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## Injured NFL player accuses ESPN of HIPAA violations

**B**ack in 2015, New York Giants defensive end Jason Pierre-Paul suffered severe injuries to his right hand in an infamous July 4 fireworks accident. As a result of an explosive device detonating in his hand, Pierre-Paul's index finger was amputated and portions of other fingers were also removed in following surgeries.

Impressively, this was not a career-ending injury for Pierre-Paul, as he was still able to play football during the latter half of the 2015 season. He even recently signed a \$10 million, one-year contract to continue playing for the New York Giants in 2016.

It will be interesting to continue watching Pierre-Paul overcome adversity on the field. Off the field, it will be interesting to continue watching Pierre-Paul battle it out in a lawsuit he filed in February against ESPN and its NFL reporter Adam Schefter.

At issue is the disclosure of Pierre-Paul's medical records through Schefter's Twitter account.

On July 8, Schefter tweeted to his approximately 4 million followers: "ESPN obtained medical charts that show Giants DE Jason Pierre-Paul had right index finger amputated today."

The tweet included an image of a chart from Miami's Jackson Memorial Hospital containing medical information about the amputation of Pierre-Paul's right index finger.

As a result of the tweet (and obvious fear of accountability), Jackson Memorial launched an internal investigation of the incident to uncover any Health Insurance Portability and Accountability Act (HIPAA) violations that had plausibly occurred.

HIPAA is a federal patient privacy law that — in very brief summary — imposes a floor

regarding the obligation not to release private health information without a patient's consent.

As attorneys, we understand first-hand the hurdles that HIPAA and broader medical privacy statutes create, including preventing us from subpoenaing medical records with any hope. We know how difficult it is to obtain people's private medical records. So how did an ESPN reporter have such luck?

Absent Schefter's willingness to reveal his source, we can only assume he had some help and then put pieces of the puzzle together from there. Not coincidentally, Jackson Memorial Hospital announced that two employees, an operating room nurse and a secretary, were fired for accessing the medical information at issue.

Luckily for ESPN and Schefter, HIPAA only imposes liability upon health-care providers such as the hospital and its employees. Also, while HIPAA protects the health information of individuals, it does not create a private cause of action for those aggrieved.

But where there is a will, there is a way. Within his Miami-Dade County, Fla., civil division complaint, Pierre-Paul seeks recovery from ESPN and its reporter for damages for the violation of Florida statute Section 456.057 (Count 1) and invasion of privacy (Count 2). Absent as a defendant in the suit is the hospital.

Florida statute Section 456.057 prohibits the disclosure of medical records without the patient's consent. But, if medical records are disclosed to a third party, Florida statute Section 456.057(11) provides that "the third party to whom information is disclosed is prohibited from further disclosing any information in the medical record without the expressed written consent of the patient or the patient's legal representative."

### TIME-OUT

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Pierre-Paul's complaint alleges that the hospital disclosed his medical chart to Schefter (a third party) and that Schefter was prohibited from further disclosing it or any information therein without the expressed written consent of Pierre-Paul.

On April 7 of this year, ESPN successfully removed the case to the U.S. District for the Southern District of Florida where they filed a motion to dismiss. On May 5, Pierre-Paul filed his response to said motion. Pending is the district court's ruling on the motion to dismiss.

ESPN argues that Florida statute Section 456.057(11) is like HIPAA and does not create a private right of action and only applies to health-care providers and enumerated third parties that are permitted by the statute to obtain records without the patient's consent. Thus, ESPN and Adam Schefter are not third parties to whom the state statute applies.

Conversely, Pierre-Paul argues that the statute creates a broad doctor-patient privilege of confidentiality, which extends to ESPN and Schefter in this scenario.

If Pierre-Paul's lawsuit survives the motion to dismiss, he will face a difficult burden in pre-

vailing in both Counts 1 and 2. He will also need to prove that he was damaged by the release of the medical chart by Schefter, and not just by the injury itself.

After the July 4 accident, Pierre-Paul lost his chance at a major contract with the Giants after concerns were raised about his long-term health. Arguably, the leaked information contained in the private medical chart did not ease the Giants' concerns about his physical health.

Although they may not have been able to access the medical chart without the player's permission, it is unlikely that Pierre-Paul's team would not have discovered the medical information through the team's own assessments.

Professional athletes have little medical privacy from their teams. Sports teams are well aware of HIPAA risks. Accordingly, some organizations contract themselves out of potential liabilities related to the disclosure of a player's medical information, at least within the organization.

Specifically, the NFL collective bargaining agreement contains a HIPAA clause that allows team physicians to share medical information concerning players with coaches and others within the organization without being susceptible to liability for the disclosure of medical information without the player's consent.

Even if Pierre-Paul ultimately does not win his lawsuit against ESPN and Schefter, he has reportedly settled with Jackson Memorial Hospital, which would likely explain why the entity was not joined as a defendant here.

And, he also has his continuing NFL career to fall back on, unlike Tampa Bay Buccaneers cornerback and former Bear C.J. Wilson who was forced to retire after losing two fingers in a similar fireworks accident.