

MEMORANDUM

FROM: HIPAA Solutions, LC, (Peter MacKoul, Esq.)

TO: General Release

RE: Analysis of the Acosta v. Byrum case, (638 S.E.2d 246) Court of Appeals of North Carolina.

DATE: February 9, 2007

NOTE TO THE READER: Please use the information contained in this document for informational purposes only. This document is NOT intended as legal advice. Please consult an Attorney before relying on any information presented in this document.

## 1 FACTS

### 1.1 The Central Issue on Appeal: "Sufficiency of the Complaint"

In the Acosta case, the North Carolina Court of Appeals addressed the issue of *"whether the trial court properly dismissed plaintiff's complaint as to Dr. Faber. Plaintiff argues that the complaint stated a valid claim against Dr. Faber for negligent infliction of emotional distress."*<sup>1</sup>

Essentially this case involves an action alleging an invasion of privacy and the intentional infliction of emotional distress filed against Dr. Faber, the owner of Psychiatric Associates and Robin Byrum, (the Office Manager at Psychiatric Associates). The plaintiff was both a patient and employee at Psychiatric Associates.

The Appellate Court clarified the relationship between the plaintiff and Byrum by stating, the *"plaintiff alleged that Byrum had severe personal animus towards plaintiff."*<sup>2</sup> Specifically, the plaintiff claims that Dr. Faber improperly allowed Byrum to access and use his medical record access number numerous times over the course of less than one year. For example, the plaintiff stated that Byrum *"used Dr. Faber's access code to*

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<sup>1</sup> Acosta v. Byrum, 638 S.E. 2d 256, pages 248 -249, (2006).

<sup>2</sup> Acosta at 249.

*retrieve plaintiff's confidential psychiatric and other medical and healthcare records.”*<sup>3</sup> Also, and more significantly, the plaintiff claims that “*Byrum then provided information contained in those records to third parties without plaintiff's authorization or consent.*”<sup>4</sup>

The plaintiff also claims that by allowing Byrum to access and use the medical records access code that Dr. Faber violated the Health Insurance Portability and Accountability Act, (or HIPAA); and finally due to Byrum's access the plaintiff “*experienced severe emotional distress, humiliation, and anguish from the exposure of her medical records to third parties.*”<sup>5</sup> Also that “*Dr. Faber knew or should have known that his negligence would cause severe emotional distress.*”<sup>6</sup>

## 2 ANALYSIS OF THE CASE

### 2.1 Analysis on the Elements of the Plaintiff's Claim, Which was Found to be “Sufficient.”

The Appellate Court agreed with the plaintiff that the case should not have been dismissed.<sup>7</sup>

The court then outlined and analyzed the plaintiff's claim stating, “*the substantive elements of negligent infliction of emotional distress are:*

“(1) *the defendant negligently engaged in conduct,*

(2) *it was reasonably foreseeable that such conduct would cause the plaintiff severe emotional distress ..., and*

(3) *the conduct did in fact cause the plaintiff severe emotional distress. Johnson v. Ruark Obstetrics, 327 N.C. 283, 304, 395 S.E.2d 85, 97 (1990).”*

The Appellate Court then stated, “*therefore, in analyzing the sufficiency of the complaint, the dispositive question becomes whether plaintiff sufficiently stated a claim for negligent infliction of emotional distress for which relief can be granted.*”<sup>8</sup>

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<sup>3</sup> Id at 249.

<sup>4</sup> Id at 249.

<sup>5</sup> Id at 249.

<sup>6</sup> Id at 249.

<sup>7</sup> Acosta at 250.

