

Municipal Law News

Foster Swift Administrative & Municipal Group

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WEBINAR | The Medical Marijuana Act - and the Issues It Presents to Municipalities

Join Foster Swift's municipal attorneys for a free webinar:

DATE: May 18, 2011

TIME: 11:30 a.m. - 12:30 p.m.

The topic of [medical marijuana](#) is on nearly every municipal board or council's agenda these days. And the law is changing fast and furiously – from court decisions to State Department of Treasury pronouncements. Foster Swift will shed light on the law and summarize recent updates in the medical marijuana front.

This free webinar will explore:

- the Michigan Medical Marijuana Act (MMA);
- recent court decisions interpreting the MMA; and
- other recent updates.

Stay ahead of the game without leaving your office. Take home helpful information and have your questions answered during a Q&A session.

SCHEDULED PRESENTERS

- Ronald D. Richards
- Michael D. Homier
- Laura J. Garlinghouse

SIMPLE STEPS TO REGISTER

1. Go to www.gotomeeting.com/register/520163641
2. Complete the registration form

\$4.3 Million Fine Imposed For HIPAA Violation

by: [Johanna M. Novak](#)

As municipalities know, the federal HIPAA law provides federal protections for protected health information. HIPAA rules are detailed, complex, and extensive. Relevant here, HIPAA says that "covered entities" have to safeguard health information and spells out patients' rights

to that information. Municipalities should take note of a recent federal agency decision to levy a large fine – just over \$4.3 million dollars – against a covered entity for violating patient rights under HIPAA.

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The federal HIPAA regulations apply only to those entities defined in the regulations as “covered entities.” Covered entities under HIPAA are group and individual health care plans, clearinghouses, and providers who transmit health information electronically. Health insurance benefits that a municipality offers may be covered by HIPAA. In effect, that means that a municipality who provides health insurance benefits may have to follow the detailed HIPAA rules. Subject to certain exceptions, a federal rule (45 CFR 164.524) provides that an individual may access and inspect or copy his or her protected health information in a designated record set no later than 30 days (60 days for information that is not maintained or accessible to the covered entity on-site) after the covered entity’s receipt of the request.

Just recently, the U.S. Department of Health and Human Services’ Office for Civil Rights (OCR) imposed a fine of over \$4.3 million against Cignet Health of Prince George’s County in Maryland (Cignet), a Christian-influenced health center in Maryland. Forty-one patients had filed complaints with OCR after Cignet allegedly denied them access to their medical records. OCR investigated and determined that Cignet had indeed violated the patients’ rights by denying them access to their medical records.

Cignet’s violation of the rights of access played a large part in its fine, to be sure. But the size of Cignet’s total fine, it seems in no small part, was due to Cignet compounding that error: it repeatedly failed to respond to OCR requests

to produce the records at issue, and failed to produce the records in response to an OCR subpoena. Cignet ultimately gave in, but the damage had already been done. The OCR determined that Cignet’s failure to cooperate was due to willful neglect and fined Cignet an additional \$3 million, on top of \$1.3 million for the improper denial of access.

This was the first civil monetary penalty the OCR has issued for violating the HIPAA privacy rules. And yet mere weeks after this penalty was issued, Massachusetts General Hospital (Mass General) was fined \$1 million to settle a potential HIPAA violation case. That case arose when a hospital employee lost protected health information when commuting to work – apparently leaving 192 patient records on a subway train that were never recovered.

These results leave no doubt that the government is increasing its enforcement of the HIPAA privacy and security rules. Those organizations that are required to comply with HIPAA – including certain municipalities that offer employee health benefits – should review their policies and procedures to ensure that they are adequately protecting patient information.

If you would like assistance in developing or updating HIPAA policies and procedures, or have questions about whether your municipality is required to comply with HIPAA, please contact either **Johanna M. Novak** at **906.226.5501** or any other member of the Foster Swift Administrative & Municipal Team.

