

Long-Term Care Survey Alert

Patient Privacy: Make Photography And Recordings Part Of Your HIPAA Policies

Recent class-action lawsuits have highlighted the extremely expensive consequences of healthcare professionals who photograph or videotape patients inappropriately. If your organization photographs or records patients in the course of providing care; make sure your HIPAA policies contain strong parameters for this.

Johns Hopkins Hospital recently agreed to a \$190-million settlement with more than 8,000 patients of gynecologist **Dr. Nikita Levy**, following allegations that Levy secretly photographed and videotaped their bodies in the exam room, according to a July 24 blog posting by Florida-based attorneys Julie Gallagher and **Leslie Schultz-Kin** for the law firm **Akerman LLP**.

Although the patients' faces were not visible in the images, "and it could not be established with certainty which patients were recorded or how many, thousands of patients were traumatized, according to lawyers," Gallagher and Schultz-Kin wrote. The patients included both women and girls.

And this is not the only lawsuit involving a physician photographing a patient inappropriately □ Gallagher and Schultz-Kin point out that several other cases, including some involving posting the photos to social media websites, have cropped up in the past few years.

Beware: "In this era of social media where the use of smartphones and tablets make sharing data so easy, these cases raise fresh concerns about a hospital's ability to protect patients' privacy," Gallagher and Schultz-Kin warned. "Accordingly, it is imperative that hospitals implement comprehensive policies regarding patient photography, video imaging and audio recording."

Best practice: Gallagher and Schultz-Kin advised that such policies should:

- Define allowable purposes and circumstances for obtaining film, digital photographs, video images or recording patients using a camera or other device;
- Set forth standards for the creation, use, disclosure and retention of the images;
- Ensure that patient/legal representative consent is given in writing or by verbal consent documented through an appropriate authorization form; and
- Identify prohibited activities and behaviors relating to photography, video or audio recordings of patients, including personal use, entertainment purposes, posting on social media or in public areas, malicious use, or using such images in a way that is disruptive to patient care or the work environment. Make staff failing to comply with such policies subject to disciplinary action.