



# Murphy v. Dulay (11th Cir.)

Topics Covered: Professional Liability

## Issue

The issue in this case is whether the Florida Medical Malpractice Act, Fla. Stat. § 766.1065, which requires a potential plaintiff who claims medical negligence to authorize the release of otherwise confidential health information as a condition of bringing the lawsuit, conflicts with the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations.

## AMA Interest

Medical liability reform is the AMA's highest legislative priority.

## Case Summary

Glen Murphy was a former patient of Adolfo C. Dulay, MD, a family practitioner from Madison, Florida. Mr. Murphy sued Dr. Dulay in the United States District Court for the Northern District of Florida, claiming that he intended to sue Dr. Dulay for medical negligence in state court but did not want to authorize the release of his medical information, as required under the Florida Medical Malpractice Act. Mr. Murphy asserted that 45 CFR § 164.508 (a)(1) of the HIPAA privacy regulations preempted the Florida law, to the extent the Florida law required him to authorize *ex parte* interviews with his other health care providers.

Mr. Murphy sought a judicial declaration that the portion of the state law allowing *ex parte* interviews was invalid. He also sought to enjoin Dr. Dulay from conducting such interviews with his other health care providers. The State of Florida, through its Attorney General, intervened to defend the Florida statute. By agreement of the parties, the case was decided in the trial court based on the pleadings and the legal arguments.

After deciding that the case was justiciable, the court addressed what it characterized as "the critical question:" Should the authorization required under Florida law as a prerequisite to the bringing of a medical negligence action be deemed a "valid" authorization, as the word "valid" is used in 45 CFR § 164.508 (a)(1) of the HIPAA privacy regulations? Based on what it deemed to be the purpose and structure of the HIPAA regulations, the court concluded that the Florida Medical Malpractice Act did, in fact, violate the HIPAA regulations and should therefore be preempted. It entered a declaratory judgment and injunction in favor of Mr. Murphy and against Dr. Dulay.

The State of Florida, as intervenor, has appealed to the Eleventh Circuit.

## Litigation Center Involvement

The Litigation Center joined the Florida Medical Association and the Texas Medical Association proffered an *amicus* brief to the Eleventh Circuit, supporting Dr. Dulay and the

Florida Medical Malpractice Act. However, because the brief was untimely the Eleventh Circuit denied leave to file it.

United States Court of Appeals for the Eleventh Circuit brief