

**IN THE SUPREME COURT OF OHIO**

<b>DARLENE BURNHAM,</b>	)	<b>Case No. 2015-1127</b>
	)	
<b>Plaintiff-Appellee,</b>	)	<b>On Appeal from the</b>
	)	<b>Eighth Appellate District,</b>
<b>v.</b>	)	<b>Cuyahoga County</b>
	)	<b>Case No. CA-14-102038</b>
<b>CLEVELAND CLINIC, et al.,</b>	)	
	)	
<b>Defendants-Appellants.</b>	)	

**MEMORANDUM IN SUPPORT OF JURISDICTION OF AMICI CURIAE, OHIO  
HOSPITAL ASSOCIATION AND OHIO STATE MEDICAL ASSOCIATION, IN  
SUPPORT OF APPELLANTS**

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## STATEMENT OF INTEREST OF AMICI

Below is a brief overview of Amici and their members:

- The Ohio Hospital Association (“OHA”) is a private nonprofit trade association established in 1915 as the first state-level hospital association in the United States. From its inception, the OHA has provided a mechanism for Ohio’s hospitals to come together and develop health care legislation and policy in the best interest of hospitals and their communities. The OHA is comprised of over 200 hospitals and 13 health systems. Together these hospitals and health systems employ more than 280,000 employees in Ohio.
- The Ohio State Medical Association (“OSMA”) is a nonprofit professional association established in 1835 and is comprised of approximately 16,000 physicians, medical residents, and medical students in Ohio. The OSMA’s membership includes most Ohio physicians engaged in the private practice of medicine.

Amici represent the vast majority of hospitals and physicians in Ohio and have a strong interest in legal and legislative developments affecting their members, such as the recent Eighth District decision in *Burnham v. Cleveland Clinic*, 8<sup>th</sup> Dist. Cuyahoga No. 102038, 2015-Ohio-2044 (“*Burnham*”), which required a hospital to produce privileged information to its litigation adversary without an immediate right to appeal the discovery order. Amici are deeply concerned that, if this Court does not review *Burnham* and provide clarification to Ohio’s lower courts regarding a party’s long-recognized right to an interlocutory appeal from a decision denying the

assertion of a privilege, meaningful review of orders requiring the production of privileged material<sup>1</sup> will be eviscerated.

**EXPLANATION OF WHY THIS CASE IS OF PUBLIC  
OR GREAT GENERAL INTEREST**

This case is of public or great general interest because it involves an important issue that can arise in any lawsuit filed in Ohio – the lack of meaningful review of an erroneous order to compel privileged communications.

Thousands of lawsuits are filed in Ohio every year. Hospitals, doctors, and other health care providers often are named as defendants. According to Ohio Courthouse News Service, in just the past 18 months, more than 1,200 cases asserting a claim for medical negligence or medical malpractice have been filed in Ohio state and federal courts in just 52 of Ohio’s 88 counties.<sup>2</sup>

While some parties in lawsuits may not be represented by or may not have sought the advice of an attorney, many (if not most) are represented by and/or have sought the advice of an attorney. This is certainly true of hospitals, doctors, and other health care providers who are almost always represented by counsel in medical negligence<sup>3</sup> cases. In every case where an attorney represents or has advised a client, the client’s communications with his attorney are

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<sup>1</sup> The terms “privileged communication,” “privileged material,” and “privileged information” are used interchangeably throughout this memorandum.

<sup>2</sup> Because Rule 7.02(D)(3) of the Ohio Supreme Court Rules of Practice prohibits attachments to memoranda in support of jurisdiction, except for attachments specifically required or permitted under Rule 7.02, Amici are not attaching the reports prepared by the Ohio Courthouse News Service, but instead refer the Court to Ohio Courthouse News Service at <https://www.courthousenews.com>. This service collects and reports on new case filings from 52 of Ohio’s 88 counties. The Ohio Courthouse News Service identified (by parties’ names, court, and case number) approximately 1240 cases that were filed in Ohio state or federal courts in 2014 and 2015 (through July 6, 2015) that asserted a claim for either medical negligence or medical malpractice.

