



## Client Alert

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### **Cleveland Clinic Sued by Patient after Releasing Medical Records in Response to a Subpoena**

A Federal District Court ruled that the Cleveland Clinic, a hospital in Ohio, could be sued by a patient for an invasion of privacy resulting from the hospital's release of the patient's medical records in response to a grand jury subpoena issued by an Ohio court. The U.S. District Court for the Northern District of Ohio ruled that more stringent state privacy standards superseded the hospital's obligations to comply with the subpoena and related disclosure requirements under the Health Insurance Portability and Accountability Act (HIPAA). The ruling allowed the patient to sue the hospital for invading his privacy.

The grand jury subpoena was issued as part of a criminal investigation of the patient, who was indicted for carrying a concealed weapon despite an alleged drug and alcohol dependency. As part of the criminal proceedings, the Cuyahoga County Court of Common Pleas, on behalf of the police department, issued a grand jury subpoena to Cleveland Clinic for the patient's medical records. The request included information about any treatment for drug or alcohol abuse, as well as any mental health counseling the patient had received.

The hospital complied with the subpoena and turned over the information to a police officer involved in the case. That prompted the patient to file suit against the Cleveland Clinic, claiming the hospital invaded his privacy and negligently disclosed his private medical information without proper authorization. The patient argued that the release of his medical records violated Ohio's physician-patient privilege statute, which, with limited exception, protects medical information from public disclosure without patient consent.

The Cleveland Clinic argued that the case should be dismissed because the hospital complied with HIPAA's provisions for releasing information requested in a grand jury subpoena. The hospital also argued that, as a practical matter, grand jury proceedings are conducted in secret and any information shared is kept confidential, so the release of the records did not constitute a public disclosure in violation of the physician-patient privilege.

However, the court ruled in favor of the patient, relying in part on the aspect of HIPAA that requires the hospital to comply with "more stringent" state privacy laws. Although there is a provision of HIPAA allowing the release of patient records in response to a grand jury subpoena and other law enforce-



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ment requests, that provision of HIPAA does not preempt a more stringent provision of state law. Ohio's broad physician-patient privilege law does not contain an exception for subpoenas or grand jury proceedings. As such, the court ruled that it is more stringent than, and thus prevails over, HIPAA and must be followed by the hospital.

The Cleveland Clinic case is important for healthcare providers who may think they are doing the right thing when complying with law enforcement requests. It is important to remember that HIPAA is not the sole source of privacy law; state laws must be consulted and may trump HIPAA if the state law provides a patient with greater privacy protections. HIPAA compliance is important, but it is not the only matter to be considered.

In the case of a subpoena, it is important not to simply ignore the subpoena, as doing so can lead to a contempt action, which may involve fines or even jail time. Providers can contest the subpoena or ask the court for further clarification on the information requested and the interplay with the privacy rights of the patient. A court order protecting the information may be available.

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