<sup>8</sup> Id at 250

## 2.1.1 THE 1ST ELEMENT OR THE DEFENDANT'S NEGLIGENCE

### 2.1.1.1 ANALYSIS ON “(1) THE DEFENDANT NEGLIGENTLY ENGAGED IN CONDUCT,”

The plaintiff contended that she sufficiently alleged the defendant's negligence when the defendant permitted Byrum to use his access code in violation of the rules of the University Health Systems and HIPAA. The Appellate Court stated in relation to the Plaintiff's contention as follows: *“Here, defendant has been placed on notice that plaintiff will use the rules and regulations of the University Health Systems, Roanoke Chowan Hospital, and HIPAA to establish the standard of care. **Therefore, plaintiff has sufficiently pled the standard of care in her complaint.**”*<sup>9</sup>

## 2.1.2 THE 2<sup>ND</sup> ELEMENT OR “PROXIMATE CAUSE.”

### 2.1.2.1 ANALYSIS ON “(2) IT WAS REASONABLY FORESEEABLE THAT SUCH CONDUCT WOULD CAUSE THE PLAINTIFF SEVERE EMOTIONAL DISTRESS,” OR “PROXIMATE CAUSE.”

The Appellate Court defined the concept of “proximate cause” phrasing it as the “test of proximate cause,” in the following way: *“the test of proximate cause is whether the risk of injury, not necessarily in the precise form, in which it actually occurs, is within the reasonable foresight of the defendant.’... Questions of proximate cause and foreseeability are questions of fact to be decided by the jury.... (“rarely is the court justified in deciding [proximate cause] as a matter of law”).... Thus, since proximate cause is a factual question, not a legal one, it is typically not appropriate to discuss in a motion to dismiss.”*<sup>10</sup>

The court also analyzed the exact language used by the Plaintiff to plead the “proximate cause” element in her complaint to determine whether the Plaintiff pled facts that were sufficient to support the Plaintiff's claim of negligent infliction of emotional distress.

For example, the Court re-iterated as follows: *“plaintiff in this case pled the following two paragraphs in her complaint: “59. Dr. Faber knew or should have known that his negligence, as described above, was likely to cause Plaintiff severe emotional distress. 60. Dr. Faber's negligence, as described above, proximately caused Plaintiff to suffer severe emotional distress, humiliation and mental anguish.”*<sup>11</sup>

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<sup>9</sup> Acosta at 251.

<sup>10</sup> Acosta at 251.

<sup>11</sup> Acosta at 251.

The Court also stated, “*additionally, plaintiff alleged the following relevant facts to support that allegation: Dr. Faber knew of the severe personal animus Byrum had for plaintiff, Dr. Faber allowed Byrum to use his medical access code, Byrum used that code to access and obtain plaintiff's confidential medical records, and consequently, plaintiff suffered severe emotional distress, humiliation, and mental anguish.*”<sup>12</sup>

Finally the Appellate Court concluded as follows in relation to the sufficiency of this part of the Plaintiff's complaint; “*these facts are sufficient to support plaintiff's claim of negligent infliction of emotional distress. See also Zenobile v. McKecuen, 144 N.C.App. 104, 110-11, 548 S.E.2d 756, 760-61 (2001) (sufficient facts alleged to support a claim of negligent infliction of emotional distress).*”<sup>13</sup>

### 2.1.3 THE 3<sup>RD</sup> & FINAL ELEMENT OR SEVERE EMOTIONAL DISTRESS

#### 2.1.3.1 ANALYSIS ON “(3) THE CONDUCT DID IN FACT CAUSE THE PLAINTIFF SEVERE EMOTIONAL DISTRESS.”

Ultimately the Appellate Court stated that the Plaintiff alleged sufficient facts to support a claim of severe emotional distress.

The court stated as follows:

*“In the complaint, the “[p]laintiffs alleged that defendant's negligence caused them ‘extreme mental and emotional distress,’ specifically referring to plaintiff-wife's fears regarding her son's health and her resultant sleeplessness.” [Id. at 646, 496 S.E.2d at 583](#). The Court acknowledged the sparseness of this allegation of extreme emotional distress, but nevertheless held it sufficient to state a claim for negligent infliction of emotional distress. [Id.](#) The allegation was sufficient so long as it provided the “‘defendant notice of the nature and basis of plaintiffs’ claim so as to enable him to answer and prepare for trial.’” [Id.](#) (citation omitted).”<sup>14</sup>*

