

I Told You So!
HIPAA Privacy Rule Recognized as “Standard of Care”

Summary: While the HIPAA Privacy Rule does not recognize a private cause of action (i.e., an individual’s right to sue a covered entity directly for a violation of HIPAA), the court recognizes that the HIPAA Privacy Rule may establish a “standard of care” with respect to other claims that relate to a provider’s obligation to maintain the confidentiality of medical records.

Case: *Acosta v. Byrum*, ___ N.C. App. ___, 638 S.E.2d 246 (2006).

Facts: Patient (Acosta) sued her doctor (Faber) for negligent infliction of emotional distress after he allowed a third party (Byrum) to use his access code to obtain copies of patient’s psychiatric and other medical records. Acosta alleged that Byrum then intentionally disclosed Acosta’s information to others, which caused her severe emotional distress.

Discussion: The claim of negligent infliction of emotional distress (NIED) requires the patient to show that

- (1) the doctor negligently engaged in conduct,
- (2) it was reasonably foreseeable that such conduct would cause the patient severe emotional distress, and
- (3) the conduct did in fact cause the patient severe emotional distress.

The Court of Appeals concluded that Acosta’s allegations were sufficient to state a claim for NIED: Acosta alleged that Faber “negligently engaged in conduct by permitting Byrum to use his access code in violation of the rules and regulations of the University Health Systems, Roanoke Chowan Hospital, and HIPAA.” She alleged that Faber “knew of the severe personal animus Byrum had for [Acosta]” and that Byrum’s access to those records and use of the information caused her severe emotional distress.

Acosta did not sue the doctor for violating HIPAA. She sued him for infliction of emotional distress and used HIPAA (as well as the confidentiality policies of his providers) as the benchmark for how he should have behaved. In other words, Acosta cites “HIPAA as evidence of the appropriate standard of care, [which is] a necessary element of negligence.” The court explained that “HIPAA is inapplicable beyond providing evidence of the duty of care owed by Dr. Faber with regards to the plaintiff’s medical records.”