



Medical Mutual of Ohio v. Schlotterer, 909 N.E.2d 1237 (Ohio 2009)

Topics Covered: Patient Privacy, Confidentiality

Outcome: Very Unfavorable

Issue

The issue in this case was whether a physician could be required to disclose confidential patient-physician communications in response to a health insurance company's discovery requests in litigation.

AMA Interest

The AMA believes that, absent patient consent, patient-physician communications should be kept confidential.

Case Summary

Medical Mutual of Ohio (Med Mutual), a managed care organization, sued William Schlotterer, DO for fraud and breach of contract, alleging that he persistently upcoded his claims to Med Mutual for medical services to patients. Med Mutual asked Dr. Schlotterer to produce his patients' medical records so that it could substantiate its claims. Dr. Schlotterer refused, and Med Mutual moved to compel production. Med Mutual proffered a protective order, under which Dr. Schlotterer would have to waive his patients' right to confidentiality. The trial court granted the motion, and Dr. Schlotterer appealed to the Ohio Court of Appeals.

The Court of Appeals found that Ohio law prohibits physicians from testifying about their communications with patients absent exceptional circumstances (none of which were present in the case), that Med Mutual's pecuniary interests did not outweigh the patients' privacy interests and that the requested discovery was overly broad. Additionally, the appellate court found that Med Mutual was required at least to attempt to obtain releases of the information sought directly from the patients. Consequently, the Court of Appeals reversed the trial court order requiring production of the patient records. Med Mutual appealed to the Ohio Supreme Court.

The Ohio Supreme Court, in a split decision, reversed the Court of Appeals and ordered the discovery. It noted that the patients had consented to the release of otherwise privileged information when they signed an application for insurance, enrolled in a plan, or presented the insurance company's identification card to a physician at the time of service. This consent was broad enough to cover the present fraud investigation.

Litigation Center Involvement

The Litigation Center has joined the Ohio State Medical Association in an amicus curiae brief in the Ohio Supreme Court supporting the need for patient-physician confidentiality.

Ohio Supreme Court brief