Mr. Anthony J. Groeber, the new executive director for the State Medical Board of Ohio, provided comments to the AMCNO Board of Directors.

Medical Records Case Could Reshape the Definition of “Medical Records”

**AMCNO Files Amicus Brief**

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On October 8, 2014, the Supreme Court of Ohio accepted jurisdiction over and agreed to review Griffith v. Aultman Hospital. This case involves claims by the estate of a deceased patient against a hospital. The precise legal question raised by Griffith concerns the scope of medical records, and whether all patient data generated should be considered a component of a patient’s “medical record.” Specifically, the Supreme Court will determine whether a patient’s medical records are only those records kept by a hospital’s Medical Records Department or whether they include information received elsewhere, such as a Risk Management Department.

While this question is relatively narrow, the implications of the Court’s ruling could reverberate in hospitals statewide. Should the Court expand the definition of medical records, hospitals and physicians will likely be subject to greater restrictions on how they record patient information, where that information is stored, and what health information must be produced in response to a patient query.

In light of these issues, The Academy of Medicine of Cleveland & Northern Ohio (AMCNO) has decided to file an Amicus Brief arguing that the definition of the “medical record” should continue to be defined by healthcare providers, and not by the courts.

AMCNO’s specific interest in this litigation includes opposing attempts to compel impossibly overbroad data retention policies on medical providers, including physicians and hospitals. The statutory interpretation of

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AMCNO Board of Directors Meets with New SMBO Executive Director

The AMCNO Board of Directors was pleased to welcome Anthony J. Groeber, the new executive director for the State Medical Board of Ohio (SMBO) at their January Board meeting. Groeber was formerly the Executive Director for the Ohio Board of Tax Appeals and has a strong background in operations management and strategic planning. He informed the AMCNO board that, ultimately, the SMBO’s role is to protect the public; however, the SMBO also has to interact with consumers, lobbying groups, physicians and other healthcare groups along with the administration.

Groeber stated that the SMBO is the state agency charged with regulating the practice of medicine and selected other health professions. The board consists of 12 members appointed by the governor to a 5-year term: 7 medical doctors, 1 doctor of osteopathy, 1 podiatrist and 3 consumer members. The SMBO’s role is to protect Ohio patients and citizens and facilitate the good practice of medicine.

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“medical record,” being advanced by a plaintiff would result in an unworkable and interpretation of the terminology “medical record,” as defined in R.C. 3701.74. If this interpretation is adopted, the likely result will be endless discovery disputes, as well as unwarranted claims/allegations of obstruction, spoliation, etc., against medical providers.

The Underlying Case:
Howard Griffith was a patient at Aultman Hospital. Following a successful surgery to remove a portion of his lung, Mr. Griffith was transferred to a recovery room. He was subsequently found in an unresponsive state with his central line, chest tube and cardiac monitor disconnected.

Following Mr. Griffith’s death, his daughter filed a lawsuit against Aultman Hospital and sought to obtain copies of his medical records. The hospital released the “complete” medical record, which did not contain certain EKG strips generated by the patient’s cardiac monitor. The hospital had removed these rhythm strips from the patient’s room and stored them with the Risk Management Department.

These strips form the basis for the present dispute. The plaintiff argued that the rhythm strips were part of Mr. Griffith’s medical record because they were generated incident to his care and treatment. The hospital, however, claimed that the strips were not part of the record because they were not collected and stored in the records department. It is important to note that the strips were ultimately provided to the plaintiff, after they were requested during litigation discovery. The hospital has argued that the purpose of the medical record was to record the information needed to process the patient’s care and not to include all information generated during an inpatient stay.

The lower courts agreed with the hospital. They based their decision on R.C. 3701.74(A)(8), which defines a “medical record” 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 and treatment.” The trial and appellate courts focused on whether the EKG strips were maintained in the course of the patient’s treatment. Ultimately, the courts found that, because the EKG strips were maintained separately from the medical record, they were excluded from the statutory definition.

Implications: What Constitutes a Patient’s Medical Record?
If Ms. Griffith prevails, the ability of patients to request and timely receive complete and accessible copies of their medical records may be compromised. Medical providers may be required to provide boxes and boxes of redundant and irrelevant data – in a format that is far less accessible. Patients may actually become less educated, not more educated, on their own medical histories. Further, patients may be discouraged from making requests for records under R.C. 3701.74(B), knowing that the end result of such requests will be a seemingly limitless production of records in non-user friendly format and with expensive copying fees.

If medical providers are required to provide far more documents in response to a request made under R.C. 3701.74, then the fees charged to patients per R.C. 3701.74(B) (“fees for copies of medical records”) will likewise increase.

While the question of whether this particular patient’s EKG strips are part of the medical record may seem esoteric, the answer could have broad implications for hospitals and practitioners statewide. Should the Ohio Supreme Court determine that these EKG strips were part of the patient’s medical record, all data pertaining to a patient, presumably even information stored offsite, could be defined as part of the medical record to be required to produce every time any patient makes a medical records request.

Given the volume of electronic and print data generated by the healthcare industry, requiring this information to be included in a medical record could place unreasonable record-keeping and disclosure requirements upon practitioners. Certainly, the process of cataloging, storing and maintaining this information would require additional financial and administrative commitments. It is likewise unclear to what extent practices and hospitals would be required to store extraneous information, including metadata, generated ancillary to a patient’s treatment.

On the other side of the argument, commentators have cautioned that the Griffith decision could lead to the unintended concealment (i.e., “sanitization”) of medical records. Specifically, there are concerns that if a hospital can self-define “medical records” to include only those stored within the records department, it could conceal information from patients by storing files elsewhere.

The appellate court did not resolve this issue. Instead, it noted that there is nothing in the statute indicating that it was intended to be used as a broad discovery device. Instead, the statute is a “miscellaneous provision” intended to ensure that patients can access their records in order to obtain a second opinion or transfer to a new provider. The lower courts agreed with the hospital that a medical record is not that which the plaintiff thought should be maintained, but rather that which a hospital actually determines is necessary to be maintained.

Conclusion:
In closing, the questions raised by the Griffith case implicate not only patient access to medical information, but also hospital administration and record-keeping. The question is whether hospitals and physicians get to decide what information is included in a medical record, or whether this decision will be made by the courts.

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