



# Commander's Log

LEGAL UPDATE FOR MARYLAND CORRECTIONAL  
ADMINISTRATORS AND OFFICERS

December 2018

## **HIPAA, Privacy, and Disclosure of an Inmate's Medical Information**

**Case:** *Steven E. Tarpley v. Holly Pierce, RNP,  
William Beeman, R.N. and Wexford  
Health Services, Inc.*  
**United States District Court for the  
District of Maryland**  
**Decided September 26, 2018**  
**(Unpublished)**

### **The Inmate's Medical Problems and Treatment**

Plaintiff Stephen E. Tarpley is incarcerated at North Branch Correctional Institution in Cumberland, Maryland. He has been incarcerated there since April 2011. Tarpley has a history of injuries to his lower back and other pain related issues. His medical problems worsened in 2016, and he was repeatedly seen by medical staff for specific lower back and chronic pain issues. On December 15, 2016, Registered Nurse Practitioner Holly Pierce saw Tarpley for an appointment unrelated to his back pain. Tarpley, however, tried to get Nurse Pierce to discuss his back issues. The nurse, however, evaded his requests and focused on other medical issues. During this appointment and others, Correctional Officer Michael Stallings was present.

### **The Lawsuit, Including the HIPAA and Privacy Claims**

Tarpley's requests to be seen by medical and his complaints about his treatment increased throughout 2017. In September 2017, he filed suit in federal court against Wexford Health Sources, Inc., Cumberland's health care provider, Nurse Pierce, and another medical staff member. Among his many claims, Tarpley alleged that Nurse Pierce violated the privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA") when she disclosed information concerning his medical condition in the presence of a correctional officer on December 15, 2016 and other dates. HIPAA prohibits the wrongful disclosure of unique health identifiers or individually identifiable health information. 42 U.S.C. §1320d-6 (2018).

### **The Outcome in the United States District Court**

The United States District Court rejected Tarpley's claim because no private right of action exists under HIPAA. In other words, no individual can sue another based on an alleged HIPAA violation. Instead, HIPAA focuses on regulating persons that have access to individually identifiable medical information and who conduct certain electronic



health care transactions. 42 U.S.C. § 1320d-1. HIPAA provides both civil and criminal penalties for improper disclosures of medical information. 42 U.S.C. §§ 1320d-5, d-6. However, HIPAA limits enforcement of the statute to the Secretary of Health and Human Services. Thus, private enforcement is precluded.

Further, neither the United States Supreme Court nor the United States Court of Appeals for the Fourth Circuit has ever recognized a constitutional right in the privacy of prisoners' medical records. Absent such constitutional protection, Tarpley had no viable claim against Nurse Pierce for permitting a corrections officer to be present during his medical appointments. Therefore, his claim was dismissed.

**NOTE:** It is unclear in the opinion why the correctional officer was present at one or more of the inmate's medical appointments. Tarpley alleged, however, that the officer was the nurse's "boyfriend," and that the medical information obtained by the officer was used by staff to harass him. In any event, the better practice is to afford as much privacy as possible when inmates are seen by medical staff. This does not mean, however, that safety and security are to be sacrificed for the sake of privacy. It simply means that the right balance should be struck between inmate privacy and institutional security and that balance should be reflected in the facility's policies, orders, and guidelines.

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