



Settlement reached on medical records

Agreement follows NALC lawsuit; tougher restrictions now in place



USPS Inspector General David Williams

The NALC has entered into a settlement agreement with the United States Postal Service and the USPS Office of Inspector General (OIG) that imposes significant new restrictions on OIG agents and postal inspectors when they try to obtain confidential medical information about employees from the employees' doctors or other personal health care providers.

The settlement follows months of intense negotiations by the parties' attorneys, supervised by a U.S. magistrate judge.

NALC President Fred Rolando, who participated in the negotiations, said he was extremely pleased with the final outcome.

"The restrictions imposed by this settlement should prevent OIG agents from intimidating and coercing doctors and other providers who would otherwise choose to maintain the confidentiality of sensitive information," Rolando said. "Even more significantly, the settlement will ensure that union advocates can prevent the Postal Service from using improperly obtained information as evidence against employees in arbitration cases."

In January 2008, the NALC and American Postal Workers Union filed a joint federal lawsuit against the Postal Service and the OIG, seeking to stop OIG agents from obtaining confidential medical information about employees without their knowledge or consent during investigations of alleged workers' compensation or sick leave fraud (see the March 2008 *Postal Record*).

NALC had discovered incidents where health care providers were intimidated by OIG agents into turning over certain medical information about employees, information that had no relevance to any legitimate investigation of alleged misconduct.

This settlement agreement recognizes that, under federal law, OIG agents and

postal inspectors may, under certain circumstances, seek to obtain relevant information from an employee's health care provider without the employee's consent as part of a legitimate investigation of suspected fraud or other misconduct.

However, the agreement requires OIG agents and postal inspectors, before interviewing an employee's health care provider, to give that provider a specially negotiated form letter that explicitly states that the provider "is not required to speak" about the employee's health information to an agent or inspector.

The letter also tells the health care provider that he or she "may take as much time as necessary" to decide whether to discuss the employee's health information and may consult with whomever he or she chooses (other than the employee) while making that decision.

Further, this form letter requires the agent or inspector to identify, in writing, the specific information they are looking for, and to provide a written explanation of how that information is both relevant and material to a legitimate law enforcement investigation.

The settlement additionally provides that any information obtained from a health care provider in violation of the settlement may not be used by the Postal Service for any purpose, including discipline or discharge of the employee, and it will not be admissible as evidence in any arbitration involving the discharge or discipline of the employee.

"In an age where our personal information is now a valuable commodity, protecting it is just about as important as protecting our jobs and our benefits," said President Rolando. "This agreement will help keep prying eyes and hands safely out of our medical affairs and preserve that special bond of trust we have with our doctors." ✉