

HOSPITAL HELD IN CONTEMPT FOR FAILURE TO PROVIDE COMPLETE MEDICAL RECORDS IN WORKER'S COMPENSATION CASE

A recent decision of the Michigan Compensation Appellate Commission has important implications for health care providers in terms of the scope of medical records that they must produce in response to subpoenas issued in worker's compensation cases. In *Perry v. McDonald's Restaurants of Michigan, Inc.*, the attorney for McDonald's issued a subpoena to Covenant Medical Center for all of the claimant's medical records. In response, Covenant provided records relating only to the claimed work injury, asserting that HIPAA precluded it from producing any records beyond that. McDonald's counsel filed a motion for contempt with the worker's compensation magistrate, who found Covenant in contempt for failing to produce the complete records. Covenant appealed to the Appellate Commission, and the Commission affirmed the finding of contempt, rejecting Covenant's HIPAA argument.

In worker's compensation cases the primary means to develop information regarding pre-existing or non-occupational medical conditions is through medical records. The *Perry* decision will make it easier for worker's compensation attorneys to pursue obtaining complete medical records from health care providers, regardless of HIPAA implications. This may put health care providers in a difficult situation as they attempt to comply with HIPAA privacy regulations and additional restrictions on the release of substance abuse treatment records. Health care providers may well begin to see a significant uptick in the aggressiveness with which worker's compensation attorneys pursue obtaining complete medical records, including the filing of more motions for contempt against providers who do not produce complete records in response to a subpoena.

Smith Haughey can assist providers as they attempt to navigate these difficult waters. If you have any questions regarding the response to a subpoena in a worker's compensation case, please contact one of our attorneys at 616-774-8000 or info@shrr.com.