<sup>3</sup> For simplicity, the term “medical negligence” will be used to describe cases that refer to either medical negligence or medical malpractice.

subject to the attorney-client privilege. The attorney-client privilege is one of the oldest recognized evidentiary privileges protecting confidential communications from disclosure. *See Squire Sanders & Dempsey, L.L.P. v. Givaudan Flavors Corp.* 127 Ohio St.3d 161, 2010-Ohio-4469, 937 N.E.2d 533, ¶16. The underlying rationale of the attorney-client privilege “is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.” *Id.*

In every case in which an attorney represents or has advised a party, there is the potential that a litigation adversary may seek discovery of attorney-client privileged communications. Although privileged communications are not discoverable under Civ. R. 26, trial courts are not perfect and have incorrectly determined that privileged communications should be produced or should not be protected. When this happens, it is critical that the party compelled to disclose the privileged communication has an opportunity for meaningful review of the trial court’s decision.

While *Burnham* specifically addresses the attorney-client privilege, which is important to Amici and most litigants, the Eighth District’s erroneous decision reaches far beyond the attorney-client privilege and applies to many other types of privileged and confidential communications, including the physician-patient privilege, which is uniquely applicable to Amici.

Confidentiality between patients and their physicians is of paramount importance in the provision of health care. Protecting the confidentiality of medical records is vital to ensuring that patients have access to safe and effective health care. Uncertainty about whether medical records will be divulged may lead patients to avoid or delay seeking medical treatment, or to withhold important information when they do seek medical treatment. Courts have recognized that disclosure of an individual’s medical records could cause a variety of harms:

First, the breach may produce direct negative consequences for the patient. \* \* \* Second, the patient may suffer harm simply from knowing that elements of the intimate details of his life have been laid bare for the uninvited viewer. Third, the patient may suffer harm to his public image that, if the public disclosures are true, cannot be rehabilitated through legal action \* \* \* Finally, the patient-doctor relationship, founded as it is on trust, may be irredeemably shattered.

*Ms. B. v. Montgomery County Emergency Serv.*, 799 F.Supp.534, 538 (E.D.Pa. 1992), *affirmed sub nom. Ms. B. v. United States Postal Serv.*, 989 F.2d 488 (3<sup>rd</sup> Cir. 1993).

Additionally, patients expect that their medical records will be maintained confidentially by their health care providers and are not discoverable in litigation in which they are not a party. Yet, nonparty medical records are sought in discovery (and often the nonparties whose records are sought are not even aware that their records are the subject of a dispute in a lawsuit in which they are not a party). *See, e.g., Roe v. Planned Parenthood*, 122 Ohio St.3d 399, 2009-Ohio-2973, 92 N.E.2d 61 (finding that trial court should not have compelled the production of the medical records of nonparty adolescents who sought an abortion); *Brown v. ManorCare Health Services*, 9<sup>th</sup> Dist. Summit No. 27412, 2015-Ohio-857 (seeking records of all nursing home roommates); *Cepeda v. Lutheran Hospital*, 8<sup>th</sup> Dist. Cuyahoga No. 90031, 2008-Ohio-2348 (permitting discovery of other patients' billing records), *rev'd and remanded*, 123 Ohio St.3d 16. When this occurs, it is usually a defendant health care provider who seeks to protect the nonparty's privileged and confidential health care information from disclosure in both the trial and appellate courts.

When trial courts err and compel the production of privileged communications – whether subject to the attorney-client privilege, the physician-patient privilege, or some other privilege – the party seeking to protect the privileged communication must have a meaningful opportunity to have the decision reviewed *before* the privileged communication is provided to an adverse litigant. The reason for this is simple – once the adverse litigant has the privileged

communication, the harm to the producing party has already occurred. Among other things, an adverse litigant may use the privileged information to prepare his case, to prove his case at trial, or to obtain leverage in settlement negotiations. And that's not all. Unless there is a protective order in place, the privileged communication can even be shared with others and made publicly available. ***Simply put, once a party is forced to disclose privileged communications to an adverse litigant, there is no way to put the parties into the same position they were in prior to disclosure.*** For this reason, Ohio courts frequently have held that parties compelled to produce privileged information would be left without meaningful recourse if they must wait until the case is adjudicated to seek review because “the proverbial bell cannot be unrung.” *See, e.g., Gibson-Myers & Associates, Inc. v. Pearce*, 9<sup>th</sup> Dist. Summit No. 1958, 1999 Ohio App. LEXIS 5010 (Oct. 27, 1999), \*6-7<sup>4</sup>; *Bennett v. Martin*, 186 Ohio App.3d 412, 2009-Ohio-6195, 928 N.E.2d 763 (10<sup>th</sup> Dist.), ¶ 33 (recognizing that “[i]njury results from the dissemination of the [confidential or privileged] information itself, which cannot be remedied absent an immediate appeal.”); *Smith v. Chen*, Slip Opinion No. 2013-2088, 2015-Ohio-1480 (Kennedy, J., dissenting) (citing numerous decisions holding that an order compelling confidential or privileged material is entitled to interlocutory review under the rationale that harm results from the forced disclosure of privileged matter).

