IN THE SUPREME COURT OF OHIO

GENE'A GRIFFITH, EXECUTRIX FOR THE ESTATE OF HOWARD E. GRIFFITH, DECEASED	)	**CASE NO. :**
Plaintiff - Appellant	)	**On Appeal from the Stark County Court of Appeals, Fifth Appellate District, Case No. 2013 CA 000142**
- vs -	)	
AULTMAN HOSPITAL	)	
Defendant - Appellee	)	

AMICUS CURIAE BRIEF ON BEHALF OF PLAINTIFF-APPELLANT

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"Medical records" would be a term that would seem to be self-evident. Ohio R.C. 3701.74 provides every Ohio citizen the right to obtain a copy of their medical records. One would be hard pressed to find an Ohio citizen who does not have any medical records. Ohio R.C. 3701.74 (A) (8) defines medical records to mean "data in any form that pertains to a patient's medical history, diagnosis, prognosis, or medical condition and that is generated and maintained by a health care provider in the process of the patient's health care treatment." The case at bar has restricted this definition by allowing medical providers to self-determine what are medical records by virtue of where those records are physically kept in the medical providers facility.

In the case at bar the hospital only considers medical records to be available to a patient pursuant to this statute if those records have been housed in their Medical Record Department. Those records that meet the statutory definition above but are not housed in the hospitals self-created and controlled "Medical Record Department" would be exempt from this statutory requirement if the current decision is allowed to rule the legal landscape. It is a slippery slope and this distinction allows medical providers the ability to circumvent the law by creating internal processes to house certain records in departments other than the Medical Record Department. Such a practice would obviously frustrate the intent and purpose of the statute. This issue is of great importance to every Ohio citizen as every citizen enjoys the right provided under R.C. 3701.74 and almost every Ohio citizen has had, or at some point in their life, will have medical care.

III. STATEMENT OF THE IDENTITY AND INTEREST OF THE AMICUS

The Summit County Association for Justice is a not for profit association of trial lawyers, where our mission is to "Preserve Justice and Accountability," fighting to preserve and protect the legal rights of the individual. For nearly 25 years, the members of the Summit County Association for Justice have come together to advocate for the rights of individuals by promoting safer products, workers' rights, access to quality health care, eliminating discrimination in the workplace and fighting for those who are injured through no fault of their own. The Summit County Association for Justice champions access to justice and the constitutional right to trial by jury.

IV. STATEMENT OF THE CASE AND FACTS

This case seeks to preserve the clear and all-encompassing definition of "medical records" as provided by the Ohio R.C. 3701.74 (A) (8) without any limiting factors as now introduced by the Appellate decision in this matter. On March 25, 2014, in a two to one decision, the Court of Appeals of the 5th Appellate District constricted the statutory definition of "medical records" by allowing medical providers to exclude medical data as part of a patient's medical record, solely by self-determining how to "maintain" these records pursuant to the statutory definition set forth in Ohio R.C. 3701.74 (A) (8).

In the underlying case, the Plaintiff exercised her right to obtain a copy of her father's medical records, as Executrix of his estate, from Defendant-Appellee Aultman Hospital. Aultman Hospital ultimately did not provide all medical records that it had generated or maintained. Ultimately it came to light that there were records not provided pursuant to the Plaintiff's statutory request. Those records were not provided because they were not housed in

Aultman Hospital's Medical Record Department. Instead, those records had been housed in the Risk Management Department.

The decision to house the records in Risk Management as opposed to Medical Records was made pursuant to an internal policy or procedure of Aultman Hospital. It was not a decision based upon some statutory guidelines or Ohio Department of Health guidelines. It was merely the desire of Aultman Hospital.

During her deposition, the Director of the Medical Record Department acknowledged that these other medical records were indeed medical records of the Plaintiff's father. However, since those medical records had not been provided to the Medical Record Department to be stored, they were not part of the hospital's official medical records. Upon further inquiry the medical records director did not know what other hospital departments may or may not have additional records pertaining to the Plaintiff's father.

