

Part B Insider (Multispecialty) Coding Alert

PHYSICIAN NOTES: Commission Dropped Charges, But Didn't Clear Doctor's Name

You can't sue to keep your name out of federal data bank

A physician who passed through the fire of an investigation doesn't deserve a public exoneration, a court ruled.

Washington state's **Medical Quality Assurance Commission** investigated neurosurgeon **Michael Lawrence** for "unprofessional conduct" and ultimately found the charges were baseless. Lawrence was accused of tearing the dura (the membrane covering the spinal canal) of 25 patients between 1998 and 2000, a high rate of tears for a "reasonably prudent neurosurgeon."

An expert witness surveyed Lawrence's cases and originally said Lawrence had a dura tear rate of 26 percent, but later corrected that figure to an acceptable 12 percent. After that, the commission withdrew its charges against Lawrence, but never issued a public exoneration of him. He sued seeking a public clearing of his name, but the state Court of Appeals sided with the Health Department in *Lawrence v. Department of Health* (33483-6-II).

The Commission didn't act arbitrarily, in view of the charges against Lawrence, nor was it unreasonable for dropping the case after the expert witness changed his opinion. Professional courtesy may have entitled Lawrence to a hearing to clear his name, but legal process didn't require it, the court found.

In other news:

- You can't go to court to keep your name out of the feds' data bank.

Kentucky physician **James Carter** was enrolled with **Blue Cross/Blue Shield of Tennessee**, until a peer review investigation of his alleged failure to comply with the Blues' quality standards for delivery of health care services. The Blues plan dropped Carter as a physician and reported him to the Health Care Integrity Protection Data Bank (HIPDB), which was set up by the Health Insurance Portability and Accountability Act.

Carter sued to keep this information out of the HIPDB and also to prevent the Blues from terminating his participation. The **U.S. District Court for the Eastern District of Tennessee** ruled that his participation in the Blues plan is governed by state law, not federal law.

Meanwhile, the court ruled that HIPAA doesn't allow doctors to sue to keep their information out of the HIPBD. HIPAA does allow administrative procedures to challenge the accuracy of information in the data bank, however.

- The **Centers for Medicare & Medicaid Services** won't allow type of bill (TOB) 12X with diagnostic mammography codes. But CMS will now allow G0202 for screening mammography claims and G0204 and G0206 for diagnostic mammography claims, according to April 28 Transmittal 916.