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<sup>4</sup> This Court, in its first decision addressing the “provisional remedy” section in R.C. 2505.02(B)(4), cited *Gibson-Myers & Associates* with approval and included its famous quote that the “proverbial bell cannot be unrung” in its decision holding that a forced medication order was a final order that could be immediately appealed. *State v. Muncie*, 91 Ohio St.3d 440, 2001-Ohio-93, 746 N.E.2d 1092. In *Muncie*, this Court described the court of appeals decision in *Gibson-Myers & Associates* as follows: “[T]he Summit County Court of Appeals determined that an order compelling the production of documents containing trade secrets was a final order, for the party resisting disclosure of those documents would have had no ability after final judgment to restore the cloak of secrecy lifted by the trial court’s order compelling production.” *Id.* at 451. This same rationale applies to compelled disclosure of privileged documents and provides an understanding of what is meant by the “bell cannot be unrung.”

Issues relating to the discovery of privileged communications often arise in cases against hospitals and/or physicians (as in *Burnham*). Thus, hospitals and physicians are often involved in immediate appeals of orders to produce what they believe to be privileged communications. Given that more than 1,200 cases alleging medical negligence were filed in Ohio during the past 18 months alone, the issue before the Court is one that will undoubtedly recur with some frequency in the very near future.<sup>5</sup>

In its recent decision in *Smith v. Chen*, Slip Opinion No. 2013-2008, 2015-Ohio-1480, this Court stated that it did not intend to change existing law. However, despite this Court's admonishment that its decision in *Smith* "does not adopt a new rule, nor does it make an appeal from an order compelling disclosure of privileged material more difficult" (*Smith*, ¶9), the Eighth District in *Burnham* has interpreted *Smith* to impose a new, different, and potentially insurmountable burden on a party who has been compelled to produce privileged material. If permitted to stand, the Eighth District's misinterpretation will nullify a litigant's ability to obtain meaningful review of decisions requiring disclosure of privileged material.

For decades, Ohio courts, including this Court, have drawn the reasonable inference that the disclosure of privileged communications would result in harm based on the rationale that there is no way to restore, after final adjudication on the merits, the cloak of secrecy lifted by a trial court's order to compel privileged and confidential information. See *State v. Muncie*, 91 Ohio St.3d 440, 451, 2001-Ohio-93, 746 N.E.2d 1092. However, the Eighth District, relying on

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<sup>5</sup> In fact, just a couple of weeks ago, the same issue arose in a case against a nursing home and the same result was reached – the court found no final appealable order – even though the court of appeals acknowledged that the *Howell* appellant presented no argument or proof on the issue, whereas the *Burnham* appellant did. *Howell v. Park East Care & Rehabilitation*, 8<sup>th</sup> Dist. Cuyahoga No. 102111, 2015-Ohio-2403, ¶ 13.

an erroneous interpretation of *Smith*, disregarded this established precedent, including its own decisions applying this rationale.

Now, in light of the Eighth District's application of *Smith*, it is unclear what burden appellants must meet to satisfy R.C. 2505.02(B)(4)'s "final order" definition to avoid dismissal of an appeal from an erroneous order to produce privileged material. Parties will have no meaningful recourse if appellate courts require the party asserting the privilege to provide detailed information as to how and why the privileged material, if disclosed, would preclude meaningful appellate review after adjudication of the entire case on the merits. Among other things, a party seeking to protect privileged and confidential material should not have to provide its opponent a roadmap for its use. Further, parties (and their attorneys) rarely know exactly how a case is going to unfold, especially during the discovery phase of litigation, thereby requiring speculation or clairvoyant power to establish how an appellant would be harmed in the absence of an immediate appeal from an order compelling the disclosure of privileged material. Contrary to the Eighth District's decision in *Burnham*, this new, substantial burden should not be required to satisfy R.C. 2505.02(B)(4)'s "final order" definition. In the nearly two decades since R.C. 2505.02(B)(4) has been on the books, Ohio courts have not required a party appealing the forced disclosure of privileged communications to prove specifically how it will be harmed by such disclosure before it is entitled to immediate appellate review, and there is no reason to upset this settled area of law.

