

## Ohio HIPAA ruling may help get emergency news



### State law trumps federal rule in this case

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Many of you have found yourselves struggling with state and local entities over access to records that have some relationship to health matters since the implementation of the Health Insurance Portability and Accountability Act (HIPAA) several years ago. In particular, there have been difficulties in obtaining information about ambulance and other emergency medical services runs that previously were public records.

We are not alone in these struggles. Other papers across the country are having trouble getting access to materials that were previously public but now are being withheld due to the HIPAA issues. Until recently, there was little case law to provide instruction as to how these conflicts would be resolved. And although we still don't have any case law in Missouri, we have now one case in Ohio that may be helpful to us in the future.

The Cincinnati Enquirer had requested copies of lead citations issued by the local Health Department on properties over a several-year period. These citations were otherwise public records under Ohio's open records law, but contained a multipage form used by the department to notify property owners of the results of lead-assessment investigations on dwelling units through the city.

Only one sentence in the 14-page document contains any information that could be considered "medical information." It reads: "This unit has been reported to our department as the residence of a child whose blood test indicates an elevated lead level."

The health department, feeling that release of this report would allow someone to pinpoint the name and address of a child who had a potential lead poisoning problem based on blood test results, argued that they were prohibited by HIPAA from making this report public.

The state supreme court looked at these issues and recently held that the state open records law trumped the provisions of HIPAA in this case. A number of factors went into making this decision.

"Nothing contained in these reports identifies by name, age, birth date, social security number, telephone number, family information, photograph or other identifier any specific individual or details any specific medical examination, assessment, diagnosis or treatment of any medical condition," the Supreme Court said. For that reason, the court held in part that these were not records containing "protected health information" and therefore not covered by HIPAA.

We could make use of several of the arguments contained in this decision in connection with a similar lawsuit in Missouri, but perhaps the most important factor that would also apply to similar situations in this state would be the court's reasoning in regard to the conflict between the state law and the federal law.

"Our research reveals that at the time of implementing these regulations, the Department of Health and Human Services ... promulgated Standards for Privacy of Individually Identifiable Health Information..., stating, 'We intend (this law) to preserve access to information considered important enough by state or federal authorities to require its disclosure by law;' 'we do not believe that Congress intended to preempt each such law' and 'the rule's approach is simply intended to avoid any obstruction to the health plan or covered health care provider's ability to comply with its existing legal obligations.'"

Because the Ohio Supreme Court believed that Ohio law requires the paint reports to be open to the public, the Court held that HIPAA did not control. It is possible that a similar argument would be useful in Missouri in cases where we are having problems.

Never hesitate to call the hotline so we can discuss such situations. I may be able to help you get access to similar records.