

HIPAA INFORMATION

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You are the general manager and your news director calls telling you that you will run a story on tonight's news where hospital records from a hospital employee show major malpractice and the station is going to show the records against a background with excerpts taken from the records.

Most broadcasters are aware that under the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and The Health Information Technology for Economic and Clinical Health Act, the (HITECH Act), the release of individually identifiable health information, no matter how newsworthy, violates HIPAA and the HITECH Act. Violations of these laws can result in severe civil penalties, including fines of up to \$1.5 million for multiple violations of these standards in a single calendar year for violations occurring after February 18, 2009, and criminal fines of up to \$250,000 or imprisonment up to ten years, or both.

You, as the general manager, should make sure that, if the story runs about the hospital and the malpractice allegations, there is no individually identifiable health information. All names, addresses, social security numbers or other means which might identify an individual patient should be redacted or the actual medical records themselves should not be shown. Interviews should be carefully screened to make sure that in fact no information of the type protected by HIPAA is broadcast.

BROKEN PROMISES

In *Cohen v. Cowles Media Co.*, the United States Supreme Court held that a newspaper enjoys no special immunity from application of general laws. The publisher of the newspaper in *Cowles* was therefore liable for breach of promise based upon promissory estoppel law. In *Cohen*, reporters from the Minneapolis Star and Tribune and the St. Paul Pioneer Press Dispatch promised not to reveal a confidential source. However, they were overruled by their editors who decided that the source's name was newsworthy as his information and identity was revealed. As a result, a lawsuit was brought and the Court held that in fact the newspapers could be held liable for breach of promise. The moral of this story is that a clear and definite promise when used to induce an individual to reveal information can result in a valid lawsuit. Reporters and editors should be careful in dealing with sources and should specifically state that they will or will not use their name, title, or how they will be quoted, e.g., a high administration official. Editors and general managers need to be aware that once a reporter makes a promise, the station may well be bound by it. Wherever possible, reporters should record the terms of the agreement. Such a recording should be done while the witness is present. If you have questions, please feel free to contact the WVBA or your General Counsel, David Barnette at (304) 340-1327.