IN THE SUPREME COURT OF OHIO

GENE'A GRIFFITH	Appellant,	: Case No.	14-1055
v. **AULTMAN HOSPITAL**		: On Appeal from the Stark County Court of Appeals, Fifth Appellate District,	
	Appellee.	: Case No. 2013 CA 00142	

AMICUS CURIAE BRIEF OF THE CENTRAL OHIO ASSOCIATION FOR JUSTICE IN SUPPORT OF JURISDICTION

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I. STATEMENT OF INTEREST OF AMICUS CURIAE

This brief is filed by the Central Ohio Association for Justice in support of Appellant's motion that the Ohio Supreme Court take jurisdiction of the issues arising in the case of *Gene'a Griffith v. Aultman Hospital,* particularly the issue of the proper definition of the term medical record. The Central Ohio Association for Justice, or COAJ, is an organization of several hundred attorneys in a wide range of practice areas, primarily plaintiff-focused. The organization's main purposes are to promote justice for all individuals in state, local and federal courts, to improve the judicial system and to serve the citizens of central Ohio. COAJ takes a keen interest in issues that affect the rights of litigants in the civil justice system, as many of its members serve plaintiffs seeking redress through the courts in personal injury and medical malpractice cases. It is with these particular concerns in mind that COAJ files this brief to urge the court to address the issues raised by in this matter.

II. STATEMENT OF THE CASE AND FACTS

This case involves the critical issue of the rights of ordinary citizens to have full access to their own medical records. According to the hospital in this instance, it is the individual medical providers, and not the law, that define which records constitute medical records to which citizens have access. To define medical record as "whatever a medical provider says it is," however, leaves too much discretion in the hands of the individual medical provider and potentially cuts off citizens' access to a complete copy of their own records. If the lower court decisions in this case stand, the individual appellant will be denied access to a full and complete copy of the medical records at issue. More importantly, the broad discretion left to medical providers to define "medical record" will impede the rights of all citizens to obtain critical information contained in their medical records.

III. WHY THIS CASE INVOLVES AN ISSUE OF GREATPUBLIC OR GENERAL INTEREST

Access to one's medical records is of great public concern as evidenced by adoption of R.C. 3701.74 by Ohio's General Assembly. This statute requires a "health care provider" to make a patient's medical records available upon request. Implicit in this requirement is the duty to maintain any record related to a patient's medical care in the health care providers possession. In fact, R.C. 3701.74(A)(8) defines "medical record" as "data in any form that pertains to a patient's medical history, diagnosis, prognosis, or medical condition and that is generated and maintained by a health care provider in the process of the patient's health care treatment." (emphasis added).

Appellee Aultman Hospital misconstrues the meaning of the word "maintain" when it contends it need not provide Appellant, Gene'a Griffith, all medical records related to her deceased father's care because they were not kept in Aultman's medical records department. Aultman takes this position despite the fact that it has admitted it does *possess* additional records pertaining to Mr. Griffith outside this department. This practice is a violation of R.C. 3701.74, on its face, and contrary to the public interest in providing access to all medical records in Aultman's possession relating to any of Aultman's patients or the patients of any other medical provider.

IV. PROPOSITION OF LAW NUMBER 1: A PATIENT HAS A RIGHT TO ALL MEDICAL RECORDS THE HOSPITAL GENERATED AND MAINTAINS, REGARDLESS OF THE DEPARTMENT IN WHICH THE RECORDS ARE STORED.

To "maintain" something is to preserve, keep or retain that thing. Aultman admits it has in its possession other documents related to Mr. Griffith's medical care generated in the course of Mr. Griffith's treatment. Therefore, in keeping with the statute, Aultman was required to

produce them as part of Mr. Griffith's medical record. There is no exception carved out in R.C. 3701.74(A)(8) permitting a health care provider to produce only what it determines is a medical record simply because the health care provider chose a system to store medical records that does not conform to its statutory duties.

If the Fifth District Court of Appeals decision in this case remains unchanged, the public of that district will never be sure that they are receiving all medical records related to their care or that of their loved ones and family members, regardless of whether an underlying medical malpractice case is pending. The public is entitled to receive all records generated by the health care provider related to "a patient's medical history, diagnosis, prognosis, or medical condition" that is in the health care providers possession, not just those records kept in the health care providers medical records department. No inference can reasonably be taken from the language of R.C. 3701.74 suggesting that a health care provider can avoid producing a patient's medical record in its possession simply because of organizational efficiencies.

Such a practice, if condoned by this Court, will provide fertile ground for abuses, unintended consequences and increased medical costs. For example, in medical malpractice actions, defendants will be able to limit or avoid liability by simply withholding incriminating records from their medical records departments. In personal injury and workers' compensation cases, lack of a complete medical record may hinder efforts by the parties to show evidence of pre-existing conditions which could materially affect the outcome of the case for either party.

In the vast majority of cases where no litigation is pending or even contemplated, treating physicians may order diagnostic testing or medical procedures that are duplicative or that would be contra indicated if that physician had first known of the information contained in all the medical records from the health care provider who rendered prior treatment to the patient. As

such, unnecessary additional costs and expenses will be incurred that could have been completely avoided.

V. CONCLUSION

In sum, this case affects the rights of all citizens to gain access to their medical records whether they need them for purposes of litigation or simply for purposes of obtaining a second medical opinion. This is an issue of great importance to COAJ and to the public in general and it is for all these reasons that COAJ urges the court to take jurisdiction.

Respectfully submitted,
Central Ohio Association for Justice, By

Dated: June 23, 2014

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing pleading, discovery or other document has been served upon:

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