

STATE OF MINNESOTA

COUNTY OF RAMSEY

**FILED**

DISTRICT COURT

February 28, 2022

SECOND JUDICIAL DISTRICT

OFFICE OF

**APPELLATE COURTS**

Kelly Schneider and Evarist Schneider II,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

vs.

Children's Health Care, d/b/a Children's  
Hospital and Clinics and Children's Health  
Care Foundation,

Defendants.

Court File No.: 62-CV-20-5104

Case Type: Other Civil

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

This matter came on for a remote hearing by Zoom on January 21, 2022, at 9:00 AM. Marcus Almon, Esq., A L Brown, Esq., and Josh Williams, Esq., appeared on behalf of Plaintiffs. Dave Carney, Esq., and Danyll Foix, Esq., appeared on behalf of Defendants. Based upon the files, records, and proceedings herein, and the arguments of counsel, **IT IS HEREBY ORDERED:**

1. Defendants' motion for summary judgment is **GRANTED**.
2. This matter is dismissed with prejudice.
3. The attached Memorandum shall be incorporated into this Order.

LET JUDGMENT BE ENTERED ACCORDINGLY.

**BY THE COURT:**


Nelson, Laura (Judge)  
Feb 23 2022 4:38 PM

LAURA NELSON  
JUDGE OF DISTRICT COURT

Dated: February 23, 2022

**Judgment**  
Thereby certifies the foregoing orders  
Constitutes the Judgment of the Court

Patricia Johnston, Court Operations Associate

Johnston, Patricia  
Feb 24 2022 9:50 AM

## MEMORANDUM

The Court has previously set forth the factual and procedural history of this case in its April 7, 2021, order denying Defendants Children’s Hospital Association, Inc. d/b/a Children’s Hospitals and Clinics, and Children’s Health Care Foundation’s motion to dismiss. On September 17, 2021, Defendants filed the instant motion for summary judgment. Plaintiffs filed their opposition to Defendants’ motion on January 7, 2022. Defendants filed their reply in support of their motion on January 14, 2022.

### Legal Standard for Motion for Summary Judgment

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and either party is entitled to judgment as a matter of law. *W.J.L. v. Bugge*, 573 N.W.2d 677, 680 (Minn. 1998); Minn. R. Civ. P. 56.03. In considering a motion for summary judgment “the district court must view the evidence in the light most favorable to the nonmoving party.” *Christensen Law Office, PLLC v. Olean*, 916 N.W.2d 876, 885 (Minn. App. 2018). “A fact is material if its resolution will affect the outcome of the case.” *O’Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996). A genuine issue of material fact exists when a fact may be reasonably resolved in favor of either party, but “the nonmoving party must do more than simply show that there is some metaphysical doubt as to the material facts.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69–70 (Minn. 1997) (citation omitted).

### Analysis

Plaintiffs brought their claim under the Minnesota Health Records Act (MHRA), which states that “[a] provider, or a person who receives health records from a provider, may not release a patient’s health records” without written consent, representation of that consent, or specific authorization under law. Minn. Stat. 144.293, subd. 2. Defendants argue that the disclosure of Plaintiffs’ child’s health record was not a violation of the MHRA, because it was “otherwise authorized by law,” namely the fundraising regulations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 C.F.R. § 164.514(f)(1), which states that:

Subject to the conditions of paragraph (f)(2) of this section, a covered entity may use, or disclose to a business associate or to an institutionally related foundation, the following protected health information for the purpose of raising funds for its own benefit, without an authorization meeting the requirements of § 164.508:

- (i) Demographic information relating to an individual, including name, address, other contact information, age, gender, and date of birth;
- (ii) Dates of health care provided to an individual;
- (iii) Department of service information;
- (iv) Treating physician;
- (v) Outcome information; and
- (vi) Health insurance status.

Plaintiffs argue that the phrase “otherwise authorized by law” should not be understood to include authorizations contained in HIPAA regulations. The Court already addressed Plaintiffs’ non-delegation argument in its April 16, 2021, order denying Defendants’ motion to dismiss and will not re-address that issue. As stated in that order, Plaintiffs’ argument—that interpreting the “otherwise authorized by law” language to include this federal law would be an unconstitutional delegation of pure legislative power—is without merit.

In order to take advantage of the fundraising provision of HIPAA, the covered entity must provide notice of potential fundraising communications in its federally mandated HIPAA privacy notice. The Court denied Defendants’ motion to dismiss in its April 16, 2021, order in part because the pleadings did not show that Defendants had given Plaintiffs that required notice. Defendants have since submitted evidence that they provided that notice, and Plaintiffs do not dispute that they received this notice.

Plaintiffs’ arguments related to Defendants’ motion for summary judgment are specific—in addition to the non-delegation argument discussed above, Plaintiffs’ only other argument as to why the “otherwise authorized by law” language does not include HIPAA is that compliance with HIPAA requires compliance with MHRA, and that because the MHRA is “more stringent” than the HIPAA fund raising regulation, MHRA controls and bars disclosure. Plaintiffs fail, however, to identify a specific section of either MHRA that would bar disclosure under Minn. Stat. 144.293, subd. 2, or of HIPAA that conflicts with the fundraising provision.

Instead, Plaintiffs argue generally that the purpose of the MHRA is to protect the privacy of patients regarding their health care records, and that the MHRA is more specific in this purpose than HIPAA is. Such broad arguments, without specific reference to provisions of law, are not persuasive.

Ultimately, Defendants have shown that there is no genuine issue of fact related to their disclosure of Plaintiffs' child's health record, because that disclosure was "otherwise authorized by law," namely the HIPAA fundraising regulation, 45 C.F.R. § 164.514(f)(1). Plaintiffs' arguments that MHRA and HIPAA do not allow the disclosure cannot change that outcome without citation to a specific provision of either statute that would bar disclosure. Accordingly, Defendants' motion for summary judgment is granted on the basis that defendants' disclosure was "otherwise authorized" under 45 C.F.R. § 164.514(f)(1).

Because the Court grants summary judgment to Defendants based on their disclosure being authorized under HIPAA, the Court does not reach Defendants' arguments regarding the general consent form Plaintiffs signed, or the First Amendment.

#### **Conclusion**

Based on the foregoing, Defendants' motion for summary judgment is **GRANTED**.

LEN