N.Y. Court Upholds HIV-Related Patient Confidentiality in Misconduct Case

September 4, 2009

On August 25, the Supreme Court of the State of New York Appellate Division, First Department, ruled that a subpoena seeking medical and billing records of nine patients of an HIV specialist under inquiry based upon anonymous allegations of physician misconduct was in violation of the New York Public Health Law.* While the State Board for Professional Medical Misconduct investigation will continue, identifying patient information will be redacted unless it is critical to the proceeding.

“This decision is important because fear of unauthorized disclosure continues to be one of the biggest barriers to testing for HIV and treatment of HIV-related conditions,” said Thomas Ude Jr., senior staff attorney at New York City–based HIV and LGBT legal advocacy group Lambda Legal. Ude submitted the organization’s amicus curiae (“friend of the court”) brief on the case. “By insisting on strict compliance with the law in all circumstances, even for government agencies, this decision will help calm the fears of people in treatment—and people being tested for HIV—by ensuring maximum confidentiality before HIV-related information is disclosed to anyone.”

Ude added that in the limited circumstances where HIV-related information would need to be disclosed—such as a civil or criminal proceeding—the individual has the right to be heard concerning whether and how that disclosure will occur.

“Even the government must explain the purpose for which it seeks the information, and must show that it needs the HIV-related information to fulfill that purpose,” he said. “If any information must be provided, every precaution must to be taken to minimize disclosure to that which is absolutely necessary.”

* Correction: The asterisked sentence above has been updated fromthe original version, which incorrectly stated the HIV specialist was under investigation for malpractice when in fact the HIV specialist was under inquiry based upon anonymous allegations of physician misconduct.

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