

Report on Patient Privacy Volume 18, Number 10. October 31, 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.

◆ **Florida Hospital Must Produce Records of Employee Sex Assault.** On Sept. 14, 2018, Florida federal judge Carol Mirando held that Lee Memorial Health System (Lee Memorial) must produce all records regarding allegations of sexual assault by its employees from 2012 to 2016, in a lawsuit brought by a former patient, Donia Goines, who claims she was sexually assaulted by Jeovanni Hechavarria, a nurse at Cape Coral Hospital, in July 2016. Mirando clipped the time frame of Goines' records request, but stated that Goines' repeated claims of deficiencies in Lee Memorial's policies and practices made systemwide discovery appropriate and relevant: "[D]iscovery related to risk-management reports, human resources reports, and records of disciplinary actions for any employees alleged to have committed sexual assault at Lee Memorial are relevant to determining whether Lee Memorial has a policy or custom of failing to properly supervise or investigate employees accused of committing sexual assault." In addition to alleging that Hechavarria assaulted her, Goines claimed that he assaulted another female patient, Brianna Hammer, who filed a police report and informed Lee Memorial staff and management in March 2015, but the hospital system did not sufficiently investigate her claim, establish new policies and practices to prevent future incidents, or take adequate corrective actions against Hechavarria. Goines originally sought Lee Memorial's risk management, human resources and disciplinary action records for all claims of sexual assault against its employees from 2006 through 2016. While Mirando found that Goines had justified the systemwide request in her claims, she determined that it was appropriate to limit the time frame, although not just to the period of Hechavarria's employment. "Five years of records should be sufficient for plaintiff to establish the alleged policies or customs, and the limitation will reduce the burden on Lee Memorial, especially given that Lee Memorial will not need to access or search its pre-2010 risk management database," the order stated. *Goines v. Lee Memorial Health System et al.*, case number 2:17-cv-00656, in the U.S. District Court for the Middle District of Florida.

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