V. ARGUMENTS IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW NO. 1

When a statutory definition is clear and unambiguous it should not be judicially constrained so as to frustrate the purpose of the statutory right the definition serves.

The statutory definition at issue is "medical record," which is defined by Ohio R.C. 3701.74 (A) (8) as "data in any form that pertains to a patient's medical history, diagnosis, prognosis, or medical condition and that is generated and maintained by a health care provider in the process of the patient's health care treatment." Had the legislature intended for medical records to only consist of records housed in a centralized Medical Record Department it could have so stated this intent. Instead the legislature chose open and inclusive language: "maintained by a health care provider."

There is no statutory requirement for a healthcare provider to have a Medical Record Department. A Medical Record Department is not a provider of actual medical services to a patient. It would be a department created for the convenience of the medical facility in order to gather, store and share medical information regarding patients. However, there is no statutory requirement for a hospital to have a Medical Record Department. A Hospital could allow each department, for example, emergency, surgery, radiology, etc., to maintain all of their own records. A Medical Record Department is a department of convenience for the medical facility. If a medical facility has an internal policy in place to siphon off particular documents to be maintained outside the Medical Record Department; then those internal polices cannot be used to escape the statutory rights and responsibilities set forth under Ohio R.C. 3701.74.

As pointed out in the Appellant's brief, the legislative history of this statute shows the statute has only been expanded to encompass a broader definition of Medical Records and a broader class of personnel and providers that the statute encompasses. The two to one decision at issue not only constricts the statute, but would allow the statute to be manipulated and frustrated by internal policies put in place by health care facilities. The dissent in the Appellant decision points out that very problem.

Defendant-Appellee Aultman Hospital has personally chosen to establish a Medical Record Department in which to maintain all medical records from all other departments. In this case, if the hospital and physicians thought the records and EKG rhythm strips in question were important enough to send to and *maintain* in the Risk Management Department, should they not also be important enough to send to the Medical Record Department? This is not a case of failing to maintain records that were not considered important or necessary as part of the patient's medical records, because *they were maintained.* Since the hospital maintained the records/strips,

regardless of which department they personally chose to store them in, these records should be provided as part of the patient's records.

The statute does not restrict medical records as only records physically stored/maintained in the Medical Record Department. This definition only exists in Defendant-Appellee Aultman's opinion. If we were to allow any entity to create and redefine the rules and laws by which they are bound, the Courts would fail and the judicial system would fall apart. Ohio R.C. 3701.74 does not give Aultman, or any other health care provider, the right to define what is considered a medical record and what is not. However, if the Fifth District Court's opinion stands, it empowers Aultman and other providers to do just that, define the law their own way.

The statute is clear. It defines a medical record as "data *in any form* that *pertains* to a patient's medical history, diagnosis, prognosis, or medical condition and this is *generated* and *maintained* by a health care provider in the process of the patient's health care treatment."
Ohio Rev. Code § 3701.74 (A) (8) (emphasis added.)

By this statutory definition, we know that EKG results and rhythm strips are included as records because a record is *data in any form*. We know these records *pertain* to the Patient's medical history, because the rhythm strips document the Patient's own medical history. We also know Aultman *generated* the records because they exist and we know they *maintained* the records because Risk Management had possession of them. The physical location of the records is irrelevant. The fact they were not provided to the records department, be it intentional or by error or oversight, has no legal bearing when defining them as a medical record. Therefore, there is no question that the EKG rhythm strips are considered a medical record under the definition of the statute.

Furthermore a review of the Aultman Hospital website provides their HIPPA compliant form for the release of medical information to be used by their patients. Aultman's form has a check box to order the patient's EKG results. Surely Aultman would not have included EKG's on their medical records release form if they did not consider EKG's medical records.

Despite its clear statutory definition, the Defendant-Appellee has attempted to redefine the term "medical records" to suit the Defendant's own needs. The decision of the Appellate Court allowed the Defendant-Appellee to do just that. The Appellate Court's decision shows complete disregard for the integrity of the Statute and narrows the definition in a way the Statute clearly did not intend.