Because Ohio's hospitals, doctors, and other health care providers are often required to address privilege issues in litigation, they seek and need, and Ohio's lower courts should be provided, clarification as to an appealing party's burden to obtain immediate appellate review of an order requiring disclosure of a privileged communication. Failure to provide such

clarification now (as opposed to later) will undoubtedly result in unwarranted disclosure of highly sensitive, confidential, and privileged information that has historically been protected from disclosure and will destabilize Ohio’s well-established law regarding whether orders compelling production of allegedly privileged material are final and appealable.

### **STATEMENT OF THE CASE AND FACTS**

Amici defer to the Statement of the Case and the Statement of Facts as set forth in Appellants’ Memorandum in Support of Jurisdiction.

### **LAW AND ARGUMENT**

**Proposition of Law:** An order requiring production of privileged documents, conversations or other materials is a final appealable order pursuant to R.C. 2505.02(B)(4), thereby conferring jurisdiction over the issue to the court of appeals under Article IV, Section 3(B)(2).

#### **A. History and Development of R.C. 2505.02(B)(4)’s “Provisional Remedy” Final Order**

Ohio law regarding final orders is complex and often confusing, making clarification especially important. The definition of what constitutes a “final order” from which an appeal lies is primarily found in R.C. 2505.02. Prior to 1998, orders were not appealable under R.C. 2505.02 until after the entry of a judgment disposing of all claims in the case, a judgment properly invoking Civ.R. 54(B), or an entry where the order affected a substantial right made in a special proceeding.<sup>6</sup> Mark P. Painter & Andrew S. Pollis, *Ohio Appellate Practice*, Section 2:18 (2014-15 ed.) (hereafter “*Ohio Appellate Practice*”). In 1998, R.C. 2505.02 was amended to add a new class of final orders – those involving certain types of “provisional remedies.” *Id.* Provisional remedy “final orders” are governed by R.C. 2505.02(B)(4).

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<sup>6</sup> Prior to the 1998, courts recognized orders compelling discovery of alleged privileged material as final and appealable, given the nature of the privilege. *Smith v. Chen*, Slip Opinion No. 2013-2008, 2015-Ohio-1480, ¶ 16. In doing so, courts usually found that that the order to produce the privileged material affected a substantial right.

This Court has set forth a three-part analysis to be used in determining whether an order is a final order that may be immediately appealed under R.C. 2505.02(B)(4):

- (1) the order must either grant or deny relief sought in a certain type of proceeding that the General Assembly defines as a “provisional remedy”;
- (2) the order must determine the action with respect to the provisional remedy and present a judgment in favor of the appealing party with respect to the provisional remedy; and
- (3) the reviewing court must decide that the appealing party would not be afforded a meaningful or effective remedy by an appeal following a final judgment as to all proceedings, issues, claims, and parties in the action.

*Id.*, citing *State v. Muncie*, 91 Ohio St.3d 440, 2001-Ohio-93, 746 N.E.2d 1092 (other citations omitted).

Regarding the first prong of this analysis, the General Assembly expressly included “discovery of privileged matter” in the definition of “provisional remedy” in R.C. 2505.02. Hence, there is no question that “discovery of privileged matter” is a “provisional remedy” under R.C. 2505.02(B)(4).

Regarding the second prong of this analysis, courts have consistently held that this requirement is met if the order determined the discovery issue against the appellant and actually compelled disclosure of the privileged material. *See Smith v. Chen*, Slip Opinion No. 2013-2088, 2015-Ohio-1480 (Kennedy, J., dissenting) (citing numerous decisions to this effect). When there is no compelled disclosure, but simply an order to submit the documents for *in camera* review, this requirement is not met. *Ingram v. Adena Health System*, 4<sup>th</sup> Dist. Ross No. 00CA2577, 144 Ohio App. 3d 603, 2001-Ohio-2357; *Keller v. Kehoe*, 8<sup>th</sup> Dist. Cuyahoga No.

