



Settlement Professionals, Incorporated

PLAINTIFF-LOYAL SETTLEMENT PLANNERS

HIPAA Abuse and How to Stop It

How Can You Protect Your Client During Settlement Negotiations AND at Trial

Hello everyone, Jack Meligan here with Settlement Professionals Inc. I want to talk today about **HIPAA and how to use HIPAA releases to prevent defendants from abusing tort injury clients in your cases.**

Recent Case Study on HIPAA Abuse

We recently had a settlement where the plaintiff attorney was quite surprised to find out the defendants in this case had taken his client's medical information and distributed it widely to **11 insurance companies/annuity issuers** for the purposes of determining whether or not **discounted annuities** could be purchased (structured **settlement annuities**) with which to replicate his client's lost income and future medical needs.

Why was he so surprised to hear this?

In this particular case, the plaintiff themselves were adamant that no one from the defendant side had any involvement at all in the settlement of their case or the placement of any funding vehicles to fulfill any type of settlement plan for them, because the plaintiff felt strongly about not having any involvement with anybody who was connected with the people who caused him injury. This is a common occurrence.

Unbeknownst to that plaintiff and the plaintiff attorney, when they released medical information to the defendants, they gave it to structured settlement brokers, who then passed it out to the **11 annuity companies** and they obtained what's called the ***rated age***; which is a way of discounting the cost of an annuity so it yields more and costs less.

In the course of negotiating a settlement to the case, it became evident that even though the plaintiff had requested the defendants remove their **structured settlement brokers** from the case, that these defense oriented brokers had been retained and were given private medical information, which is a violation of **HIPAA**.

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What is HIPAA?

HIPAA is an acronym for the **Health Insurance Portability and Accountability Act** of 1996. Its public law #104-191 and it amends the Internet Revenue Code of 1986. It's also known as the Kennedy-Kassebaum Bill.

- What specifically does it do?

Amongst many things, HIPAA establishes some strong security standards for protecting the confidentiality of individual medical records.

- How does that affect what we can do and prevent defendants from abusing claimants?

When defendants ask for your clients medical records ostensibly, *for the purpose of evaluating the case for settlement, the release you give them should be so narrow as to **prevent** them and **prohibit** them from giving that medical information to anyone who would then further distribute it to insurance companies* and put it out into the stream of commerce.

Therefore, **the release you give should be narrowly construed** to say you're giving this release for the purposes of "evaluating the case for settlement, but for no other purpose and you are **expressly prohibited** from giving this to any agent or broker of any insurance company who might further distribute it."

What's going to be the net affect of doing, this and why should you care?

By prohibiting the defendants from passing your client's medical information out to these insurance companies you can then have your own expert with a proper **HIPAA release** give that information to the insurance companies with provisions that **they are not to share it with anybody else**, so the privacy integrity of your client's information is protected.

Also, you **prevent the defendants from trying to profit** off the injuries they've created for your clients, of the injuries they've caused. *You prevent situations where they're able to come in and say to your client at mediation we admit liability, but with regard to your damages we disagree on the amount of money you're asking for.* We know we can buy annuities from various insurance companies with these discounts.

As I've discussed, due to the fact that they've been injured and the injuries have shortened their life expectancy, it can create a discount on the cost for the defendant. We know we can buy annuities that can replace your losses for much less than the lump sum you asked for. Obviously, that very practice by itself makes it difficult for a plaintiff attorney to recover full value for his client.

The second area you're going to benefit from by restricting the usage of your client's medical information is if the case doesn't settle, but ends up in court.

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The last thing you want to hear is that the defendant is putting on an expert who's going to testify as to the cost of a **structured settlement annuity** according to the "rated age" of your client. (By the way, except for one annuity company out there, these annuities are generally not available for sale to plaintiffs on a direct basis. There are reasons for that and I'll get into those on another video-cast)

By using the right HIPAA releases and procedures, you prevent the defendants from putting on testimony of a discounted cost of an annuity that could be used to replace your client's lost income and right for future medical care... that is information you don't want tainting the jury.

Use of HIPAA releases, quoting HIPAA, and the penalties involved

HIPAA has some severe civil and potential criminal penalties for non-compliance including:

- Fines up to \$25,000 for multiple violations of the same standard in a calendar year
- Fines up to \$250,000 and/or imprisonment, up to 10 years for the knowing misuse of individually identifiable health information.

There are some strong teeth in this act. Plaintiff attorneys would be wise to familiarize themselves with it and **obtain a HIPAA release form they can give to defendants** when they ask for client's medical information that will severely restrict the defendant's ability to **shop those medicals through the insurance stream of commerce.**

Also, a proper release will prevent the defendants from showing up in court and attempting to get a verdict that's much less than the total full value of the case, because they are asking the jury to consider a discounted annuity cost funding mechanism.

For attorney's who are interested in pursuing the use of HIPAA releases, my firm has created a HIPAA release we would be happy to share with you. It should accomplish, or at least give you, the basis to create your own release to severely restrict what defendants can do with your client's medical information.

We've also created a **revocation of previous releases** form as well. If you are in the middle of a case and you think you have a situation where the defendants are already spreading your client's information out in the insurance company stream of commerce, you can *have your client sign a revocation* and revoke any of those previous releases.

When we are given the medicals for your client to use for obtaining these discounted rates, we can also submit that revocation and prevent the insurance company from further sharing that information with the defendant's representatives.

As I have discussed, the defense has the main objective during settlement negotiations to reduce their overall cost to settle. Obtaining discounted annuities through a "rated age" is

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just one tactic that the defense has used successfully in the past to profit from the settlement.

To make sure that your client is protected and the defense does not profit during your case, be sure to contact us to obtain the proper HIPAA release and revocation forms to stop the defense cold in their tracks when it comes to sharing your client's medical information.

We have all you need in digital format, which I can email to you if you would like a copy of it for reference or use in a case. My email address is meligan@settlepro.com.

We would be happy to supply it to you and help you implement it.

For more information on regarding other roadblocks that may occur during the financial aspects of the settlement, feel free to contact me anytime at:

800-666-5584

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