This Court previously addressed the issue of the lower courts ability to redefine a term which has been clearly set by Statute in the case of *Horsely v. United Ohio Ins. Co.,* 567 N.E.2d 1004, 58 Ohio St.3d 44 (Ohio 1991). In the case of *Horsely*, the disputed definition was "motor vehicle" which had already been clearly defined by Statute. The Appellate Court had disregarded the statutory definition, but on appeal The Ohio Supreme Court stated "This court can discern no valid reason for not accepting this definition of a 'motor vehicle' provided by the General Assembly." This Court continued stating, "Absent a legislative intent to the contrary, we decline to formulate our own definition of 'motor vehicle,' when the General Assembly has already spoken as to how that term should be defined." *Horsely,* 58 Ohio St.3d at 46, 567 N.E.2d at 1006.

The Appellate Courts have also reviewed the issue of statutory definitions and concluded that there is no need to restrict the language or attempt to interpret a term which has already been clearly defined. The Courts have repeatedly upheld that unambiguous statutory definitions are to

be applied just as they are written, without the need for additional interpretation. This shared opinion of the Ohio Appellate Courts was summarized by the 12th District Court of Appeals:

> In interpreting a statute, a court must first look to the language of the statute itself to determine legislative intent. If the language used is clear and unambiguous, the interpretive effort is at an end and the statute must be applied as written. *Bryant v. Dayton Casket Co.* (1982), 69 Ohio St.2d 367, 369, 23 O.O.3d 341, 342, 433 N.E.2d 142, 143; *Seely v. Expert, Inc.* (1971), 26 Ohio St.2d 61, 71-72, 55 O.O.2d 120, 126, 269 N.E.2d 121, 128. **Courts have a duty to give effect to all of the words used, not to delete words used or to insert words not used.** *In re Burchfield* (1988), 51 Ohio App.3d 148, 152, 555 N.E.2d 325, 329. A court may not simply rewrite a statute on the basis that it is improving it. *Seely*, supra, 26 Ohio St.2d at 71, 55 O.O.2d at 125, 269 N.E.2d at 128.

Deaton v. McIntosh, 612 N.E.2d 1316, 82 Ohio App.3d 688, 690 (Ohio App. 12 Dist. 1992) (emphasis added).

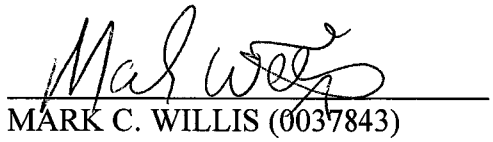
In this case, the Appellate Court had no just reason to redefine what was already clearly defined by statute. The language of R.C. 3701.74 (A) (8) is broad and inclusive, but well defined and unambiguous. The Appellate Court's decision to severely narrow the statute's definition was unwarranted and will severely impact public interest.

VI. CONCLUSION

The Appellant decision at issue could affect every Ohio citizen given that, at some point in their life, every Ohio citizen will probably receive medical treatment and every Ohio citizen then has the right to obtain a copy of their medical records from said treatment. The Ohio Legislature saw fit to give Ohio citizens the right to obtain a copy of their medical records and define what constitute as medical records in broad and expansive terms. The only changes to the statute over time have been to further expand and broaden the scope of the statute. The decision

at issue not only is an about-face on expanding the statute, but it constricts the statute and creates a condition that is ripe for abuse. As such, the Summit County Association for Justice urges this Court to accept jurisdiction in this matter and address the case on its merits.

RESPECTFULLY SUBMITTED,
SUMMIT COUNTY ASSOCIATION FOR JUSTICE

By: 

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CERTIFICATE OF SERVICE

Counsel hereby certifies that a true and accurate copy of the foregoing was sent via electronic means pursuant to Civ. R. 5(B)(2)(f) and/or Regular U.S. Mail on this 23rd day of June 2014, to:

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