

Report on Patient Privacy Volume 18, Number 3. March 31, 2018 Patient Privacy Court Case

By HCCA Staff

This monthly column is written by Ellie F. Chapman of Morgan, Lewis & Bockius LLP in San Francisco. It is designed to provide RPP readers with a sampling of the types of patient privacy cases that courts are now hearing. It is not intended to be a comprehensive monthly survey of all patient privacy court actions. Contact Ellie at ellie.chapman@morganlewis.com.

◆ **Lawsuit Alleges Michigan is Unlawfully Storing Newborns' Blood.** On February 8, a group of Michigan parents sued the state's Department of Health and Human Services ("Health Department") over the collection and indefinite retention of blood samples taken from their children as newborns. *Kanuszewski v. Michigan Department of Health and Human Services et al.*, No. 1:18-cv-10472 (E.D. Mich. Feb. 8, 2018). The program, run by the Health Department, requires healthcare professionals who care for newborns to collect blood samples within the first 48 hours of newborns' lives to test for more than 50 maladies, disorders and diseases. The program has collected and stored approximately five million blood samples to date. In their complaint, the plaintiffs describe the practice as a "noble public policy idea" but allege that the practice is being done without parents' knowledge or consent and violates constitutional rights under the Fourth Amendment. The plaintiffs also allege concern about the potential for misuse and the "possibility of discrimination against their infants and perhaps even relatives through the use of such blood samples and research activity." According to the complaint, this concern is particularly troublesome, given that there currently do not appear to be any legal restrictions to limit who can access and use the blood samples. In addition to damages, the suit seeks an order declaring the conduct of the defendants to be unconstitutional, and requests that the practice be halted and all data be destroyed and the blood samples returned to their parents. Similar lawsuits have previously been initiated with varying degrees of success in Indiana, Minnesota and Texas.

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