

L a b o r & E m p l o y m e n t
A L E R T

FEBRUARY
2008

HOSPITAL WORKER FIRED FOR
DIVULGING PATIENT INFORMATION
CAN SUE FOR WRONGFUL TERMINATION

New Jersey's Appellate Court recently ruled that a wrongful termination lawsuit by a former hospital worker who divulged patient information can 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. *Serrano v. Christ Hospital*, No. A-4448-06T3 (App. Div. December 21, 2007).

Patient Information Revealed

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, plaintiff learned that one of these children went to the same school as her own child. When plaintiff took her child to school the next day, she observed the other child in the classroom coughing. Based on what plaintiff knew of the grandparent's medical condition, she decided to take her child home. The teacher approached plaintiff and asked 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. Plaintiff asked the teacher whether she had any paperwork clearing the child for school, to which the teacher said no. 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 mother complained to the hospital, and "the hospital terminated plaintiff based on this alleged breach of its confidentiality policy." Plaintiff filed suit against the hospital for wrongful termination.

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The Appeal

The Appellate Division panel concluded that 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 plaintiff’s actions here. 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 patient 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 plaintiff’s disclosure of confidential information was arguably mandated by public policy, the plaintiff can proceed with her case.

Impact of the Appellate Division Ruling

The appellate court made clear that this is not a judgment in favor of 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 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.” While this is only one unpublished decision of a panel of the Appellate

Division, it serves as guidance to employers to consider that New Jersey courts will weigh public policy concerns with unambiguous written employee policies to possibly defeat summary judgment in a wrongful termination case. Finally, employers should 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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