

ORIGINAL

IN THE SUPREME COURT OF OHIO

GENE'A GRIFFITH, EXECUTRIX)
FOR THE ESTATE OF HOWARD E.)
GRIFFITH, DECEASED)

Plaintiff - Appellant)

- vs -)

AULTMAN HOSPITAL)

Defendant - Appellee)

CASE NO. : 2014-1055

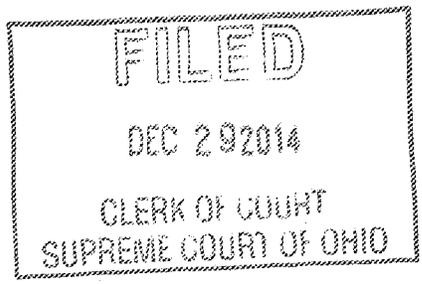
On Appeal from the Stark County
Court of Appeals,
Fifth Appellate District,
Case No. 2013 CA 000142

AMICUS CURIAE BRIEF ON BEHALF OF PLAINTIFF-APPELLANT

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II. STATEMENT OF THE IDENTITY AND INTEREST OF THE AMICUS

The Ohio Association for Justice and the Summit County Association for Justice are not for profit associations of trial lawyers. The mission of the Ohio Association for Justice is to preserve Constitutional rights and protect access to the civil justice system for all Ohioans. The mission of the Summit County Association for Justice is to "Preserve Justice and Accountability." Both associations exist to preserve and protect the legal rights of the individual. The members of both associations have come together to advocate for the rights of individuals by promoting safer products, workers' rights, access to quality health care, eliminating discrimination in the workplace and fighting for those who are injured through no fault of their own. Both associations champion access to justice and the constitutional right to trial by jury.

III. STATEMENT OF THE CASE AND FACTS

This case seeks to preserve the clear and all-encompassing definition of "medical records" as provided by Ohio R.C. 3701.74 (A) (8) without any limiting factors as now introduced by the Appellate decision in this matter. On March 25, 2014, in a two-to-one decision, the Court of Appeals of the 5th Appellate District constricted the statutory definition of "medical records" by allowing medical providers to exclude medical data as part of a patient's medical record, solely by self-determining how to "maintain" these records pursuant to the statutory definition set forth in Ohio R.C. 3701.74 (A) (8).

In the underlying case, the Plaintiff, as executrix of her father's estate, exercised her right to obtain a complete copy of her father's medical records from Defendant-Appellee Aultman Hospital. Aultman Hospital did not provide all medical records that it had generated or maintained. The missing documents contain data from her father's heart monitor, and are crucial to the timeline of when his heart stopped. Ultimately it came to light that there were records not

provided pursuant to the Plaintiff's statutory request. Those records were not provided ostensibly because they had not made it over to, or had been removed from, Aultman Hospital's Medical Record Department. Instead, it has been represented that the missing heart monitor records are under the control of another department; Risk Management.

The Hospital's decision to house the records in Risk Management as opposed to Medical Records was made pursuant to an internal policy or procedure of Aultman Hospital. The decision was not based upon any statutory guidelines or Ohio Department of Health guidelines. The decision to route these particular and crucial records away from the Medical Record Department was merely the desire of Aultman Hospital.

During her deposition, the Director of the Medical Record Department acknowledged that these other medical documents were indeed medical records of the Plaintiff's father. However, since those medical records had not been provided to the Medical Record Department to be stored, they were not part of the hospital's official medical records. Upon further inquiry the medical records director did not know what other hospital departments may or may not have additional records pertaining to the Plaintiff's father.

IV. ARGUMENTS IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW NO. 1

When a statutory definition is clear and unambiguous it should not be judicially constrained so as to frustrate the purpose of the statutory right the definition serves.

