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INSURANCE LAW BULLETIN

Re: Court Holds Contacting Decedent's Physicians To Authenticate And Confirm Contents Of Medical Records Is Not HIPAA Violation

The United States District Court for the District of Maryland recently granted summary judgment and declared a life insurance policy void based on material misrepresentations.

Plaintiff sued seeking death benefits under a life insurance policy. During discovery, the insurer, in accordance with the Health Insurance Portability and Accountability Act ("HIPAA"), obtained decedent's complete medical records. Affidavits were subsequently obtained from the decedent's physicians authenticating the records and confirming the reported medical conditions. The insurer moved for summary judgment. In opposition, plaintiff argued the physician affidavits were inadmissible because they were obtained in violation of HIPAA and a dispute existed as to whether the decedent had the medical conditions identified in the records. The court rejected both arguments.

The court found the physician affidavits did not violate HIPAA because the protected health information had been properly disclosed in the medical records. Moreover, the court held the insurer need not prove the decedent had the medical conditions revealed in the records, but simply that the information in the medical records was omitted from the application and material to the underwriting decision. Here, the omitted information was material because the insurer would not have issued the policy.

For further information or a copy of the court's decision, please contact **Michael P. Cunningham**, who represented the insurer in this matter, at 410.659.4979 or mcunningham@fblaw.com.

Please visit our website at www.fblaw.com.

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