



# CLIENT ADVISORY

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**Heather D. Acosta v. Robin Byrum, Shirley Smith, Beverly Edwards, M.D. and David R. Faber, II, M.D.**  
**North Carolina Court of Appeals**  
**December 19, 2006**  
**No. COA06-106**

The North Carolina Court of Appeals, overturning the dismissal of the Plaintiff's case by the trial court, recently held that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) may be used to provide evidence of the duty of care owed concerning the privacy of medical information.

The Plaintiff brought suit against both Dr. Faber and Robin Byrum alleging invasion of privacy and intentional infliction of emotional distress (similar additional claims were made against the other two defendants). Dr. Faber owned Psychiatric Associates of Eastern Carolina, Robin Byrum was the manager and Plaintiff was an employee and patient. Plaintiff alleged that Robin Byrum was able to access Plaintiff's confidential psychiatric and medical records with the use of Dr. Faber's medical record access number. This information

was then provided to third parties without Plaintiff's consent. Plaintiff alleged she "experienced severe emotional distress, humiliation, and anguish from the exposure of her medical records to third parties."

Plaintiff also alleged that Dr. Faber violated the rules of HIPAA and other health organizations by negligently allowing Robin Byrum to use his access code. Plaintiff alleged that these rules provide a standard of care to maintain privacy of her confidential medical records.

In Plaintiff's appeal, it was also argued "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." The court agreed.

The court stated that the Plaintiff references HIPAA as evidence of the appropriate standard of care, a necessary element of negligence. The court further stated that since no HIPAA claim was made, "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."