

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

August Term, 2012

(Submitted: September 28, 2012 Question Certified: March 25, 2013
Certified Question Answered: January 9, 2014 Decided: January 27, 2014)

Docket No. 12-1045-cv

-----x

JOHN DOE,

Plaintiff-Appellant,

-v.-

12-1045-cv

GUTHRIE CLINIC, LTD., GUTHRIE HEALTH,
GUTHRIE HEALTHCARE SYSTEM, GUTHRIE
HEALTH PLAN, INC., GUTHRIE CLINIC
INC., GUTHRIE CLINIC, A Professional
Corporation, GUTHRIE CLINICS GROUP
PRACTICE PARTNERSHIP, L.L.P., GUTHRIE
MEDICAL GROUP, P.C., GUTHRIE
ENTERPRISES TWIN TIER MANAGEMENT
CORPORATION,

Defendants-Appellees.

-----x

Before: CHIN, LOHIER, and DRONEY, Circuit Judges.

1 Appeal from a judgment of the United States District Court for the Western
2 District of New York (Telesca, L.), dismissing, among other things, a claim for
3 breach of the fiduciary duty of confidentiality arising from a non-physician
4 employee's unauthorized disclosure of John Doe's confidential medical
5 information. In response to a certified question from this Court, the New York
6 Court of Appeals held that, under New York law, the common law right of action
7 for breach of the fiduciary duty of confidentiality for the unauthorized disclosure
8 of medical information may not run directly against a medical corporation,
9 where the employee responsible for the breach is not a physician and acts outside
10 the scope of her employment. Doe v. Guthrie Clinic, Ltd., No. 224, 2014 WL
11 66644 (N.Y. Jan. 9, 2014). Accordingly, we AFFIRM the judgment of the District
12 Court.

13
14 T. Andrew Brown, Joseph A. Gawlowicz,
15 Brown & Hutchinson, Rochester, New
16 York, for Plaintiff-Appellant John Doe.

17
18 Martha Brockway Stolley, Morgan, Lewis &
19 Bockius LLP, New York, New York, for
20 Defendants-Appellees Guthrie Clinic, Ltd.,
21 Guthrie Health, Guthrie Healthcare System,
22 Guthrie Health Plan, Inc., Guthrie Clinic
23 Inc., Guthrie Clinic, A Professional
24 Corporation, Guthrie Clinics Group
25 Practice Partnership, L.L.P., Guthrie
26 Medical Group, P.C., Guthrie Enterprises
27 Twin Tier Management Corporation.
28

29 PER CURIAM:

30 John Doe appeals from a judgment of the United States District Court for
31 the Western District of New York (Telesca, L.) dismissing his complaint against
32 various Pennsylvania-based entities (the "Guthrie Defendants") that Doe alleges

1 own Guthrie Clinic Steuben, a healthcare facility in Corning, New York. Doe v.
2 Guthrie Clinic, Ltd., No. 11-CV-6089, 2012 WL 531026 (W.D.N.Y. Feb. 17, 2012).
3 We assume familiarity with the underlying facts and procedural history of this
4 case, which are set forth in our prior opinion filed in this case on March 25, 2013.
5 Doe v. Guthrie Clinic, Ltd., 710 F.3d 492 (2d Cir. 2013).

6 On appeal, the parties disputed the ability of a plaintiff to sue a medical
7 corporation directly for a non-physician employee's unauthorized disclosure of
8 confidential medical information, when the employee acted outside the scope of
9 her employment.¹ In our prior opinion, we certified the following question to the
10 New York Court of Appeals:

11 "Whether, under New York law, the common law right of action for
12 breach of the fiduciary duty of confidentiality for the unauthorized
13 disclosure of medical information may run directly against medical
14 corporations, even when the employee responsible for the breach is
15 not a physician and acts outside the scope of her employment?"

16 Id. at 494.

17 In an opinion filed on January 9, 2014, the New York Court of Appeals
18 answered the certified question in the negative, holding that "a medical

¹ In a separate summary order, we affirmed the District Court's dismissal of Doe's other claims against the Guthrie Defendants. Doe v. Guthrie Clinic, Ltd., 519 F. App'x 719 (2d Cir. 2013) (summary order).

1 corporation's duty of safekeeping a patient's confidential medical information is
2 limited to those risks that are reasonably foreseeable and to actions within the
3 scope of employment." Doe v. Guthrie Clinic, Ltd., No. 224, 2014 WL 66644 (N.Y.
4 Jan. 9, 2014). There is no dispute that the employee responsible for disclosing
5 Doe's confidential medical information acted outside the scope of her
6 employment. The ruling of the New York Court of Appeals therefore resolves
7 the remaining issue in this case. Its decision requires that we affirm the District
8 Court's dismissal of Doe's claim for breach of the fiduciary duty of
9 confidentiality.

10 For the foregoing reasons, we AFFIRM the judgment of the District Court.
11 We thank the New York Court of Appeals for its assistance in resolving this
12 question of New York law.