

Health Information Compliance Alert

Medical Records: DOC DUPED IN DIVORCE DRAMA

An unauthorized medical information release may mean a California physician will pay compensatory damages and even fines for violating statutory law, but he wont be paying punitive damages.

Joe Browns wife **Suzanne** contacted Dr. **Anthony Whitney**, an internist, and asked him to write a letter indicating that Brown needed psychiatric help. Whitney produced the letter addressed "To Whom It May Concern," and included information on Browns mental health problems and need for psychiatric care. He never consulted Brown regarding the letter and never sought Browns authorization to disclose the information.

Suzanne used the letter in a divorce proceeding to obtain a restraining order against Brown. Brown sued Whitney and Suzanne. He alleged that Whitney violated Californias confidentiality of medical information act, and committed various common law torts such as negligence and negligent and intentional infliction of emotional distress.

Later, Brown moved to amend his complaint to allege punitive damages. Under California law a plaintiff must substantiate a legally sufficient punitive damages claim before including the claim in the complaint against a health care provider.

The trial court granted Browns motion, but the **Court of Appeal of California** reversed.

Evidence showed that Suzanne telephoned Whitney and informed him that Brown had been arrested and that she wanted Brown to obtain a psychological evaluation. Whitney recommended that she speak with the judge and make such a request. Six weeks later, she again called Whitney and asked for the letter. He believed that the request dated back to their earlier conversation. Whitney testified he had no idea that his patient and Suzanne were in the midst of divorce proceedings.

These facts prompted the appellate courts reversal. There was not, the court found, clear and convincing evidence that Whitney acted with a "willful and conscious disregard" of Browns rights by violating confidentiality rules. He did not act with malice and his conduct was not despicable.

Thus he couldnt meet the requirements for including a punitive damages claim. That holding did not, the court noted, preclude compensatory damages.