

## Case Summary

### Advantacare Health Partners, LP v. Access IV

2004 WL 1837997 (N.D.Cal. Aug. 17, 2004)

#### **Evidence Sanctions Imposed For Failing to Comply with Injunction Ordering the Deletion of Files**

The plaintiff brought legal action against its former employees for misappropriating a number of plaintiff's computer files. In support of its claims, the plaintiff performed a forensic analysis of the employees' former work computers and discovered that they had copied confidential files prior to leaving the company. These files included information such as plaintiff's patient database, budget documents, employees' wages, referral statistics, marketing materials, and other items. Based on this evidence, the court granted the plaintiffs' request to make forensic copies of the defendants' current home and business computers. A computer forensic expert discovered that after the court issued the order, numerous computer searches for data deletion software were performed and scrub software was used to delete more than 13,000 files from the defendant's home and office computers.

Based on these facts, the court ordered the defendants to permanently delete the remaining files and authorized the plaintiffs to re-image the defendants' hard drives to verify compliance. A forensic computer examiner re-imaged the defendants' hard drives and found that thousands of plaintiff's files remained on the drives. The plaintiff claimed that the actions of the defendant caused prejudice to the merits of its case and requested the court to enter a default judgment.

#### **Decision**

The court found that the defendants' actions, while culpable, did not warrant granting the sanction of default judgment; the court was not sure that the circumstances were "extraordinary," and lesser sanctions promised to be as effective as a default judgment. Instead, the court granted evidence sanctions instructing the trier of fact to presume that the defendants had copied all of the plaintiffs' computer files. Furthermore, the defendants were ordered to pay monetary sanctions in the amount of \$20,000 within 30 days.

Deletion of Electronic Documents