

## Health Information Compliance Alert

### Health Information News: SURVEY FINDS FLAWS IN FEDERAL PRIVACY LAWS

How does your state size up with others when it comes to protecting patient privacy?

According to a recent study performed by the Privacy Journal, California and Minnesota rank among the nation's most vigilant states at protecting their citizens' privacy, while the federal government is still lagging behind.

The high marks received by the Golden State are due in large part to a string of patient-friendly legislative efforts that enacted greater privacy protections within the last two years, as well as the protections already included in the state's constitution, the Journal reports.

The Journal also notes that the federal government needs to make a greater effort at protecting individuals from having their medical records accessed. "If the federal government had been ranked like a state it would have placed in the fourth tier," explained Privacy Journal Publisher **Robert Ellis Smith**, who oversaw the survey.

"Federal laws do not protect medical records nor provide access to them, they do not protect library records at all, and federal law has only partial protection for financial records," the survey found.

Rounding out the top ten were Connecticut, Florida, Hawaii, Illinois, Massachusetts, New York, Washington, and Wisconsin.

Editor's Note: To see the survey, go to [www.privacyjournal.net/advocacy.htm](http://www.privacyjournal.net/advocacy.htm)

1. A circuit court judge in Orlando, FL ruled that staff members at a drug rehabilitation center cannot be compelled to cooperate with police who are investigating Governor **Jeb Bush's** daughter, **Noelle Bush**, for crack cocaine possession.

The ruling, issued by Orange County Chief Circuit Judge **Belvin Perry Jr.**, asserted that the patient privacy rights of addicts who relapse in treatment programs outweigh law enforcement interests.

Noelle Bush, 25, was ordered into the **Center for Drug-Free Living** in January after she was charged with attempting to obtain the anti-anxiety drug Xanax using a fraudulent prescription. Orlando police Sept. 10 indicated that Bush was under investigation for drug possession after they received a complaint from within the facility.

According to the Washington Post, an employee at the Center initially wrote up a statement for investigators indicating that a small lump of crack cocaine was found in Noelle Bush's shoe. The statement, however, was soon destroyed when a supervisor at the facility instructed employees to protect patient confidentiality and not to cooperate with the police and their investigation.

Perry agreed with the Center's decision, stating in his ruling that "[i]f the Court were to grant the State's motion in this case, then all patients who suffer relapses could be hauled out of treatment programs and into criminal courts on the whim of a state prosecutor or police officer." Without providing patients in drug rehabilitation centers any assurances of privacy, Perry argued, "the treatment-based intervention program would be rendered meaningless."

**Jeff Ashton**, the Assistant State attorney assigned as prosecutor, maintained that privacy laws should not have applied to this case, and criticized Perry's ruling for granting "a license to commit crimes with immunity." Ashton confirmed that his office plans to appeal the decision.

2. Prosecutors that demand a hospital's medical records in the hopes of finding criminal suspects who may have been wounded were sent packing by New York State's highest court.

The **New York Court of Appeals** ruled that permitting prosecutors such access to medical records infringes on patient confidentiality, the New York Times reported Oct. 16. The ruling stems from a May 1998 murder case in which investigators believed that the suspect had been stabbed and was bleeding when he took off from the crime scene.

Early last year, the Manhattan district attorney's office issued subpoenas to 23 New York City hospitals, looking for records on men who sought treatment for stab wounds around the time of the murder.

The DA's office attempted to avoid any and all privacy issues by requesting only non-medical information such as patients' names and addresses, but several hospitals refused to hand over any records.

Siding with the hospitals, Justice **Albert Rosenblatt** ruled that "the inherently medical nature of this judgment is not obviated by attempting to qualify it in terms of what a layperson might plainly observe," adding that "patients should not fear that merely by obtaining emergency medical care they may lose the confidentiality of their medical records and their physicians' medical determinations," the Times reports.

The decision only affects cases that involve a doctor's medical judgment. In cases where information about a possible crime is apparent to the public, prosecutors are permitted to issue a subpoena for records.

In a related story, a recent Middlesex Co., NJ Supreme Court Judge's ruling means prosecutors won't be able to subpoena patients' medical records at least for now.

The **Medical Society of New Jersey** won a trial court ruling in September that will bar the use of subpoenas to obtain an individual's treatment records.

Superior Court Judge **Robert Feldman** in Middlesex County ruled to limit access to patients' medical records, saying that the only way for a litigant to get records is to send the doctor a patient authorization, according to the New Jersey Law Journal. If that fails, the lawyer should get a court order, the ruling explained.

According to the Journal, Feldman ruled in *Simms v. Bradach* that sending a subpoena that requires the doctor to appear at a deposition with the records is unacceptable.

3. Buena Vista county officials have pulled out of a landmark legal tussle with a **Planned Parenthood** clinic in Storm Lake, IA over pregnancy records. After a newborn baby was found dead at a recycling center in Buena Vista County, investigators had asked area hospitals and clinics for patient records.

Storm Lake's clinic refused, arguing that the pregnancy records were protected health information. The state attorney general's office sued the clinic, and the case made its way up to the **Iowa Supreme Court**.

But **Tom Miller**, Iowa's attorney general, asked the state high court to remand the case back to the district court so he could request court-order withdrawal.

Now only paperwork and judicial approval which is likely to be granted separates Planned Parenthood from a dismissal and a patients' privacy rights victory.