

## NY court rules pharmacy has responsibility to keep prescription records private

In a case that may set a precedent for the rest of the nation, a New York Supreme Court ruled that pharmacies and pharmacists have a fiduciary responsibility to protect the privacy of patients.

According to the Health Insurance Portability and Accountability Act (HIPAA), pharmacies and other covered entities cannot disclose a patient's personal health information for reasons unrelated to treatment without the patient's consent. Although, this case does not specifically cite HIPAA, it alleges violations under similar New York state laws.

### The Case

An unidentified man diagnosed with AIDS was a longtime customer at Trio Drugs, a small "mom and pop" pharmacy in New York City. The man selected Trio because few people would have access to his prescription records. In 1999, the owner of Trio decided to retire and to sell the pharmacy customer records to CVS, a drug store chain with over 4,100 stores in 34 states. As part of the agreement with CVS, Trio was prohibited from notifying customers before transferring the records. The unidentified man went to Trio one day to find that it had closed; a sign on the door indicated that all pharmacy records had been transferred to a local CVS.

The man sued Trio and CVS claiming that they had breached a fiduciary duty to protect the confidentiality of his records and had engaged in deceptive trade practices. He said that the transfer of his records to CVS made his medical information available to thousands of CVS employees nationwide via its networked databases. The case was filed as a class

action lawsuit covering several thousand people whose medical or prescription information was transferred to CVS without their knowledge.

In March 2001, the court refused to dismiss the case, indicating that a patient and a pharmacist may have a fiduciary relationship and that CVS and Trio may have used deceptive business practices. The court ruled that the plaintiffs could not sue for actual monetary damages (because there were none), but could sue for punitive damages.

On December 9, 2003, the court expanded privacy law protection by creating a new fiduciary duty for pharmacies to protect the confidentiality of their customers' prescription and medical records. The court held that Trio had violated that duty when it sold its customers' records without notice or consent from its customers. The court also agreed that CVS and Trio had engaged in deceptive trade practices. As yet, no damages have been awarded.

### The Significance of this Case

This decision is part of a nationwide trend in which courts are finding that organizations have a legal responsibility to keep patient information confidential. Although this case does not fall under the Tenth Circuit Court which governs Colorado, courts nationwide are increasingly supporting the rights of patients to keep their medical information private. To avoid lawsuits, Colorado counties should make a concerted effort to keep patient medical information confidential.

For more information, contact CTSI at 303-861-0507.

---

### **County Technical Services, Inc.**

800 Grant St., Suite 400  
Denver CO 80203

303.861.0507  
FAX: 303.861.2832

**Technical Updates are available online at: [www.ctsi.org](http://www.ctsi.org)**