

The Importance of Documenting the Failure to Document

Labor & Employment Law Update

By Suzannah Wilson Overholt on February 20, 2019

One of the biggest challenges faced by health care providers is ensuring proper documentation in patient charts. Shortcomings in charting can result in lost revenue due to third party payers' assigning a lower CPT code or refusing to pay a claim. Even worse, poor charting may prompt an equally poor survey result.

Convincing employees to stay on top of charting can be difficult and frustrating but taking appropriate action against those who fail to do so and documenting that action is critical. A recent decision by the U.S. District Court for the Western District of Wisconsin illustrates the manner in which an employee's failure to chart should be properly documented through the disciplinary process, and how such effective documentation may be used to defend against claims for discrimination and/or wrongful termination.

In *Blumentritt v. Mayo Clinic Health System – Franciscan Healthcare, Inc.* (W.D. Wis. Feb. 6, 2019), the district court granted summary judgment in favor of the Mayo Clinic due, in part, to its well-documented history of disciplinary action against Mr. Blumentritt for his failure to complete charting in a timely manner. The following best practices were used by the Mayo Clinic:

- Charts were audited for completeness;
- When an audit revealed an employee with a significant number of incomplete charts, the supervisor had a coaching session with the employee and established clear, achievable goals for the employee;
- The supervisor monitored the employee and, when he failed to meet the goals, gave him a performance counseling;
- The supervisor took the employee off of performance counseling and provided positive feedback for his accomplishment when he improved;
- When the employee backslid, the supervisor gave him an improvement plan with specific objectives and due dates for achieving those objectives, as well as a warning that failure to complete documentation according to established policies or adhere to the timeline would result in termination;
- The supervisor revised the timeline for the improvement plan when the supervisor's schedule interfered with the deadlines;

- When another audit revealed the employee again failed to complete patient charts, the supervisor gave the employee a last chance warning; and
- When a follow up audit revealed that the employee's charting was incomplete and the employee failed to correct the problem after being given an opportunity to do so, he was terminated.

The one weakness in the process appears to have been the Mayo Clinic's failure to take action against Mr. Blumentritt when he did not meet the deadlines set in the performance improvement plan. On the flip side, a real strength is that the Mayo Clinic did not restart the disciplinary process when the employee backslid, and instead resumed at an appropriate level given the prior infractions. The well-documented disciplinary measures against Mr. Blumentritt were critical to the Mayo Clinic's ability to defend against his claim that he was terminated because he was a gay male.

The takeaways from this decision are to act on audit results, document action taken, follow through, and keep the pressure on the employee to perform. (Also worth noting is that the court did not question the Seventh Circuit Court of Appeals' decision in *Hively v. Ivy Tech Comm. Coll.* that discrimination on the basis of sexual orientation is prohibited by Title VII of the Civil Rights Act of 1964.)

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