The Ohio Supreme Court recently declined to review the decision of the Tenth District Court of Appeals in the case of Pontius v. Riverside Radiology & Interventional Assocs., Inc. The AMCNO filed an amicus brief urging the Ohio Supreme Court to review the decision of the Tenth District. The Tenth District’s decision in Pontius subjects healthcare providers to potential liability for the actions of a rogue employee who accesses protected patient information for no other purpose other than the employee’s own curiosity. Notwithstanding the Pontius decision, there are measures healthcare entities and providers can take to minimize and potentially eliminate the impact of Pontius.

By way of background, the decedent in Pontius presented to the Riverside Methodist emergency department complaining of urinary discomfort and lower abdominal pain. Notably, the decedent had a vena cava filter implanted due to his history of deep vein thrombosis and pulmonary embolism. A CT scan was taken of his abdomen and pelvis and were found to be negative for clots, and he was discharged. He died the following morning from a pulmonary embolism. A part-time radiologist with privileges at Riverside Methodist and acquaintance of the decedent’s family accessed the decedent’s CT scans, despite not being involved with the decedent’s care, and determined that the original reading of the CT scan missed the clot. He then informed the decedent’s mother and friend of this fact.

At trial, the court precluded any evidence of the part-time radiologist’s discussion with the plaintiff that clots were missed in the CT scans, and the jury reached a verdict in favor of the defendants. The appeals court reversed the verdict and ordered a new trial, finding that the part-time radiologist’s statements were admissible because they constituted a party admission. To be considered a party admission, a statement must be made by a party’s agent or servant concerning a matter within the scope of the agency or employment. Astonishingly, the court found that notwithstanding the lack of directive by Riverside to review the decedent’s case, the radiologist’s statements were within the scope of his employment with Riverside because his duties included peer-review of other radiologists and that his review of the decedent’s scans constituted peer review.

The Pontius decision makes it ever so important for healthcare entities to be vigilant to ensure that those who have access and are accessing a patient’s protected information are providers who provided care to the patient or are peer-reviewing the information at the direction of the healthcare entity. Moreover, written guidelines and policies that delineate precisely under what circumstances a provider can access a patient’s protected health information can be helpful to argue that conduct like that of the rogue radiologist in Pontius is not within the scope of employment. Furthermore, guidelines providing that peer-reviewers are prohibited from reviewing the protected information of any patient absent an express directive from the quality assurance or peer-review committee, and that such conduct is sanctionable and is not within the scope of employment could be beneficial should litigation ensue. Lastly, healthcare entities can include language in employee contracts or contracts with independent contractors to protect against liability by expressly providing that a provider accessing a patient’s protected information in violation of HIPAA laws is not conduct within the scope of their employment with the healthcare entity. Although not fool-proof, the aforementioned steps can curtail the impact of the Pontius decision.