

Legal issues - medical



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LEGAL ISSUES-MEDICAL Your School of Nursing Number and of Paper This paper shall present a logical answer involving a legal-medical problem involving a doctor, who violated the provisions of the Health Insurance Portability and Accountability Act (HIPAA), particularly the Privacy Rule of the HIPAA, when he disclosed a medical record abstract of his former patient. This paper will explain the criminal liability of the doctor to his patient and the liability of the nurse who assisted him during the abortion of the patient, and the penalties that they will be facing for the act or acts committed. Keywords: medical malpractice, privacy rule, criminal liability, penalty, abortion

ANSWERS TO THE LEGAL MEDICAL PROBLEM

“ According to HIPAA, the Privacy and Security Rules shall apply only to covered entities. A healthcare provider is considered a covered entity. The health care providers shall include the following only: doctors, clinics, psychologists, dentists, chiropractors, nursing homes, and families” (HHS.gov). Thus, in this given problem, Doctor Williams is considered to be included in the list of covered entity, due to the fact that he is a doctor of medicine who disclosed the medical report of his former patient.

In the case at bar, it is clear that Dr. Williams committed a medical practice during the abortion services done to one of his patients, Joan. For fear of being sued for medical malpractice, he asked his friend's advice by showing the medical records of his patient, who told him to talk to a medical malpractice insurer to help him overcome this problem. The act of divulging a patient's medical record is contrary of the provisions of the HIPAA which provides:

“ The Privacy Rule protects all " individually identifiable health

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information" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral.

The Privacy Rule calls this information protected health information (PHI). It includes the individual's past, present or future physical or mental health or condition" (HHS. gov).

Therefore, undoubtedly, it can be concluded that Dr. Williams committed a violation of the HIPAA. Here, there was no showing that he requested for permission from his patient to allow him to disclose the PHI. Instead, he used the information as a defense to a potential suit for medical malpractice. By giving out the information to the medical insurance carrier to, he can save himself from help him from any criminal liability for the error committed against patient for the mistake he committed.

This offense has a corresponding penalty. For this violation, the doctor shall be charged of the following:

For violations occurring prior to 2/18/2009

For violations occurring on or after 2/18/2009

Penalty Amount

Up to \$100

per violation

\$100 to \$50, 000 or more

per violation

Calendar Year Cap

\$25, 000

\$1, 500, 000

Source US Department of Health and Human Services.

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Since the doctor has identifiable health information, he may face a “ criminal penalty of up to \$50, 000 and up to one-year imprisonment. The criminal penalties increase to \$100, 000 and up to five years imprisonment if the wrongful conduct involves false pretenses, and to \$250, 000 and up to 10 years imprisonment if the wrongful conduct involves the intent to sell, transfer, or use identifiable health information for commercial advantage, personal gain or malicious harm” (HHS. gov).

As for the nurse, she has the obligation or responsibility to report the facts of the case to proper authorities in order to ascertain what really transpired while the abortion services was conducted. Otherwise, the nurse maybe held as an accomplice if the doctor was proven to have been guilty of medical practice. It is high ethical and immoral for the nurse to report to the authorities the information regarding the erroneous abortion procedure conducted by the doctor to compensate the victim for the damages caused to her by the doctor.

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