

# LEGAL EAGLE EYE NEWSLETTER

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## Confidentiality: Patients Unable To Sue After LPN Wrongfully Accessed Their Charts.

An LPN newly hired for the hospital's gastroenterology department had a running feud with another individual that pre-dated her hiring.

The other individual and her daughter had been patients at the hospital in the past but were never under the care of the gastroenterology service.

In the first hours of her first day at the hospital the LPN accessed the other individual's and the individual's minor daughter's medical charts forty-two times and gathered information she later posted on a friend's Internet blog.

The LPN confessed that revenge was her only motivation. She was convicted of Federal criminal charges, fined \$1,000 and placed on probation.

### **Court Throws Out Civil Lawsuit Filed Against the Hospital**

The Court of Appeals of Indiana ruled the victims had no right to sue the LPN's employer for what the LPN did.

An employer is liable to a third party in a civil lawsuit for an employee's wrongful conduct only if the employee's conduct was authorized by the employer as within the scope of the employee's job duties and was done in furtherance of the employer's business.

The telling factor here was that the LPN, when hired, had signed the hospital's confidentiality agreement as to patients' private medical information.



***The pivotal legal factor here is that the LPN had signed the hospital's Commitment of Confidentiality Agreement.***

***The signed confidentiality agreement establishes that the LPN's misconduct taking confidential information from patients' medical charts out of personal spite was outside the scope of her duties as a nurse for the hospital.***

COURT OF APPEALS OF INDIANA  
October 5, 2015

The confidentiality agreement the LPN signed was convincing proof for the Court that the LPN's conduct was not authorized by her employer and was not within the scope of her nursing duties caring for the hospital's patients.

By signing the confidentiality agreement the LPN agreed she would only access, use or disclose information she had some reason to see associated with the hospital's business and which the hospital authorized her to access.

The LPN expressly agreed that she would access, use or disclose such information only as authorized by the hospital and only to treat her patients.

The LPN was authorized to access patients' confidential information for reasons associated with the hospital's business of caring for patients.

She was expressly not authorized to access such information for personal, unauthorized, unethical or illegal reasons.

On a separate issue the Court ruled the hospital was not negligent as to its hiring of the LPN in the first place.

Her background check disclosed a prior conviction for misdemeanor assault, but the Court believed that was no reason to anticipate a serious breach of medical confidentiality. ***Robbins v. Trustees***, \_\_ N.E. 3d \_\_, 2015 WL 5771814 (Ind. App., October 2, 2015).

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