89218, ¶ 11 (explaining why order to seal records and submit for *in camera* inspection does not meet the third requirement of R.C. 2505.02(B)(4)). This makes perfect sense because a court could determine, based on an *in camera* inspection, that the documents are privileged and not discoverable, which is why an order requiring disclosure of the privileged material is necessary to satisfy this requirement. *See Ingram*, 144 Ohio App.3d 603, 606.

Regarding the third prong of this analysis, whether a remedy is meaningful or effective essentially is determined by the detrimental impact or consequence of deferring appellate review. Generally, orders have been held to satisfy this requirement if “[t]he proverbial bell cannot be unrung”<sup>7</sup> or “if the cat is let out of the bag and can never be put back in.”<sup>8</sup> *See Ohio Appellate Practice*, Section 2:21. As this Court noted in *Muncie*, the first case in which it addressed the “provisional remedy” part of R.C. 2505.02, once the cloak of secrecy is lifted by a court compelling disclosure of confidential material, it cannot be restored. *State v. Muncie*, 91 Ohio St.3d 440, 451.

Since *Muncie*, Ohio appellate courts have generally followed its rationale and held that orders requiring the disclosure of privileged or other sensitive confidential material (such as medical records or trade secrets) satisfy the third part of the analysis because once the information is handed to an adversary “the damage is done and cannot be undone.” *Walker v. Firelands Community Hospital*, 6<sup>th</sup> Dist. Erie No. E-03-009, 2003-Ohio-2908, ¶ 12; *see, e.g., Randall v. Cantwell Machinery Co.*, 10<sup>th</sup> Dist. Franklin No. 12AP-786, 2013-Ohio-2744, ¶ 7 (“An order requiring the release of privileged or confidential information in discovery \* \* \*

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<sup>7</sup> *State v. Muncie*, 91 Ohio St.3d 440, 451, 2001-Ohio-93, 746 N.E.2d 1092 (quoting *Gibson-Myers & Associates, Inc. v. Pearce*, 9<sup>th</sup> Dist. Summit No. 1958, 1999 Ohio App. LEXIS 5010 (Oct. 27, 1999)).

<sup>8</sup> *Mansfield Family v. CGS Worldwide, Inc.* 5<sup>th</sup> Dist. Richland No. 00-CA-3, 2000 Ohio App. LEXIS 6187 (Dec. 28, 2000), \*7.

prevents the appealing party from obtaining an effective remedy because the privileged information has already been released.”); *Bennett v. Martin*, 186 Ohio App.3d 412, 2009-Ohio-6195, 928 N.E.2d 763 (10<sup>th</sup> Dist.), ¶ 33 (recognizing that “[i]njury results from the dissemination of the [confidential or privileged] information itself, which cannot be remedied absent an immediate appeal.”); *Grove v. Northeast Ohio Nephrology Assoc., Inc.* 164 Ohio App. 3d 829 (9<sup>th</sup> Dist. 2005) (holding that R.C. 2505.02 (B)(4) is satisfied since appealing after a final judgment “would not be meaningful because the physician-patient privilege would have already been compromised.”)

Further, requiring an appellant seeking an interlocutory appeal from an order to produce privileged material to affirmatively establish, during the discovery phase of litigation, the lack of a meaningful remedy *after* a final adjudication on the merits, would require speculation as to how it will be harmed or how a different ruling would alter the outcome of the proceedings. This does not seem like a particularly fruitful exercise, particularly in light of the abundance of case law since 1998 finding that an order requiring the disclosure of privileged information warrants an interlocutory appeal due to the harm caused by the disclosure itself because the parties cannot resume the positions they were in prior to the disclosure.

#### **B. *Burnham* Shows that Clarification is Needed**

With the above as a backdrop, in *Burnham*, the Eight District erroneously interpreted and expanded this Court’s recent decision in *Smith v. Chen*, Slip Opinion No. 2013-208, 2015-Ohio-1480, by requiring the Cleveland Clinic to state with specificity how it will be harmed if it is denied an immediate appeal. In doing so, the Eighth District set the stage for other lower courts to erroneously apply *Smith* and created confusion as to whether orders compelling privileged information to be divulged are immediately appealable as they have been since R.C. 2505.02 was amended to add the “provisional remedy” right to appeal almost two decades ago.