The statutory definition at issue is "medical record," which is defined by Ohio R.C. 3701.74 (A) (8) as "data in any form that pertains to a patient's medical history, diagnosis, prognosis, or medical condition and that is generated and maintained by a health care provider in the process of the patient's health care treatment." Had the legislature intended for medical

records to only consist of records housed in a centralized Medical Record Department it could have so stated this intent. Instead the legislature chose open and inclusive language: “maintained by a health care provider.”

There is no statutory requirement for a healthcare provider to have a Medical Record Department. A Medical Record Department is not a provider of actual medical services to a patient. It is a department that exists in larger medical facilities for the convenience of the medical facility in order to gather, store and share medical information regarding patients. However, there is no statutory requirement for a hospital to have a Medical Record Department. A Hospital could allow each department; for example, emergency, surgery, radiology, etc., to maintain all of their own records. A Medical Record Department is a department of convenience for the medical facility. If a medical facility has an internal policy in place to siphon off particular documents to be maintained outside the Medical Record Department; then those internal policies cannot be used to escape the statutory rights and responsibilities set forth under Ohio R.C. 3701.74.

As pointed out in the Appellant’s brief, the legislative history of this statute shows the statute has only been expanded to encompass a broader definition of Medical Records and a broader class of personnel and providers that the statute encompasses. The two-to-one decision at issue not only constricts the statute, but would allow the statute to be manipulated and frustrated by internal policies put in place by health care facilities. The dissent in the Appellate decision points out that very problem.

Defendant-Appellee Aultman Hospital made the decision to establish a Medical Record Department in which to maintain all medical records from all other departments. In this case, if the hospital and physicians thought the records and EKG rhythm strips in question were

important enough to send to and *maintain* in the Risk Management Department, should they not also be important enough to send to the Medical Record Department? The present matter does not involve a failure to maintain records. Since the hospital maintained the records/strips, regardless of which department they personally chose to store them in, these records should be provided as part of the patient's records.

The statute does not restrict medical records as only records physically stored/maintained in the Medical Record Department. This construction of the statute was fashioned out of whole cloth by the lower court herein. If we were to allow any entity to create and redefine the rules and laws by which they are bound, the Courts would fail and the judicial system would fall apart. Ohio R.C. 3701.74 does not give Aultman, or any other health care provider, the right to define what is considered a medical record and what is not. However, if the Fifth District Court's opinion stands, it empowers Aultman and other providers to do just that: constrain the definition of medical records to include only those documents they wish to share.

The statute is clear. It defines a medical record as "data *in any form* that *pertains* to a patient's medical history, diagnosis, prognosis, or medical condition and this is *generated* and *maintained* by a health care provider in the process of the patient's health care treatment."

Ohio Rev. Code § 3701.74 (A) (8) (emphasis added.)

By this statutory definition, we know that EKG results and rhythm strips are included as records because a record is *data in any form*. We know these records *pertain* to the Patient's medical history, because the rhythm strips contain real time documentation of the Patient's own medical condition. We also know Aultman *generated* the records because they exist and we know they *maintained* the records because Risk Management has possession of them. For purposes of the controlling statute, the physical location of these records is irrelevant. The fact

they were not provided to the records department, be it intentional or by error or oversight, has no legal bearing when defining them as a medical record. Therefore, there is no question that the EKG rhythm strips are considered a medical record under the definition of the statute.

Furthermore a review of the Aultman Hospital website provides the Hospital's HIPPA compliant medical record release form to be used by their patients for the release of patient's medical information. Aultman's medical record release form has a check box to order the patient's EKG results. Surely Aultman would not have included EKG's on their medical records release form if they themselves did not consider EKG's as medical records.

EKG records are routinely obtained and reviewed by health and life insurance companies for underwriting purposes to determine if an insurance customer is eligible for some preferred rating category. Only in certain cases, such as here when the real time monitoring data is critical to the timeline of care for a patient who died, are these records routed to the Risk Management Department. That does not render them 'un-records.' Neither their content nor form suddenly changed merely by moving them from one office to another.

