

Byrne v. Avery Center for Obstetrics & Gynecology, P.C. (SC 19873)

Brief Summary: Plaintiff sought damages from the defendant doctor for releasing her medical records without her consent. Court concluded that a duty of confidentiality arises from a physician-patient relationship and the unauthorized disclosure of confidential information obtained in the course of that relationship gives rise to a cause of action sounding in tort against the health care provider, unless the disclosure is allowed by law.

The plaintiff, Emily Byrne, began a personal relationship with Andro Mendoza in 2004 and she instructed the defendant not to release her medical records to him. In 2005 Mendoza filed paternity actions against Byrne in Connecticut and Vermont. Thereafter, the defendant received a subpoena instructing the custodian of its records to appear before the issuing attorney on July 8, 2005, at the New Haven Regional Children's Probate Court and to produce all medical records pertaining to the plaintiff. The defendant did not alert the plaintiff of the subpoena, did not file a motion to quash it or appear in court. Instead, the defendant mailed a copy of her medical records to the court. The plaintiff alleged that she suffered harassment and extortion threats from Mendoza since he viewed her medical records. Consequently, the plaintiff filed multiple actions against the defendant, the two at issue in this case were the negligence and negligent infliction of emotional distress claims. The plaintiff alleged that the defendant acted negligently by failing to use proper and reasonable care in protecting her medical file, consequently, engaging in conduct constituting negligent infliction of emotional distress. The trial court dismissed both counts concluding that the plaintiff's claims were essentially a HIPAA violation (Health Information Privacy) which does not have a private right of action. The case was appealed, and the Supreme Court of Connecticut remanded the case back to trial, holding that HIPAA does not preempt the claim. On remand, the trial court granted the defendant's

motion for summary judgment, determining that no courts in Connecticut, to date, recognized or adopted a common-law privilege for communications between a patient and physicians. The plaintiff then appealed the matter again to the Supreme Court of Connecticut to decide whether a patient has a civil remedy against a physician if that physician, without the patient's consent, discloses confidential information obtained in the course of the physician-patient relationship. The court concluded that a duty of confidentiality arises from a physician-patient relationship and the unauthorized disclosure of confidential information obtained in the course of that relationship gives rise to a cause of action sounding in tort against the health care provider, unless the disclosure is allowed by law.

To decide this issue of first impression the court looked to case law from other jurisdictions. The majority of other jurisdictions recognized a common law cause of action for breaching the confidentiality of medical records by health care providers. The most common basis for recognizing a cause of action is that patients and physicians have a special fiduciary relationship (involving a high degree of trust) with their patients, thus, the assurance of confidentiality is necessary for patients to be forthcoming with their physician. The court discussed how the courts in New York, Mississippi, Massachusetts and South Carolina all recognized that a duty arises from the confidential patient-physician relationship, thus, a violation of that duty causing damages gives rise to a cause of action in tort law against the physician. Furthermore, the other courts recognized that the exception to this new cause of action is when the physician is compelled by law to produce the medical records. The court reasoned that the policy goals recognizing the salience of confidentiality between physicians and patients was coherent with the majority jurisdiction's rule. Thus, the court concluded a duty of confidentiality arises from the physician-patient relationship and that unauthorized disclosure of

confidential information obtained in the course of that relationship for the purpose of treatment gives rise to a cause of action sounding in tort against the health care provider, unless the disclosure is otherwise allowed by law. Additionally, the court noted that to the extent it has become common practice for Connecticut health care providers to follow the HIPAA procedures in rendering service to patients, the standards and procedures of HIPAA may be used to inform the applicable standard of care to this new cause of action. Meaning that a failure to follow the HIPAA procedures may be equivalent to breaching the standard of care.

The defendant argued that even if the court were to recognize a new cause of action, summary judgment was appropriate because the plaintiff's medical records were disclosed in response to a subpoena and § 52-146o (b) does not require the patient's consent for such a disclosure. The court rejected this argument, noting that § 52-146o (b) states that consent by the patient is not required to disclose medical records when the disclosure of said information is done pursuant to a statute, regulation of a state agency or rule of a court. However, the defendants did comply with § 52-146o (b) as a subpoena, without a court order, is not a statute, regulation of a state agency or rule of a court. Thus, the court concluded that the mere existence of a subpoena does not preclude a claim for breach of confidentiality.

Finally, the court stated that the defendant did not even comply with the subpoena as they mailed the records, however, the subpoena required the defendant to appear in person. Thus, the court concluded that there is a genuine issue of material fact as to whether the defendant violated the duty of confidentiality by the way it disclosed the plaintiff's medical records. Consequently, remanding the case back to the trial court.

The concurrence noted that the court ought to be hesitant to recognize new causes of actions because it is the duty of the legislature, not the judiciary to create new law. However,

Justice Robinson concluded that in this instance it was appropriate as the citizens of Connecticut would be more unsettled had the court “closed the doors” to patients who health care providers breached their confidence causing harm.

The key takeaway from this case is that Connecticut law now recognizes a new cause of action sounding in tort law for breach of confidentiality by a physician. This is salient because it provides the people of Connecticut with a judicial remedy for a breach of confidentiality by a physician which can cause great harm such as extreme emotional distress allegedly in this case.