*Smith* involved an appeal from an order compelling discovery of attorney-work product after finding “good cause” under Civ.R. 26 to permit such discovery. This Court determined, based on the record before it, that there was no final order under R.C. 2505.02(B)(4). In reaching this conclusion, the Court noted that appellants “never argued, much less established, that they would not be afforded a meaningful or effective remedy through an appeal after a final judgment is entered by the trial court resolving the entire case,” and that the only reference to whether there was a final order was in the docketing statement filed with the court of appeals. *Id.*, ¶ 6. Further, even after the Court ordered the appellants to brief the issue of whether there was a final order under R.C. 2505.02(B)(4), the *Smith* appellants “again failed” to do so. *Id.* Based on this record, the Court dismissed the appeal for lack of jurisdiction.

Even though this Court made clear that its decision in *Smith* “does not adopt a new rule, nor does it make an appeal from an order compelling disclosure of privileged material more difficult to maintain” (*Smith* ¶ 9), just five weeks after *Smith* was decided the Eighth District relied on it in *Burnham* in a way that makes it much more difficult for appellants to maintain an appeal from an order compelling the disclosure of privileged material.

Unlike in *Smith*, the hospital appellant in *Burnham* (“Cleveland Clinic”) made arguments addressing R.C. 2505.02(B)(4), relied on decisions holding that similar incident reports were determined to be privileged communications or attorney-work product protected from disclosure, and submitted an affidavit specifying the purpose of the incident report at issue. (*See* Brief of Appellant, filed in Court of Appeals, at 6-13.) One of the decisions relied on involved the Cleveland Clinic and the same type of incident report as in *Burnham*. In that case, the federal district court determined that the incident report was privileged and not discoverable. *Cleveland Clinic Health System- East Region v. Innovative Placements, Inc.* 283 F.R.D. 362 (N.D. Ohio

2012). Despite the fact that the *Burnham* appellants did not simply rely on a reference in a docketing statement to support their interlocutory appeal (as in *Smith*), but instead presented legal authority finding that the same incident report form constituted a privileged communication, the Eighth District refused to hear their appeal.<sup>9</sup>

So, if legal argument based on applicable authorities finding similar incident reports privileged, a prior decision finding the same exact type of incident report privileged, and affidavits in support of the privileged nature of the incident report at issue are not sufficient to allow an interlocutory appeal to determine whether the trial court erred in compelling the production of alleged privileged material, then what is?

If *Smith* does not make an appeal from an order compelling disclosure of privileged material more difficult to maintain, then the appeal in *Burnham* should not have been dismissed. The Eighth District's decision in *Burnham* is contrary to almost 20 years of jurisprudence construing R.C. 2505.02(B)(4) and plainly imposes a higher burden on parties appealing from orders compelling them to produce privileged or confidential material in discovery, contrary to this Court's directive in *Smith*.

### **CONCLUSION**

Being forced to divulge sensitive privileged information in litigation is, by its very nature, harmful to the party whose privileged information is disclosed. Once a party's privileged

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<sup>9</sup> A few weeks after deciding *Burnham*, the Eighth District addressed the same issue in *Howell v. Park East Care & Rehabilitation*, 8<sup>th</sup> Dist. Cuyahoga No. 102111, 2015-Ohio-2403. In reaching this conclusion, the Eighth District noted that “[u]nlike in *Burnham*, the appellant in *Howell* did not even attempt to establish the necessity of an immediate appeal. Instead, the *Howell* appellant merely referenced R.C. 2505.02(B)(4) in the docketing statement.” See *Howell v. Park East Care & Rehabilitation*, 8<sup>th</sup> Dist. Cuyahoga No. 102111, 2015-Ohio-2403, ¶ 13. “Only referencing this section in the docketing statement was insufficient in *Smith* and likewise insufficient in this case.” *Howell*, ¶ 6. Thus, despite significantly different “proofs,” the same court of appeals reached the same result in both *Burnham* and *Howell*, relying on *Smith*.

information is shared, there is no way to erase it from the knowledge or psyche of those who receive it and no way to restore the parties to the same position they were in prior to the disclosure. This Court should accept this discretionary appeal and provide guidance to Ohio's lower courts to ensure that erroneous decisions to produce privileged material receive meaningful appellate review before the material is disclosed. Otherwise, litigants, including hospitals and physicians in the thousands of cases per year they are involved in, will be left without meaningful recourse to address decisions compelling disclosure of sensitive confidential and privileged communications.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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