of the employer's policy. The claimant appealed and contended that she could provide documentation that substantiated she did not violate the policy because the patient had given her consent. She further contended that she could produce a Facebook post proving she had consent.

The appellant claimant and employer witness with Princeton Claims Management appeared before an Appeal Tribunal examiner. Both parties agreed the claimant had accessed a medical record of a non-patient of the medical practice – the question was whether she was authorized to do it. The claimant argued she did not commit an act of misconduct because she received permission from the individual through a social media post. The claimant did not provide documentation nor a witness to support her contention. The employer witness testified that authorization cannot be given through a social media post but can only be given through proper documentation which requires the patient to complete an authorization form. In this case, no such form was completed, and the claimant had no right to access the medical record. And therefore, the employer argued the claimant's disqualification for misconduct was appropriate and should be upheld.

Judgment

In the Appeal Tribunal's Decision, the examiner opined that since "it is unreasonable to believe that authorization to access a person's medical record can be given through a social media post when access to medical records are so strictly regulated, the employer's testimony is found to be more credible, and the claimant's contention is rejected." Hence, the claimant's actions constitute a willful disregard of the standards of behavior which the employer has a right to expect of its employees and she is disqualified due to misconduct connected with the work under N.J.S.A. 43:21-5(b).

This case illustrates the importance of protecting the privacy of an individual's medical record under the employer's confidentiality policy and HIPAA. Accessing a patient's medical record without a work-connected reason or valid written consent is a breach of that individual's privacy rights under HIPAA, and the employer's policy and rises to misconduct under the NJ UI Law.

For more information about Princeton Claims Management or unemployment insurance eligibility please contact **LuAnne Rooney Frascella** at 609.936.2207 or lfrascella@njha.com.