

Health Information Compliance Alert

Privacy: PROZAC MAILING RESULTS FROM PHYSICIANS FAILING

"Mr. Postman, look and see. Is there a lawsuit in your bag for me?": That's the tune some Florida physicians are singing these days after a patient found an unwanted surprise in the mailbox.

Three doctors and one physician assistant, among others, have fallen under Florida Attorney General **Bob Butterworth's** microscope, thanks to unsolicited samples of the anti-depressant drug Prozac being sent to their patients through the mail.

Butterworth has issued investigative subpoenas to Indianapolis-based **Eli Lilly & Co.**; **Walgreens Co.** in Deerfield, IL; **Holy Cross Hospital** in Ft. Lauderdale, FL; and **Holy Cross Medical Group** members Drs. **Zonia Acosta**, **Kenneth Burke** and **Lise M. Lambert**, as well as physician assistant **Natasha Attalah**, according to a recent release.

The trouble started when a patient being identified only as "S.K." received the mailing which came in a Walgreens envelope and contained a free sample of a new once-weekly Prozac tablet, accompanied by a signed letter from the Holy Cross members and filed an invasion-of-privacy lawsuit, reports the **Associated Press**.

And invasion of privacy isn't the only point of concern with this case, experts note. "There is legitimate concern that the unsolicited delivery of prescription drugs could lead to dangerous misuse," Butterworth remarks. "At the same time, it raises the specter that privacy rights are being violated by misusing medical information to target likely candidates for a particular drug," he continues.

The investigative subpoenas are meant to determine whether the Prozac mailing violated any state laws, and Butterworth has handed the Holy Cross members' names over to the **Department of Health** to determine whether they ran afoul of the states Medical Practices Act, the release reports.

The situation also raises the concerns of "practicing medicine without a license and about violations of laws regulating the practice of pharmacy, since drugs like Prozac can only be lawfully dispensed pursuant to a prescription written by a licensed practitioner authorized to prescribe under state law," notes attorney **Larri Short** with **Arent Fox Kintner Plotkin & Kahn** in Washington.

This case is shocking on many levels, argues attorney **David Glaser** with **Fredrikson & Byron** in Minneapolis. "Success in life is often tied with empathy," he notes, and one of the first questions a physician should ask herself when approached by someone asking for patient information is whether the patient is going to get upset, he insists. "If I send people stuff in the mail that may embarrass them without asking, they might get mad," he quips.

And physicians should always keep in mind that someone who has a financial interest in what he's trying to get the physician to disclose can't always be trusted when he says it's OK, Glaser instructs.

"Doctors need to think about it any time they are asked by a third party to disclose patient information," agrees attorney **Michael Roach** with **Michael Best & Friedrich** in Chicago. And practices should have policies and procedures in place that detail when it's OK to disclose patient information and when it's not, he advises. Health care organizations are going to have to implement these policies under the Health Insurance Portability and Accountability Act anyway, "so we might as well start thinking about it now," he points out.

Even situations that sound great on the surface should be scrutinized, Roach says. The situation in Florida is a case in point: "This could have been made to sound very good," he muses.

And once HIPAA takes effect in April, physicians looking to disclose patient information to a pharmaceutical company will



have to ensure they're following HIPAA's marketing requirements to the letter, attorney **Kristen Rosati** with Phoenix-based **Coppersmith Gordon Schermer Owens & Nelson** reminds providers.