



Your privacy under attack

NALC files suit to stop OIG raid on medical records

The NALC filed suit in federal court in January seeking to halt the Postal Service's Office of the Inspector General (OIG) from illegally accessing the private medical records of letter carriers and other postal employees, and then telling health care providers to keep quiet about the raids.

Attorneys for both the NALC and the American Postal Workers Union, which represents clerks, maintenance and motor vehicle services crafts, formally submitted papers in New York City on January 17 in the U.S. District Court for the Southern District of New York.

"There are laws on the books that explicitly state that it's illegal for anyone to look at your medical records without your permission," said NALC President William H. Young. "And yet, time and again, we've heard that OIG agents are sneaking around, using underhanded and outrageous tactics to get doctors to show them the private medical files of postal employees."

The medical records controversy is the latest involving the OIG, which has appeared to be running wildly out of control. The most glaring incidents had involved several mass suspensions of letter carriers for allegedly mishandling mail—cases where the carriers were ultimately found to be without blame and compensated for their lost time. The sneak attack on medical privacy appears to be part of a grandiose power play by the Inspector General and his agents.

"We are hopeful this court action will stop the abuse of postal employees' privacy," President Young said. "Of course, we all know the legal process can be long, difficult and sometimes frustrating. But we have a strong case and we will not knuckle under to bullying tactics."

"This federal lawsuit is the first step," Young added. "If more action is needed, the NALC will not hesitate to take it."

For years, the Postal Service acquired workers' medical information for a variety of reasons, such as decisions regarding fitness for duty or determining employee eligibility for disability retirement. Usually, the limited, relevant medical information was obtained directly from the employees, in full compliance with standards outlined in the Privacy Act of 1974.

But in late 2007, the NALC caught wind of a shady change in OIG tactics. Form letters, printed on OIG letterhead and addressed generically to a "Health Care Provider," began to surface. The documents state that the OIG functions as a health oversight agency, which therefore allows it to view the private, protected health information of a postal employee, without getting the employees' permission first or letting the employee know that access has been granted. Often, these demands for employee medical files are presented under the guise of investigating alleged employee misconduct.

The letters further maintain that the health care provider should wait at

least a year before letting the employee know that the OIG has accessed that personal data.

Last September, President Young wrote James C. Miller III, then chairman of the Postal Service Board of Governors, to demand that Miller direct the OIG "to immediately... discontinue its current practice of extracting sensitive, protected health information from employees' health care providers." The Board of Governors oversees the Office of the Inspector General.

"I was shocked to learn that the OIG agents indicated that once they show the provider the letter, the provider discloses to them the employee's entire medical file, not simply the OWCP file, and are led to believe that they can speak freely about the employee's medical history," Young wrote. "This is all done without the knowledge or authorization of the employee/patient."

Board of Governors Secretary Wendy Hocking replied to Young's letter in November, asserting that the Postal Service is acting legally when it accesses employee medical records in

this way. "Therefore, no further action will be taken," she wrote.

Since then, the NALC has uncovered evidence of numerous violations of postal employees' medical files by the OIG. In his December "President's Message" printed in *The Postal Record*, Young promised that the union's lawyers would "pursue this matter relentlessly through litigation," and on January 17 he made good on that promise.

The lawsuit states that by tapping into employees' private medical information, the OIG is not only operating outside its legal authority, but is actually causing violations of federal medical privacy laws, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Privacy Act of 1974. Significantly, the suit also charges that the practice violates Fourth Amendment protections against illegal search and seizure.

A copy of the lawsuit and the latest information about it is available at nalc.org. Further developments will be printed in future issues of *The Postal Record* and the *NALC Bulletin*. ☒

Miller replaced as BOG chair



Attorney Alan C. Kessler was elected chairman of the Postal Service Board of Governors at the board's January meeting, replacing

James C. Miller III, the former Reagan budget chief who trumpeted his pro-privatization views. Kessler, a Democrat, was appointed to the Board in 2000 by President Bill Clinton for a term that expires this December. He had served as vice chairman since 2005. He is a partner in a large Philadelphia law firm.

Answers to some questions about TEs

The NALC and USPS have jointly issued a "Questions and Answers (27), NALC Transitional Employees." The question-and-answer format addresses some of the issues that have arisen concerning transitional employees in the letter carrier craft allowed under the 2006-2011 National Agreement.

The "Questions and Answers" appear in full in the Contract Talk column in this issue, beginning on page 31. The document also has been sent to the field and is available online at nalc.org as document M-01633 in the Materials Reference System section of the Contract Administration page.

Executive Vice President Fred Rolando said the union and Postal Service are continuing discussions and the document will be updated as agreement is reached on other issues. The Q&A document is the only source of the parties' joint agreement at the headquarters level, Rolando noted, and local NALC leaders should not rely on any other interpretations. ☒

TEs need new Form 1187 when promoted to career

Branch officers please note: The USPS is not continuing dues withholding automatically on members who change from TE to career status. When NALC members who are transitional employees are promoted to career, you must have them complete and sign a new Form 1187. The Form 1187 submitted on behalf of career employees differs from that of the TE 1187 in the method in which cancellation of dues can occur. ☒