

## PA WHISTLEBLOWER LAW

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### 43 Pa.C.S. §§ 1421-1428

- “Whistleblower.” A person who witnesses or has evidence of wrongdoing or waste while employed and who makes a good faith report of wrongdoing or waste, verbally or in writing, to one of the person’s supervisors, to an agent of the employer or to an appropriate authority.
- No employer may discharge, threaten, discriminate or retaliate against an employee, or a person acting on behalf of the employee who makes a good faith report of wrongdoing or waste by a public body.



## WHAT IS A PUBLIC BODY?

- While the Whistleblower Law does not apply to private employers, the law does apply to an employer that was created by the Commonwealth or “which is funded in any amount by or through Commonwealth or political subdivision authority.” 43 P.S. §1422.
- The courts have interpreted the language of the Whistleblower Law to apply to any entity that receives funding from the Commonwealth or through the Commonwealth. This means that a recipient of funding from Pennsylvania or Medicaid is considered a “public body” for purposes of the Whistleblower Law.
- A private hospital that receives Medicaid funding is a “public body”.



- “Waste.” An employer’s conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from Commonwealth or political subdivision sources.
- “Wrongdoing.” A violation which is not merely technical or minimal in nature of a Federal or State statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.

## Statute of Limitations and Burdens of Proof

- 180 day statute of limitations.
- The employee must show that prior to the alleged reprisal, the employee or a person acting on behalf of the employee reported or was about to report in good faith an instance of wrongdoing or waste to the employer or an appropriate authority.
- The employer may rely on the defense that the action taken occurred for separate and legitimate reasons, which are not merely pretext.



## Damages

- Reinstatement
- Payment of back wages
- Full reinstatement of fringe benefits and seniority
- Actual damages
- Attorney and witness fees
- Costs of litigation



**“From one perspective, whistleblowing is the ultimate act of justice, serving to right a wrong. From another perspective, whistleblowing is the ultimate breach, a grave betrayal.”**

## PREVENTION

- A corporate culture that promotes internal criticism can be very effective in preventing external reports.
- It isn't enough to inform employees that whistle-blowing activity is protected from discrimination and retaliation. Instead, workers must see or feel that the words of protection are actually true and that protection actually exists.
- If the message, conveyed by words and deeds, is that internal criticism is a good thing that leads to a better company for everyone, loyalty is enhanced and the risk of reporting outside the company goes down significantly.

## PREVENTION

- If an employee feels that his internal criticism of company or co-worker practices makes him look like a hero instead of a villain, he is much less likely to sue the company.
- If a lawsuit is filed, the defense may want to show that employees are expected to let the company know if something is amiss, i.e., reporting is not exceptional or heroic behavior.
- Companies should not only incorporate strong corporate policies that are well-publicized, but also train supervisors how best to encourage internal criticism.
- Supervisors must be trained to avoid retaliation against employees who criticize potential company wrongdoing or waste.



## Whistleblower Case Study

### **Rose Reporter v. Big Doc's Practice Group**

## THE PARTIES

- ***Plaintiff***

Rose Reporter was an administrative assistant in a physician office group. She was employed by the group for a number of years and had no disciplinary history.

- ***Defendant***

Big Doc's Practice Group is a physician practice. The practice is part of a health system. The health system has a corporate compliance section. The practice group receives Medicaid funds.

## **Facts**

Rose was in charge of filing medical records, office correspondence and greeting patients.

During her employment Rose noticed some irregularities in recorded vital signs while filing patient records.

Rose had no first-hand knowledge of whether the recorded vital signs were accurate, but she believed that some information was improperly altered by other office staff in violation of nursing regulations.

Rose believed the records were altered so that insurers would approve procedures, even if the necessary criteria for approval did not exist.

## **Facts**

Rose became distrustful of her co-workers.

Rose reported her concerns to her supervisor at the practice group.

The supervisor passed the information along to the corporate compliance department. Shortly thereafter, the supervisor took another job at a different employer.

Because Rose was distrustful and insecure, she emailed "evidence" in the form of patient electronic health information to her private email.

Rose also sent the emails to her husband's email account.



**INVESTIGATION**

- Corporate Compliance was alerted to Rose’s complaint.
- Compliance officers interviewed Rose concerning the alleged wrongdoing.
- Compliance officers interviewed all potential witnesses in the office and reviewed medical records.
- Rose voluntarily provided compliance officers with emails of the “evidence” she had sent to her private email account and her husband’s email account.

## INVESTIGATION RESULTS

- Corporate compliance officers prepared a comprehensive report of their findings and recommendations.
- Compliance officers recommended policy and practice changes but did not identify any significant irregularities in the medical records.
- Compliance officers notified Rose that she had violated HIPAA regulations by sending protected health information to her home email and her husband's email.
- Human Resources became involved as HIPAA violations were grounds for discipline up to and including termination.

## RESULTS

- Big Doc's Practice Group changed its policies and procedures in accordance with the corporate compliance report.
- Rose's employment was terminated for her clear violation of HIPAA and company policy.
- Rose filed a whistleblower lawsuit.
- **BRING ON THE LAWYERS!**

## PLAINTIFF'S CASE

- Rose was just trying to do what was right.
- No good deed goes unpunished at Big Doc's.
- Rose felt she had no choice but to protect herself.
- Rose's husband never accessed any of the emails.
- No one was harmed except Rose.
- Rose was right that things were not being done correctly.
- Big Doc's excuse for firing Rose really was just pretext for getting rid of a whistleblower.
- Rose lost her job for reporting wrongdoing which she had been encouraged to report and about which she was assured there would be no retaliation.

## The Defense

- The health system takes HIPAA violations very seriously.
- Rose knew that company policy did not allow disclosure of patient medical information without authorization.
- Rose knew a HIPAA violation could lead to termination.
- Rose did not need to send the information to her private email or to her husband's email. She should have simply reported what she thought was wrong.
- Rose was treated fairly under the circumstances. The practice group had a legitimate reason to let Rose go that had nothing to do with the whistle-blowing.

## Corporate Compliance Involvement

- Investigation
- Reporting of findings and recommendations
- Meetings with defense counsel after lawsuit is filed
- Turning over all emails, notes, documents, calendars, etc. to the lawyers
- Depositions (including preparation meetings)
- Trial preparation
- Trial testimony