

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Mary Johnson,

Civil No. 04-4130 (PAM/RLE)

Plaintiff,

v.

**MEMORANDUM AND ORDER**

Parker Hughes Clinics,

Defendant.

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This matter is before the Court on Defendant's Motion to Dismiss. For the following reasons, the Motion is granted.

**BACKGROUND**

Plaintiff Mary Johnson's husband received treatment at Parker Hughes Cancer Center from March 2001 until his death in September 2002. In July 2004, Johnson retained counsel for the purpose of investigating and pursuing a civil action against Defendant Parker Hughes Clinics ("Parker Hughes"). As her husband's surviving spouse, Johnson requested that Parker Hughes provide copies of the medical and billing records pertaining to the care and treatment of her late husband. Parker Hughes denied Johnson's request, claiming that she was not in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

Johnson insists that she satisfies HIPAA. Minnesota Statute § 144.335 includes a deceased patient's spouse within its definition of "patient," and thus "[u]pon request, a provider shall supply a patient complete and current information possessed by the provider." HIPAA states:

If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation.

45 C.F.R. § 164.502(g)(4). According to Johnson, HIPAA invokes Minnesota law, and because Minnesota law permits her to act on behalf of her deceased spouse, she is a personal representative and entitled to her husband's medical records. Parker Hughes disagrees and defends that HIPAA preempts Minnesota law. Johnson brings this action, seeking declaratory relief clarifying her rights and obligations under HIPAA. Parker Hughes seeks to dismiss the Complaint for lack of subject matter jurisdiction.

## **DISCUSSION**

### **A. Standard of Review**

A motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) may challenge the complaint either on its face or on the factual truthfulness of its averments. Titus v. Sullivan, 4 F.3d 590, 593 (8th Cir. 1993). When a defendant challenges the complaint on its face, the Court reviews the pleadings and affords the plaintiff the same protections that it would receive on a Rule 12(b)(6) motion to dismiss. See Osborn v. United States, 918 F.2d 724, 729 n. 6 (8th Cir. 1990). The Court takes the factual allegations as true and will only dismiss the complaint if the plaintiff fails to allege an essential element for subject matter jurisdiction. See Titus, 4 F.3d at 593.

### **B. Subject Matter Jurisdiction**

Parker Hughes contends that this Court lacks subject matter jurisdiction. Because the

parties are not diverse in nature, the issue is one of federal question jurisdiction. See 28 U.S.C. § 1331. Johnson does not bring a cause of action under HIPAA, but instead seeks relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 and 2202, clarifying her rights and obligations under HIPAA. According to Johnson, because she seeks a declaratory resolution of her rights and obligations under HIPAA, this Court has subject matter jurisdiction.

The Declaratory Judgment Act is not a jurisdictional statute. Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 15-16 (1983). Thus, an independent basis for federal question jurisdiction must exist. Both parties concede that HIPAA does not provide for a private cause of action. See e.g., Univ. of Colorado Hosp. v. Denver Pub. Co., 340 F. Supp. 2d 1142, 1145 (D. Colo. 2004). Indeed, Johnson’s claim does not seek relief under HIPAA, but rather seeks an order interpreting the statute. The Court finds that this is insufficient to confer subject matter jurisdiction.

“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Whether a claim “arises under” federal law must be determined by examining the “well-pleaded complaint.” Merrell Dow Pharm., Inc. v. Thompson, 478 U.S. 804, 808 (1986). In Merrell Dow, the plaintiff sued for negligence, and alleged that a federal statute established the standard of care for the negligence claim. The Supreme Court held that a state-law cause of action for negligence that merely incorporates federal law as an element of the cause of action does not arise under federal law for the purposes of federal jurisdiction. Id. at 817. Thus, Merrell Dow stands for the proposition that federal jurisdiction cannot be based on a federal statute that

does not provide a private cause of action.

Johnson attempts to distinguish Merrell Dow from the Supreme Court's prior ruling in Smith v. Kansas City Tile & Trust Co., 255 U.S. 180 (1921). In Smith, the Court found subject matter jurisdiction:

The general rule is that where it appears from the bill or statement of the plaintiff that the right to relief depends on the construction or application of the Constitution or laws of the United States, and that such federal claim is not merely colorable, and rests upon reasonable foundation, the District Court has jurisdiction under [28 U.S.C. § 1331].

Id. at 199. Under Smith, Johnson submits that the Court has jurisdiction, because whether she is entitled to her late husband's medical records depends on the Court's interpretation of HIPAA. Although seemingly true, it is the Declaratory Judgment Act that would provide relief to Johnson in this case, not HIPAA. Furthermore, Smith involved the constitutionality of the statute, undoubtedly invoking a federal question. Thus, because there is no private cause of action nor any other basis to invoke a federal question, subject matter jurisdiction is inappropriate and this case must be dismissed.<sup>1</sup>

## CONCLUSION

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<sup>1</sup> Neither party articulates why this case cannot proceed in state court. Plaintiff may bring a cause of action alleging that Defendant has improperly denied her access to medical records, in violation of Minn. Stat. § 144.335. Although Defendant will likely argue that this statute is preempted by HIPAA, Minnesota state court nonetheless will have jurisdiction to determine the relationship between Minnesota law and HIPAA. See Merrell Dow, 487 U.S. at 808 ("A defense that raises a federal question is inadequate to confer federal jurisdiction"). Furthermore, although the Court acknowledges that the underlying purpose of this lawsuit is precedential in nature, Plaintiff's counsel agreed with the Court at oral argument that Plaintiff could undoubtedly comply with HIPAA if she sought appointment from the state court as a personal representative of her deceased husband's estate.

Subject matter jurisdiction does not lie with this Court, and therefore Defendant's Motion must be granted. Accordingly, based on all files, records, and proceeding herein, **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss (Clerk Doc. No. 4) is **GRANTED**.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: January 13, 2005

s/Paul A. Magnuson  
Paul A. Magnuson  
United States District Court Judge