



## CONNECTICUT SUPREME COURT RECOGNIZES CAUSE OF ACTION AGAINST HEALTH CARE PROVIDER

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According to a legal analysis by John F. Carberry, a Principal in Cummings & Lockwood's Litigation Group in Stamford, Connecticut, the Connecticut Supreme Court recently recognized for the first time a cause of action against a health care provider for unauthorized disclosure of confidential patient information, even in response to a subpoena in Byrne v. Avery Center for Obstetrics & Gynecology, P.C., 314 Conn. 433 (2018).

### Situation Analysis:

The Plaintiff was a patient of the Defendant obstetrics and gynecology practice. The Defendant had a privacy policy which stated it would not disclose the Plaintiff's health care information without her authorization.

Mendoza, a person with whom Plaintiff had had a relationship, commenced a paternity action against Plaintiff and in the course of that action served a subpoena on Defendant demanding production of all medical records pertaining to Plaintiff. The Defendant did not advise Plaintiff about the subpoena, took no action to quash or limit it and mailed a copy of Plaintiff's medical file to the Court, where Mendoza reviewed it. Plaintiff alleged she was subsequently harassed and subjected to extortion threats by Mendoza.

Plaintiff sued Defendant alleging breach of contract, negligence, negligent misrepresentation and negligent infliction of emotional distress.

### Court Rulings:

On a prior trip to the Connecticut Supreme Court, the Court ruled that Plaintiff's negligence claims were not preempted by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Supreme Court remanded the case to the trial court for further proceedings.

On remand, the trial court found that no Connecticut court had "recognized or adopted a common-law privilege for communications between a patient and physicians" and that Defendant's compliance with the subpoena therefore could not be the basis of a lawsuit. Plaintiff appealed this decision and the case again made its way to the Supreme Court.

Relying on its prior recognition of physician-patient confidentiality, decisions of courts in other states, a Connecticut statute protecting patient confidential information (Conn. Gen. Stat. §52-1460(a)) and the provisions of HIPAA, the Court found that a tort cause of action exists for "unauthorized disclosure of confidential information obtained in the course of [the physician-patient] relationship for the purpose of treatment...unless the disclosure is otherwise allowed by law."

The Court went on to find that Defendant's actions in responding to the subpoena without notifying Plaintiff or moving to quash the subpoena left a genuine issue of material fact as to whether Defendant violated its duty of confidentiality and remanded the case for further proceedings.

### Implications for Health Care Providers:

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Any health care provider served with a subpoena for patient treatment information should immediately advise the patient and consult with counsel to determine what steps, if any, should be taken to avoid liability for breaching physician-patient confidentiality.

## About John F. Carberry

John F. Carberry is a Principal in Cummings & Lockwood's Litigation Group and is based in the Stamford office.

John has over a quarter century of experience representing creditors in state and federal courts, including bankruptcy court. He serves as a Special Master, Attorney Trial Referee, Arbitrator and Fact Finder for the Connecticut Superior Court in Stamford.

In addition, he has experience handling business and commercial litigation matters, as well as commercial real estate litigation matters. John also serves as the Firm's General Counsel, Loss Prevention Partner and Pro Bono Partner.

John received his J.D., *cum laude*, from New York Law School and his B.A. from Fordham University. John can be reached at (203) 351-4280  or via email at [jcarberry@cl-law.com](mailto:jcarberry@cl-law.com).