CASE OF THE QUARTER: KNOW YOUR POLICY – PRIVACY CRISIS EXPENSE COVERAGE

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The "Case of the Quarter" column is a sample case study that highlights best practices in actual scenarios encountered through PRMS' extensive experience in litigation and claims management. Specific names and references have been altered to protect clients' interests. This discussion is for informational and educational purposes only and should not be relied upon as legal advice.

FACTS:

Dr. Winter receives a letter from Smooth Sailing, the company he uses for claims submission and patient billing, informing him of a recent security incident that affected some of his practice data.

Dr. Spring's employee sends an email to patients informing them of a provider's departure from the practice. Unfortunately, she does not blind-copy the recipients thus disclosing the names and email addresses of 300 patients.

Dr. Summer's laptop was stolen. She can access patient records on her laptop. The laptop and the records are password-protected.

Dr. Fall received notice from Change Healthcare that the cyber attack it suffered impacted the electronic health records and billing companies that he used in his practice.

All of the psychiatrists promptly report the incidents to their professional liability carriers.

ISSUES:

Each fact pattern describes a potential breach of protected information that could amount to a violation of federal or state statutes or regulations governing the control and use of Personally Identifiable Information (PII) and Protected Health Information (PHI). Further, some states allow private lawsuits for healthcare confidentiality breaches.

COVERAGE:

The policies of Drs. Winter, Spring, Summer, and Fall provide Privacy Crisis Expense coverage. To trigger coverage under Dr. Winter's claims-made policy, the incident must occur after the retroactive date and be reported to his insurer within sixty days of its discovery. To trigger Dr. Summer's occurrence policy coverage, the incident must take place and be reported during the policy period (effective dates of the policy).

OUTCOME:

The insurer appointed attorneys to assist the psychiatrists. The attorneys determined if each incident amounted to a breach under federal and state laws. They then advised the doctors of any steps they needed to take. For example, notifying impacted patients of the breach; notifying the Office for Civil Rights (OCR); notifying state agencies; documenting the incident and steps taken after the incident; and implementing corrective actions. The attorneys assisted the doctors with implementation of the necessary actions. No further action was taken against Drs. Winter, Spring, Summer or Fall.

TAKEAWAY: Psychiatrists have a lot to lose with confidentiality breaches. Consequences can include fines, Board investigations, OCR investigations, costly computer forensic evaluations, reputation damage, and possibly lawsuits. Educate yourself and your staff on preventing confidentiality breaches. If you learn that one has occurred, report the matter promptly to your professional malpractice carrier. If you do not have coverage, strongly consider hiring an attorney to assist you.

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