

Health Information Compliance Alert

HIPAA IN THE COURTS: Docs' Bid To Dismantle HIPAA Falls To Pieces - For Now

Privacy Rule Challenge Won't Be The Last

Like a massive elephant swatting away pesky flies, HIPAA casually withstood a group of physicians' accusation that provisions of the regulation were unconstitutional.

A federal court case proved once -but not necessarily for all - that HIPAA is the master of its health care domain. Much to the chagrin of a group of physicians from the **South Carolina Medical Association**, the **Physicians Care Network** and the **Louisiana Medical Society**, the **U.S. 4th Circuit Court of Appeals** April 25 decided in favor of the **Department of Health and Human Services** when it affirmed an earlier district court case's decision that upheld HHS' authority to administer HIPAA.

Judge **William Traxler** and the court ruled that Congress laid out an "intelligible principle in HIPAA to guide regulatory action," rejecting the plain-tiffs' contention that Congress improperly gave up its authority to promulgate standards to protect individually identifiable health information and that the statute was "impermissibly vague."

Dr. **Duren Johnson**, a plaintiff in the case and the immediate past president of the SCMA, tells **Eli** that the circuit court's decision was not unexpected, and says the SCMA had been preparing for HIPAA all during the deliberations. Johnson says he has met with the plain-tiffs' attorney, **Terry Richardson**, and they have decided to appeal the decision to the **U.S. Supreme Court**.

Johnson says the Supreme Court may decide not to hear the case, but "if they agree to hear the suit, then a decision would be expected sometime next year," adding that he is hopeful the Supreme Court will hear the case, as there are "serious facts of law concerning Congress' right to delegate rule-making authority to federal agencies that oversee not only health care but every face of our life in the US."

But for the time being, HIPAA isn't going anywhere.

To read the circuit court opinion, go to <http://pacer.ca4.uscourts.gov/opinion.pdf/022001.P.pdf>.