A recent New Jersey Appellate Court case added a new variable to the ever-challenging considerations related to patient confidentiality, and the decision may have a far-reaching impact for hospitals and other types of health care providers, as well as healthcare workers. In Serrano v. Christ Hospital, the court ruled that a wrongful termination lawsuit by a former hospital worker who divulged patient information could proceed. In reversing the lower court’s dismissal of the case, the Appellate Court stated that it sought to balance the competing public policies of patient confidentiality and public safety.

I. Patient Information Revealed
The plaintiff, Elia Serrano, a hospital employee since 1988, worked as a secretary in the hospital’s ICU department. She had signed a confidentiality statement indicating that “patient care data” was confidential and that she was barred from revealing this and other confidential information “at all times, both at work and off duty.” In 2004, while in the course of her employment, she translated for an elderly Spanish-speaking patient to help determine whether the patient had meningitis. During this exchange, she met with the patient’s daughter and learned of the daughter’s children. She also learned that the daughter was instructed to have her children examined by a doctor before returning them to school.

That evening, the plaintiff learned that one of these children went to the same school as her own child. When she took her child to school the next day, she observed the other child in the classroom coughing. Based on what the plaintiff knew of the grandparent’s medical condition, she decided to take her child home. The teacher approached Ms. Serrano to ask why she was taking her child home, the plaintiff told the teacher about the sick grandmother, and that the family was advised not to bring the children to school until cleared by a doctor. Further discussion between Ms. Serrano and the teacher revealed that no paperwork had been submitted to the school confirming that the child had been examined by a doctor. The teacher asked plaintiff to relay this information to a social worker who contacted her later that day.

As a result of this disclosure, the school requested that the coughing child be removed from school and be examined by a doctor. The coughing child’s mother complained to the hospital, and “the hospital terminated [the] plaintiff based on this alleged breach of its confidentiality policy.” Subsequently, Ms. Serrano filed suit against the hospital for wrongful termination.

II. The Appeal
The Appellate Division panel concluded that the plaintiff was arguably discharged in violation of a “clear mandate of public policy.” Recognizing that although “the hospital’s confidentiality rule is rooted in public policy…these privacy protections are not absolute,” and such privacy protections should be weighed against a competing public policy implicated by the plaintiff’s actions in this matter. While “there is no statute among the many laws enacted by our Legislature that expressly permits a hospital worker of plaintiff’s stature to reveal confidential information in order to protect children from a perceived health hazard…our Legislature has adopted numerous laws designed to protect the well-being of children.” The Appellate Division concluded that because the plaintiff’s disclosure of confidential information was arguably mandated by public policy, she could proceed with her case.

III. Impact of the Appellate Division Ruling
The appellate court made clear that this is not a judgment in favor of the plaintiff or the employer hospital, but a ruling that this dispute presents questions for a jury to determine: “we offer no prognostication as to how the competing values continued on page 18
SUMMARY

Business office management must retain tight control of employee performance to meet or exceed departmental goals. Management should continue to use other performance improvement and monitoring techniques, such as account and process audits and work observations, but the most effective results-based method is to plan, implement, monitor, and enforce productivity standards. The productivity monitoring program is most effective when combined with applicable quality standards, appropriate A/R stratification, and an aggressive collection cycle (e.g., calling on high-dollar accounts once per week, starting at the 21st day).

The productivity monitoring program is the first step to controlling your A/R, and the potential benefits are impressive. A six-hospital regional health system implemented productivity monitoring at two of its facilities as a pilot program. They experienced an increase in cash collections of over $1M per month for those two hospitals over a five-month period and intend to implement the productivity monitoring program system-wide as a result. Based upon our observations, their experience is not unique.

Implementing a productivity monitoring program will help you get better results from your collectors; and it will accelerate and improve cash collections. It is an initiative that any business office can implement with the proper executive support, and it involves minimum cost. The benefits more than justify the cost and effort.

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of the hospital’s confidentiality rule and plaintiff’s alleged interest in protecting a schoolroom full of children from a potentially deadly disease should ultimately be prioritized.” In other words, rather than having the wrongful termination suit quickly dismissed by asserting there was a clear patient confidentiality policy, the court opened the door for this kind of dispute to proceed regardless of the confidentiality policy.

It is important to note that this is only one unpublished decision of a panel of the Appellate Division; however, it serves as guidance – and possibly even a warning – to employers to consider that New Jersey courts may weigh public policy concerns with unambiguous written employee policies to possibly defeat summary judgment in a wrongful termination case. This may come as a surprise for hospitals and health care providers used to the strict provisions and regulations – such as HIPPA and other state-specific laws – related to patient confidentiality. In light of this recent decision, health care employers would be well served to consult with their attorneys when drafting or redrafting all employee policies and contact experienced counsel when defending a case of wrongful termination.

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