



## **Potential Liability Issues When Employees Disclose Confidential Information About Clients**

Last month's risk management advisory discussed the potential liability of lawyers for the errors and omissions of the individuals they supervise. This advisory addresses the need to ensure that persons supervised by a lawyer maintain confidential client information.

Lawyers receive client information which is sensitive and valuable to the client. This information may also be regulated from disclosure by federal and state laws which protect health, financial, and technological information. Disclosure of confidential information can, therefore, expose lawyers and law firms to criminal, regulatory, disciplinary, and civil proceedings. For example, lawyers who possess records related to medical treatment of clients should have procedures in place to comply with HIPAA. Also, if certain types of specified information (financial, health, and other personal data such as social security numbers) are compromised, most states have data security laws that require notice to statutorily defined groups.

Under Rule 5.1 of the ABA Model Rules of Professional Conduct, a lawyer with direct supervisory authority over other lawyers must make reasonable efforts to ensure that they conform to the Rules. Rule 5.3 of the ABA Model Rules requires that a partner or other lawyer with managerial or supervisory responsibility make reasonable efforts to ensure that the conduct of non-lawyer employees of the firm is compatible with the professional obligations of the lawyer. Although a violation of the rules of professional conduct is not intended to be a basis for civil liability, such violations are often used as evidence of lawyers' duties and the standard of care in legal malpractice cases.

The Maine Board of Overseers of the Bar provided an opinion concerning breach of confidentiality by a secretary finding no disciplinary action. Professional Ethics Opinion #134, Supervisory Liability for Breach of Confidentiality, 9/21/93, [http://www.mebaroverseers.org/attorney\\_services/opinion.html?id=89828](http://www.mebaroverseers.org/attorney_services/opinion.html?id=89828). However under different facts, such as the lawyer's direction to the employee, or knowledge of the employee's action and ratification of the action could have exposed the lawyer to disciplinary action. Further, if the client believed she was harmed by such a breach, the law firm could be held liable for the actions of its employee.

As a result of the exposure which lawyers and law firms face for breach of statutes and rules requiring the preservation of the confidential nature of certain information, lawyers and law firms should inform their employees (both lawyers and non-lawyers) about:

- The importance of protecting confidential client information
- The risks, should there be a breach of client information
- The importance of implementing procedures to protect client information including security of electronic information and the potential for data security breaches

### ***Policies and Procedures***

In addition to policies and procedures identified in last month's advisory, law firms should have:

- Processes where firm employees may raise concerns about potential breaches of confidentiality and the compromise of data security
- Written confidentiality policies and require all employees sign an affirmation that they have received and read the policy and are committed to comply with the policy

### ***Risk Management Tips***

- Be aware of any specific state rules, regulations or caselaw concerning supervision of others including attorneys and non-attorney employees.
- It is important to have policies and procedures in place for monitoring the work of those you supervise.
- Should you have questions concerning these issues, consider consulting with an attorney or risk management professional.

**We invite Allied World policyholders to access additional information on this and other Risk Management Topics.** The lawyers' risk management website, <http://awac.lawyerlaw.com>, contains resources as well as related topics.

Also, the **Risk Management Hotline** is included for up to 2 free hours per year, per firm of confidential advice regarding risk management questions that your law firm may have. If you are an Allied World policyholder, the hotline can be accessed through the risk management website, <http://awac.lawyerlaw.com>. Once you log on to the website, the link to contact the hotline is on the upper left side, under the Allied World logo.

If you are not a current Allied World policyholder and would like information on our program and our risk management services, please contact your agent or broker.

#### **Author**

**Thomas P. Sukowicz, Esq.**  
Hinshaw & Culburtson LLP

#### **Contributor**

**Kristen Lambert, JD, MSW, LICSW, FASHRM**  
Vice President, Psychiatric and Professional Liability Risk Management Group  
AWAC Services Company, a member company of Allied World

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