

No. 19-1384

In The
Supreme Court of the United States

JAMES E. PIETRANGELO, II,

Petitioner,

v.

CORRINE HUDSON,

Respondent.

**On Petition For Writ Of Certiorari To The
Court Of Appeals Of Ohio, Cuyahoga County**

**RESPONDENT'S BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI**

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**STATEMENT OF BASIS
FOR DENYING CERTIORARI
and
SUMMARY OF ARGUMENT**

The Ohio Court of Appeals for the Eighth Appellate District (“8th District”) did not violate federal law because:

- 1) Petitioner did not raise any question of federal law in the 8th District;
- 2) HIPAA explicitly permits a court to order disclosure of medical records;
- 3) The trial court order in this case merely requires Petitioner to execute “standard”, i.e., HIPAA-compliant, authorizations;
- 4) Petitioner cannot seek judicial review of medical authorizations because he failed to place them in the record.

This is simply a case about a trial court’s authority to direct and compel discovery pursuant to the Ohio Rules of Civil Procedure and Ohio law. There is no federal question involved.

STATEMENT OF THE CASE

Petitioner James Pietrangelo seeks the assistance of this Honorable Court to prevent Respondent Corrine Hudson from investigating Pietrangelo’s relevant prior medical history, after Pietrangelo filed suit seeking compensation for injuries sustained in a motor vehicle accident.

On August 9, 2017, Pietrangelo filed a lawsuit in the Court of Common Pleas for Cuyahoga County, Ohio, claiming that in August, 2015 Hudson caused an automobile accident that injured Pietrangelo’s head, neck, and back.

During discovery, Pietrangelo disclosed he had injured his head and back in a fall “around 2005”, that he “pulled a muscle in my low back in around 2011”, and also that he got into a fight and “was punched in the head in 2014.” Accordingly, Hudson requested Pietrangelo to execute medical releases to enable Hudson to subpoena Pietrangelo’s medical records since 2005, to investigate his prior head, neck, and back injuries. Pietrangelo refused to execute the HIPAA authorizations, claiming the releases were overly broad and violated his physician-patient privilege by seeking “irrelevant” records.

Hudson then filed a motion to compel. Pietrangelo filed a brief in opposition but did not submit into the record the allegedly “overbroad” medical authorizations for judicial review, did not request a protective order, did not produce any of his prior medical records for *in camera* review, and did not submit a privilege log or any affidavit to the trial court describing any records being withheld.

The trial court found that Pietrangelo had failed to support his claim of privilege and granted Hudson’s motion to compel. It then ordered Pietrangelo to execute “standard medical authorizations by June 22, 2018, or the case will be dismissed.” (Pet. App. F).

Pietrangelo appealed. On May 23, 2019, the 8th District affirmed the trial court’s order, noting that Pietrangelo had failed to take steps required by Ohio law and the Ohio Rules of Civil Procedure to support his claim of privilege, including seeking a protective order, submitting a privilege log, and/or submitting the disputed records for *in camera* review. (Pet. App. E). The 8th District also noted that Pietrangelo’s sole grounds for opposing Hudson’s request was Pietrangelo’s own conclusory allegation that all prior medical records were irrelevant. *Id.* The 8th District further noted that Pietrangelo failed to place the disputed medical record authorizations into evidence, so as to permit judicial review of any claim that the authorizations were overly broad. *Id.*

The 8th District’s decision does not mention HIPAA or any other federal law because Pietrangelo made no argument about HIPAA or other federal law. *Id.*

Pietrangelo then sought jurisdiction in the Supreme Court of Ohio, claiming—for the first time—that the trial court’s order requiring him to execute “standard medical authorizations” violated HIPAA, arguing that HIPAA requires that authorizations must be voluntary and that a court had no authority to compel the execution of a “standard medical authorization.”

On December 16, 2019, the Supreme Court of Ohio declined jurisdiction. (Pet. App. B).

This Honorable Court should do the same.

ARGUMENT

This Honorable Court should deny Pietrangelo's petition for certiorari because there is simply no question of federal law in this case. Pietrangelo never argued—either to the trial court or to the 8th District Court of Appeals—that the trial court had no authority to compel the execution of an authorization for release of medical records. The 8th District's decision never addresses HIPAA because no such argument was ever made. Pietrangelo's appeal to the 8th District simply involved whether Pietrangelo had met his burden under applicable Ohio law to support his claim of physician-patient privilege.

Moreover, the argument Pietrangelo now asserts is simply wrong because HIPAA explicitly exempts court orders from needing a written authorization. A trial court does have authority to compel disclosure of medical records without any voluntary authorization—or, as in this case, in spite of an express objection. 45 C.F.R. 164.512 provides, in pertinent part:

§ 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.

A covered entity may use or disclose protected health information *without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section*, subject to the applicable requirements of this section. . . .

* * *

(e) Standard: Disclosures for judicial and administrative proceedings.

(1) Permitted disclosures. **A covered entity may disclose protected health information** in the course of any judicial or administrative proceeding:

(i) ***In response to an order of a court or administrative tribunal***, provided that the covered entity discloses only the protected health information expressly authorized by such order;

(emphasis added).

Thus, HIPAA does permit a court to order disclosure of medical records. It is irrelevant that in this case the trial court ordered the execution of authorizations to facilitate a subpoena, since that was merely a different path for obtaining records that the court could have directly ordered to be disclosed.

Fundamentally, this is a question of Ohio law, not federal law. It is a question of the scope of statutory privilege under Ohio Revised Code 2317.02, and scope of relevant discovery under the Ohio Rules of Civil Procedure. The authorities that Pietrangelo cites address discovery under the Federal Rules of Civil Procedure, specifically Fed.R.Civ.Pro. 34. *See, e.g., Miller v. Kastelic*, No. CIV.A. 12-CV-02677, 2013 WL 4431102, at *2 (D. Colo. Aug. 16, 2013) (discussing split in federal authority based on interpretations of Rule 34); *see also* J. Grenig and J. Kinsler, *Handbook Fed. Civ. Discovery*

& Disclosure, §912 and n. 10 (4th ed. July 2018 update) (referencing application of Rule 34 to compel authorization for requesting documents from a non-party).

This case is governed by Ohio law, not the Federal Rules of Civil Procedure. The Supreme Court of Ohio has previously addressed the scope of the patient-physician privilege under Ohio Revised Code §2317.02 in the context of personal injury litigation discovery. *Ward v. Summa Health System*, 128 Ohio St.3d 212, 2010-Ohio-6275, 943 N.E.2d 514. It declined to consider this case and revisit that decision. There is no question of federal law that requires this Court's attention.

Moreover, since the trial court ordered Pietrangelo to execute "standard medical authorizations", i.e., HIPAA-compliant authorizations, Pietrangelo cannot argue that the trial court ordered him to execute authorizations that did not otherwise comply with HIPAA.

Finally, even if any HIPAA-related issue were implicated in this case, Pietrangelo failed to place the disputed authorizations into evidence. As the 8th District noted, Pietrangelo cannot seek judicial review of something he failed to place in the record.

CONCLUSION

For the foregoing reasons, this Honorable Court should deny Petitioner James E. Pietrangelo, II's petition for writ of certiorari.

Respectfully submitted,

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