

Report on Patient Privacy Volume 18, Number 11. November 30, 2018 Patient Privacy Court Case

By Ellie Chapman

This monthly column is written by Ellie F. Chapman of Morgan, Lewis & Bockius LLP in San Francisco. It is designed to provide RPP readers with a sampling of the types of patient privacy cases that courts are now hearing. It is not intended to be a comprehensive monthly survey of all patient privacy court actions. Contact Ellie at ellie.chapman@morganlewis.com.

Attorneys Get \$4.3M in Fees in \$17M HIV Disclosure Settlement. On October 15, U.S. District Judge Juan R. Sanchez granted final approval to Aetna Inc.'s \$17 million deal to settle claims that the insurance company wrongly disclosed patients' HIV-related information. "The settlement agreement is fair, reasonable, adequate and in the best interests of plaintiffs and the settlement class in light of the complexity, expense and duration of litigation, as well as the risk involved in establishing liability and damages and in maintaining the class action through trial and appeals," stated Sanchez in the order. Sanchez also awarded more than \$4.3 million in fees and cost reimbursements for the patients' attorneys. The judge described a 25% cut of the settlement for attorneys' fees as "fair and reasonable," along with a \$73,892 reimbursement for class counsel's out-of-pocket costs. The court also approved financial awards of \$5,000 each to the seven plaintiffs who filed the complaints that were consolidated in the litigation, and \$2,000 each to 30 additional class representatives whose claims were included in an amended complaint filed in December 2017. The preliminary settlement, announced in January, stems from a July 2017 mailing telling Aetna policyholders who take HIV medications and pre-exposure prophylaxis how to fill their prescriptions (*RPP* 2/18, p. 5). The letters, which were mailed as part of a settlement in earlier litigation that accused Aetna of jeopardizing policyholders' privacy by requiring them to obtain HIV medication through the mail, were sent in envelopes where members' names, addresses, claim numbers and instructions related to HIV medication were allegedly visible. Six separate suits were filed in Pennsylvania, California and Connecticut claiming that policyholders named in the mailings suffered emotional distress and damage as a result of Aetna's failure to properly secure and keep private their confidential HIV-related information. *Beckett v. Aetna Inc. et al.*, case number 2:17-cv-03864, in the U.S. District Court for the Eastern District of Pennsylvania.

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