



“HIPAA-Derivative” Litigation

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NELSON V. HENNEPIN COUNTY MEDICAL CENTER ¹ **SEPTEMBER 11, 2007** This case represents another in a series of cases around the country involving an individual using HIPAA to sustain a personal lawsuit. For example, the plaintiff sued Hennepin County Medical Center, two hospitals and the City of North St. Paul for a **“HIPAA-Derivative Medical Record Disclosure and Privacy Claims: Negligence, Breach of Contract, Minnesota Human Rights Act, Wrongful Detention, and Deprivation of Freedom.”** It is interesting that this type of a lawsuit has now developed a specific naming convention. Several of the defendants attempted to litigate this case on the federal level; ultimately however, the Federal District court remanded the case to the state court for litigation.

For example, the Federal District court stated: “Nelson, [the plaintiff], alleges a claim entitled **“HIPAA-Derivative Medical Record Disclosure and Privacy Claims: Negligence, Breach of Contract, Minnesota Human Rights Act, Wrongful Detention, and Deprivation of Freedom.”** The court went onto clarified the plaintiff’s use of HIPAA as follows: “At the motion hearing and in response to defendants’ arguments that there is no independent **HIPAA** cause of action, Nelson explained that she was using **HIPAA** as a basis for setting the **standard of care** for several of her state-law claims, not as an independent federal law claim. The Court agrees with both Nelson and defendants that Nelson has no federal cause of action under **HIPAA**.” Finally, the court stated as follows: “the Court strongly believes that it would be in all parties’ best interests to engage in good-faith settlement discussions with Magistrate Judge Nelson before they continue their litigation in state court.” The District Court made this recommendation based on the future costs of litigation and other concerns. In sum, organizations that are subject to HIPAA including hospitals, individual physicians, school districts, counties and universities can be sued by an individual using the HIPAA if the organization handles PHI in a negligent manner. ¹ 2007 WL 2695647, SEPTEMBER 11, 2007 2 504 F.Supp.2d 248 MAY 25, 2007

EVERY v. JOINT TWP. DIST. MEM’L HOSP ² **MAY 25, 2007** In this case Melissa Avery, (a part time RN), sued her former employer, the Joint Township District Memorial Hospital, alleging that the hospital wrongfully terminated her.

The hospital justified the firing on poor work performance, which involved a HIPAA violation. The hospital claimed Avery had disclosed patient PHI to an individual outside of the hospital. This issue was presented to a Federal District Court and the court justified the firing based upon poor work performance including the HIPAA violation. Please note that firing employees is a fairly common method of addressing egregious HIPAA violations. In sum, employee termination, (however costly it may be), is a judicially acceptable action to rectify HIPAA violations committed by ignorant or negligent employees.

¹ 2007 WL 2695647, SEPTEMBER 11, 2007



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Practical tips on protecting your organization in the event of an audit or lawsuit.

Ensure your organization has properly documented its classification and that your HIPAA policies and procedures reflect that classification. Also make sure your procedures vary according to the specific user groups in your organization. (HIPAA Solutions ComplyPAK provides all customized user group policies and procedures and tools to enable entity classification according to the HIPAA rules).

Ensure your organization is able to produce all appropriate and dated tracking documentation for disclosures as specifically required by certain sections of the Privacy rule, upon request. This is crucial to justifying disclosures. (HIPAA Solutions offers the PHI Locator to track all disclosures).

Ensure that your organization's security plan and documentation of the implementation of that plan has been completed in relation to securing your organization's network.

Ensure that this plan includes all appropriate IT network security standards. (HIPAA Solutions offers the Security Module enabling your organization to implement an accurate and comprehensive security remediation plan).

Determine whether your organization has kept up with training on HIPAA including recent Federal cases interpreting the HIPAA code, be able to produce documentation of this up to date training. (HIPAA Solutions ComplyPAK offers automated web based training updated regularly when the law changes, ensuring compliance with the HIPAA training rules).

Ensure that your organization can produce a section 514 analysis on PHI usage involving all employees within your organization that handle PHI. (HIPAA Solutions ComplyPAK offers a software solution to ensure this analysis is performed correctly)

HIPAA Solutions has automated all of these tasks with HIPAA ComplyPAK. ComplyPAK is a comprehensive, tested software solution that can significantly reduce the costs of becoming and staying compliant with HIPAA in real time.