Despite its clear statutory definition, the Defendant-Appellee has attempted to redefine the term "medical records" to suit the Defendant's own needs in this case. The decision of the Appellate Court allowed the Defendant-Appellee to do just that. The Appellate Court's decision erodes the integrity of the Statute and if upheld, will become an irresistible clarion call for all medical providers to sequester away any medical records that they do not wish to share.

This Court previously addressed the issue of the lower courts ability to redefine a term which has been clearly set by Statute in the case of *Horsely v. United Ohio Ins. Co.*, 567 N.E.2d 1004, 58 Ohio St.3d 44 (Ohio 1991). In the case of *Horsely*, the disputed definition was "motor vehicle," which had already been clearly defined by Statute. The Appellate Court had

disregarded the statutory definition, but on appeal the Ohio Supreme Court stated “This court can discern no valid reason for not accepting this definition of a ‘motor vehicle’ provided by the General Assembly.” This Court continued stating, “Absent a legislative intent to the contrary, we decline to formulate our own definition of ‘motor vehicle,’ when the General Assembly has already spoken as to how that term should be defined.” *Horsely*, 58 Ohio St.3d at 46, 567 N.E.2d at 1006.

The Appellate Courts have also reviewed the issue of statutory definitions and concluded that there is no need to restrict the language or attempt to interpret a term which has already been clearly defined. The Courts have repeatedly upheld that unambiguous statutory definitions are to be applied just as they are written, without additional interpretation. This shared opinion of the Ohio Appellate Courts was summarized by the 12th District Court of Appeals as follows:

In interpreting a statute, a court must first look to the language of the statute itself to determine legislative intent. If the language used is clear and unambiguous, the interpretive effort is at an end and the statute must be applied as written. *Bryant v. Dayton Casket Co.* (1982), 69 Ohio St.2d 367, 369, 23 O.O.3d 341, 342, 433 N.E.2d 142, 143; *Seely v. Expert, Inc.* (1971), 26 Ohio St.2d 61, 71-72, 55 O.O.2d 120, 126, 269 N.E.2d 121, 128. **Courts have a duty to give effect to all of the words used, not to delete words used or to insert words not used.** *In re Burchfield* (1988), 51 Ohio App.3d 148, 152, 555 N.E.2d 325, 329. A court may not simply rewrite a statute on the basis that it is improving it. *Seely*, supra, 26 Ohio St.2d at 71, 55 O.O.2d at 125, 269 N.E.2d at 128.

Deaton v. McIntosh, 612 N.E.2d 1316, 82 Ohio App.3d 688, 690 (Ohio App. 12 Dist. 1992) (emphasis added).

In this case, the Appellate Court failed to follow this brightly lit path, and grafted on a new requirement that has no support anywhere in the statute itself. The

language of R.C. 3701.74 (A) (8) is broad and inclusive, but well defined and unambiguous. The Appellate Court's decision to severely narrow the statute's definition was unwarranted and will severely impact public interest.

V. CONCLUSION

The Appellate decision at issue could affect every Ohio citizen given that, at some point in their life, every Ohio citizen will probably receive medical treatment and every Ohio citizen then has the right to obtain a copy of the medical records related to said treatment. The Ohio Legislature saw fit to give Ohio citizens the right to obtain a copy of their medical records and define what constitutes a medical record in broad and expansive terms. The only changes to the statute over time have been to further expand and broaden the scope of the statute. The decision at issue not only is an about-face on expanding the statute, but it constricts the statute and creates a condition that is ripe for abuse. As such, the Ohio Association for Justice and Summit County Association for Justice urge this Court to reverse the Appellate decision and uphold and embrace the clear statutory definition at issue.

RESPECTFULLY SUBMITTED,
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CERTIFICATE OF SERVICE

Counsel hereby certifies that a true and accurate copy of the foregoing was sent via electronic means pursuant to Civ. R. 5(B)(2)(f) and/or Regular U.S. Mail on this 27th day of December 2014, to:

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