

IN THE COURT OF APPEALS OF MARYLAND

No. 69

September Term, 1997

—
WILLIAM S. WARNER

v.

BRAD D. LERNER

—
Eldridge
Rodowsky
Chasanow
Raker
Wilner
Smith, Marvin H. (retired,
specially assigned),
Cathell, Dale R. (specially assigned),

JJ.

—
Concurring opinion by Raker, J.

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Filed: February 19, 1998

Raker, J., concurring:

I join in the opinion of the Court in so far as the Court holds that § 4-305(b)(1)(iii) does not authorize Dr. Lerner to obtain the medical records of Mr. Warner entirely on his own. The Court reasons that § 4-305(b)(1)(iii) “deals with when a health care provider [Union Memorial Hospital] in possession of medical records is allowed, *in its discretion*, to disclose them without the authorization of the patient.” Maj. slip op. at 6-7.

I write separately to make clear that I reject the “expansive reading” of the statute given by the lower courts¹ and thus reject any notion that Union Memorial Hospital had discretion to disclose Mr. Warner’s medical records pursuant to § 4-305. I do not believe that it is within the discretion of a hospital under § 4-305 to assist a doctor in the defense of a malpractice action by releasing to the doctor’s insurer or legal counsel records of a person other than the plaintiff. I would hold that under the circumstances of this case, without Mr. Warner’s authorization, Union Memorial Hospital could not lawfully disclose Mr. Warner’s medical records.

The Preamble to the Maryland Confidentiality of Medical Records Act manifests the intent of the General Assembly to protect the privacy of patients and to maintain the confidentiality of medical records, while establishing clear and certain rules for disclosure

¹ The Court of Special Appeals held:

By applying the plain language of the statute, and disregarding the potential problems associated therewith . . . , it is patent that the language of § 4-305(b)(1)(iii) permitted Lerner, through his counsel, to obtain Warner’s medical records without his prior consent or authorization.

Warner v. Lerner, 115 Md. App. 428, 433, 693 A.2d 394, 396 (1997).

of those records. The Preamble to the Act states:

WHEREAS, Medical records contain personal and sensitive information that if improperly used or disclosed may result in significant harm to the emotional, financial, health care, and privacy interests of a patient or recipient; and

WHEREAS, Patients and recipients need access to their medical records to enable them to make informed decisions concerning their health care and to correct inaccurate or incomplete information about themselves; and

WHEREAS, In order to retain the full trust and confidence of patients and recipients, health care providers have an interest in assuring that the information in medical records will not be improperly disclosed, and that clear and certain rules exist for the disclosure and redisclosure of this information; and

WHEREAS, In order to protect the privacy of a patient or recipient, that disclosure of information from a medical record without the authorization of a person in interest be limited to the information that is relevant to the purpose for which disclosure is sought and, when feasible and appropriate, to a review of the record by a person who acknowledges the duty not to redisclose the identity of the patient or recipient

1990 Maryland Laws ch. 480, at 2024. In this case, the interpretation given § 4-305 by the lower courts contravenes the purposes of the Maryland Confidentiality of Medical Records Act. The legislative history of the Act does not support the view that § 4-305(b)(1)(iii) allows a hospital to give medical records of *any* person to a physician's insurer or legal counsel if those records might somehow assist the physician in a threatened or actual lawsuit. If the hospital had such discretion, confidentiality of medical records would be illusory. *See Victor v. Proctor & Gamble*, 318 Md. 624, 631, 569 A.2d 697, 701 (1990) (“[A] statute should not be interpreted so as to produce an absurd result inconsistent with its purpose.”). Records

could then be published, without a patient's knowledge or consent, in a lawsuit in which the patient has no interest or connection thereto, and with no timely opportunity to object, complain, or to secure a protective order. The Court of Special Appeals recognized that "[t]he nature of the surgery performed on Warner was arguably personal and sensitive in nature. Many would experience unnecessary embarrassment on this basis." *Warner v. Lerner*, 115 Md. App. 428, 441, 693 A.2d 394, 400 (1997).

Disclosure of non-patient records could hardly have been the intent of the General Assembly when, in the interest of expanding the confidentiality of medical records, the General Assembly enacted the Maryland Confidentiality of Records Act. Warner is correct when he argues that "no citizen's medical and/or psychiatric records are safe from invasion and/or intrusion. Intimate facts about a citizen[']s medical, urological, gynecological and/or psychiatric history— highly intimate data— can be obtained by even the curious and/or the malicious. A public figure could thus have his records obtained for the purpose of embarrassing that individual and/or discussing or releasing intimate facts of that individual's medical background." In light of the stated purposes of § 4-305, the General Assembly could not have intended such consequences.