

New Case Provides Useful Reminder: Ohio Law is Sometimes More Strict Than HIPAA

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To the unsuspecting Ohio health care provider that is asked to disclose patient medical records, it may come as a surprise to learn that Ohio's physician-patient privilege is at times more restrictive than the Health Insurance Portability and Accountability Act (HIPAA). A recent decision from the U.S. District Court for the Northern District of Ohio provides an excellent reminder. The lesson: prior to disclosing patient medical records, relevant state laws and their interpretation in the courts should be considered in addition to HIPAA.

In *Turk v. Oiler*, the Cleveland Clinic received a grand jury subpoena issued by the Cuyahoga County Clerk of Courts. The subpoena requested the disclosure of medical records in relation to a criminal investigation. The Cleveland Clinic disclosed the records but was subsequently sued for an alleged invasion in privacy that was related, at least in part, to the disclosure of the medical records.

HIPAA allows the disclosure of protected health information in response to a grand jury subpoena. However, Ohio's physician-patient privilege permits disclosures only in certain limited circumstances, and responding to a grand jury subpoena is not one of them. Grand juries in Ohio may compel the production of documents, but privileged materials are beyond their reach. In *Turk*, the District Court held that Ohio's more restrictive law concerning the disclosure of medical records was not preempted by HIPAA. As a consequence, the Ohio law applied, and the Cleveland Clinic's attempts to obtain a favorable judgment as a matter of law on the invasion of privacy claims were unsuccessful.

Source: *Turk v. Oiler*, No. 09-CV-381 (N.D. Ohio Feb. 1, 2010).

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