Reconsider Using Credit Histories To Screen Job Applicants

by: **Sheralee S. Hurwitz**

Most employers, including municipalities, recognize that once an employee is hired, there are many factors to consider before terminating even an at-will employee. The decision to terminate employment is rarely risk-free. To help avoid having to make a termination decision, some charged with hiring decisions have thought about returning to various applicant-screening techniques to select applicants they believe will result in productive, successful

employees. But be careful. Not all screening tools are appropriate in all circumstances or for all employers.

The Equal Employment Opportunity Commission (EEOC)’s recent suit against Kaplan Higher Education Corporation should be a warning. The EEOC claims that Kaplan’s use of

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applicants' credit history is unlawfully discriminatory based on race. The key allegation states

. . . Kaplan Higher Education has rejected job applicants based on their credit history. This practice has an unlawful discriminatory impact because of race and is neither job-related nor justified by business necessity.

According to the EEOC, Kaplan used credit history checks as a selection tool in making hiring decisions in a way that had a significant *disparate impact* on black job applicants. Rejecting applicants on the basis of financial criteria such as poor credit ratings has been found in the past to disproportionately exclude minority groups.

In certain situations, financial problems may be used as a basis to argue that an applicant is financially irresponsible, reflecting poorly on character or reliability. But keep in mind that financial problems may be caused by circumstances beyond the applicant's control, such as uninsured, unexpected medical bills. Because the reason for a poor credit check result may not be directly correlated to the employee's skills or reliability, rejecting every applicant with a poor credit history may not be objective at all but

instead may disproportionately affect certain groups for reasons that are not directly related to the particular job for which they applied.

Whether the EEOC's current case will be proven remains to be seen, but the EEOC's press release makes the writing on the wall clear: "Employers need to be mindful that any hiring practice be job-related and not screen out groups of people, even if it does so unintentionally." Municipalities should be aware that using credit checks as a screening tool may increase the risk of a discrimination claim. Therefore, municipalities making hiring decisions must be able to show that the hiring criteria used to evaluate and screen applicants is necessary for the job in question. Given the EEOC's recent action, municipalities are well-advised to carefully reconsider and show restraint in using credit history checks as a screening tool, whether for an individual position or as a baseline screening tool for all applicants for employment.

If you have questions about employment screening techniques or labor matters in general, please contact either **Sheralee Hurwitz** at **616-726-2239** or any member of the Foster Swift Administrative & Municipal Team.

Foster Swift's Michael Homier To Present "Hot Topics in Planning & Zoning" At The MTA's 2011 Summer Update Series

DATES/LOCATIONS:

- June 14, 2011 - Frankenmuth
- June 15, 2011 - Gaylord
- June 16, 2011 - Lansing
- June 29, 2011 - Allendale

TOPICS COVERED:

- Power Struggle - Wind energy Systems
- Michigan Medical Marijuana Act
- Getting Back to Our Roots - Residential Agriculture

AGENDA:

- 4:30 p.m. - Registration & Networking Dinner
- 5:30 p.m. - 8:45 p.m. - Workshop

FOR MORE INFORMATION AND REGISTRATION DETAILS, VISIT:

www.michigantownships.org/EdWorkshops.asp

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Brian has an established reputation as a highly-focused attorney in several technical areas. He is known for handling complex municipal and administrative matters, with particular expertise in handling condemnation cases.

Brian has successfully represented various Michigan county road commissions, townships, and villages in condemnation matters involving the construction of roads, bridges, sewers, pipelines, and other projects. He has successfully defended several major necessity challenges, and he has successfully tried a number of just compensation challenges involving significant sums of money. Brian always strives to achieve the best result for his municipal clients efficiently and cost effectively. He has negotiated numerous favorable settlements with property owners, without the need for further litigation.

Attention-to-detail and staying current in these technically-focused practice areas is what differentiates Brian and enables him to assist clients in addressing their legal matters.

Brian practices in the Foster Swift Farmington Hills office yet assists municipalities all across Michigan. For more information about Brian, including recent cases and publications, visit fosterswift.com and search "Brian Renaud."

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