The Appellate Court utilized the McAllister precedent to justify this conclusion; “*similar to McAllister, plaintiff here claimed that defendant's negligence caused severe emotional distress, humiliation, and mental anguish. This allegation alone, when combined with her other factual claims, placed defendant on “notice of the nature and basis of plaintiff's claim[.]” Id. (citation omitted). Therefore, plaintiff's factual and legal allegations are sufficient to state a claim for negligent infliction of emotional distress.*”<sup>15</sup>

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<sup>12</sup> Acosta at 251 - 252

<sup>13</sup> Acosta at 252

<sup>14</sup> Acosta at 252

<sup>15</sup> Acosta at 252

Finally the Court concluded: *“Since all the elements of negligent infliction of emotional distress were alleged and plaintiff stated relevant facts to support those elements, the complaint sufficiently stated a claim for negligent infliction of emotional distress, and the trial court erred in dismissing plaintiff’s complaint for failure to state a claim.”*<sup>16</sup>

## 2.2 The Appellate Court’s Analysis of HIPAA

The Court indicated that the Plaintiff was not bringing a claim under HIPAA itself, but simply using HIPAA as the *“duty of care owed by Dr. Faber with regard to the Privacy of the plaintiff’s medical records.”*<sup>17</sup>

This is significant because the Appellate Court overturned the trial court’s ruling and indicated that this plaintiff could in fact bring a cause of action utilizing HIPAA as a standard or benchmark upon which potential negligence could arise.

The Appellate Court agreed with the plaintiff’s contention that no claim for an *“alleged HIPAA violation was made and therefore dismissal on the grounds that HIPAA does not grant an individual a private cause of action was improper.”* After re-iterating the plaintiff’s contention, the court responded by stating simply, *“we agree.”*<sup>18</sup>

The Court expanded upon this ‘simple statement’ by examining the plaintiff’s complaint in relation to HIPAA. For example the court stated, *“in her complaint, plaintiff states that when Dr. Faber provided his medical access code to Byrum, Dr. Faber violated the rules and regulations established by HIPAA. This allegation does not state a cause of action under HIPAA. Rather, plaintiff cites to HIPAA as evidence of the appropriate standard of care, a necessary element of negligence. Since plaintiff made no HIPAA claim, HIPAA is inapplicable beyond providing evidence of the duty of care owed by Dr. Faber with regards to the privacy of plaintiff’s medical records.”*<sup>19</sup>

The Appellate Court indicated that the plaintiff also contended that this was not a medical malpractice claim, thus rule 9(i) of the North Carolina Rules of Civil Procedure do not apply. The Court stated: *“Here, Dr. Faber’s alleged negligent act was providing his medical access code to Byrum. Providing an access code to access certain medical files qualifies as an administrative act, not one involving direct patient care. Therefore, Rule 9(j) is inapplicable; plaintiff did not need certification before filing suit.”*<sup>20</sup>

The Court concluded as follows: *“Plaintiff’s complaint should not have been dismissed*

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<sup>16</sup> Acosta at 252

<sup>17</sup> Acosta at 253

<sup>18</sup> Acosta at 253

<sup>19</sup> Acosta at 253

<sup>20</sup> Acosta at 253

*because plaintiff sufficiently stated a claim for negligent infliction of emotional distress against Dr. Faber, personal jurisdiction over Dr. Faber was proper, no HIPAA violation was alleged in the complaint, and Rule 9(j) is inapplicable. Accordingly, we reverse the decision of the trial court dismissing plaintiff's complaint against Dr. Faber. Reversed.*"<sup>21</sup>

### 3 CONCLUSION

This case indicates a legal method that allows plaintiffs' attorneys to utilize HIPAA as a "standard of care" to bring an individual action using HIPAA privacy regulations and standards instead of attempting to bring an individual lawsuit directly under HIPAA itself, which is not permitted.

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<sup>21</sup> Acosta at 254