

The Supreme Court of Ohio to Consider What Constitutes an Unauthorized Disclosure of Protected Health Information in the Context of Collecting a Medical Debt

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We are all familiar with the Health Insurance Portability and Accountability Act (HIPAA) and its Privacy Rule establishing standards to prevent the unauthorized disclosure of a patient's protected health information (PHI). Indeed, they have been our constant companion with every patient encounter in the 20-plus years since their enactment in the late 1990s. And those encounters include trying to collect a debt owed by a patient because PHI, by statutory definition, includes payment-related patient information.

But just what PHI can healthcare providers disclose when attempting to collect a debt without running afoul of state law establishing an independent tort for unauthorized disclosure of PHI—otherwise known as a *Biddle* claim¹—or federal law under HIPAA? That question is presently before the Supreme Court of Ohio in *Menorah Park Center for Senior Living v. Rolston*.² In that case, Menorah Park had sued a former patient to collect unpaid bills for healthcare services. As required by court rules, Menorah Park attached copies of the unpaid medical bills to its complaint. Those bills, unredacted, contained the provider's name and address, the patient's name and address, dates of service, billing or procedure codes, a description of the general category of services provided, the amounts charged, payments made, and the remaining balance due.

In response, the former patient counter-sued, claiming that Menorah Park had disclosed "private health information," actionable

under *Biddle*, and sought to certify a class of individuals from whom Menorah Park had similarly sought to recover unpaid medical bills by attaching unredacted copies of medical bills to lawsuits. Although the trial court granted Menorah Park's motion to dismiss the countersuit, the Eighth District Court of Appeals, which covers Cuyahoga County, reversed. To the Eighth District, the patient had sufficiently pleaded a *Biddle* claim because the unredacted medical bills could be construed to be unauthorized disclosures of PHI.³ Now on appeal to the Supreme Court, the Court will examine the interplay, if any, between what constitutes an unauthorized disclosure actionable under *Biddle* and the HIPAA Privacy Rule's exception for permitting disclosure of the "minimum necessary" PHI for the purpose of collecting a medical debt.

The Court has an interesting task before it. While Menorah Park urges the Court to find that HIPAA controls, three different groups,

AMCNO included, have filed friend-of-the-court briefs—known as amicus curiae briefs—and each offers the Court a slightly different take on how the issue should be resolved. AMCNO urged the Court to adopt a clear standard that the medical bills supporting Menorah Park's complaint satisfy the "minimum necessary" under HIPAA and thus are authorized disclosures that foreclose a *Biddle* claim. Other amici urged the Court to overrule *Biddle* altogether with the enactment of HIPAA; other amici urged the Court to look to debt-collection law as a framework.

The former patient has yet to file her response brief. Just as Menorah Park has abundant amicus support, the former patient will also likely have amicus support. However the Court resolves this issue, AMCNO members can be assured that its interests are represented and have been made known to the Court. We will keep you posted as this appeal progresses. Stay tuned. ■

¹ *Biddle v. Warren General Hosp.*, 86 Ohio St.3d 395, 715 N.E.2d 518 (1999).

² Sup.Ct. Case No. 2019-0939.

³ *Menorah Park Ctr. For Senior Living v. Rolston*, 8th Dist. Cuyahoga No. 107615, 2019-Ohio-2114.

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