

Supreme Court Overturns State Law Restrictions on Data-Mining

In a 6-3 decision on June 23, 2011, the U.S. Supreme Court overturned a 2007 Vermont law that restricted data-mining companies from using and selling individual doctor's prescribing patterns without the physician's permission.¹ Vermont argued that the law intended to promote state interest in protecting medical privacy, improving public health, and controlling healthcare costs through encouraging prescription of generic drugs.² Data-mining and pharmaceutical companies argued that, in order to encourage generic drug prescriptions, the law was paternalistic towards physicians and prevented them from learning about new, name brand pharmaceuticals.³ The Court ruled that limitations the Vermont law put on pharmaceutical marketing infringed on the First Amendment right to freedom of speech.⁴ This ruling will have significant effects on how states address pharmaceutical controls and healthcare expenditures.

In an attempt to control pharmaceutical companies' aggressive marketing to physicians and lower overall health expenditures, the Vermont law limited the release of physicians' prescribing histories.⁵ Prior to the 2007 law, pharmacies sold prescribing information to data-mining companies, which would then package and sell the provider's name and address; quantity and type of medication prescribed; where the prescription was filled; and the patient's gender and age.⁶ Pharmaceutical companies would purchase this information to tailor marketing of products to specific physicians based on the physician's prescribing history, in a technique known as "detailing."⁷

Certain representatives of the provider community have voiced concerns over the June ruling. The New England Journal of Medicine's Executive Director, Dr. Gregory D. Curfman, stated that under the Court's decision, pharmaceutical companies may have a greater influence on physicians' prescribing choices.⁸ Dr. Norman Ward, Vice President of the Vermont Medical Society (VMS), also spoke out against the court's decision, stating: "*With health care costs so out of control, to promote a playing field that arms those wishing to promote specific, higher-cost, brand name drugs that may or may not have more efficacy than generic drugs seems unwise.*"⁹

In response to these stated concerns by the provider community, data-mining and pharmaceutical companies

note that information obtained from pharmacies are used for purposes other than drug company marketing. Vice President of IMS, a data-mining company, stated that prescription related information obtained from pharmacies is a "*great benefit in terms of improving patient care.*"¹⁰ Pharmaceutical companies claimed that prescribing data can help researchers and the government monitor the safety of new medications and treatments. Justice Kennedy echoed this argument in the Courts decision, stating: "*The free flow of commercial speech 'has great relevance in the fields of medicine and public health, where information can save lives.*"¹¹

Other states have endeavored to regulate the pharmaceutical industry, including Arizona, Iowa and Nevada, who attempted to pass legislation protecting prescriber information. Each state court overturned their respective laws, and the Supreme Courts' decision may set precedent to strike similar laws in Maine and New Hampshire.¹² Despite judicial support of data-mining practices, efforts are being made to limit drug companies' marketing approaches. In 2006, the American Medical Association created the Physician Data Restriction Program (PDRP), permitting prescribers to opt out of data-mining policies that share prescribing habits with pharmaceutical companies.¹³ From 2008 to 2011, the PDRP enrollment has grown from 18,600 to 27,061 and is expected to continue to increase.¹⁴ While the June decision may significantly impact pharmaceutical operations in Vermont and other states, the ruling acknowledges privacy as a legitimate state interest, which may leave the door open for future legislation regarding data-mining practices.¹⁵

1 Sorrell v IMS Health Inc., 564 U.S. _ (2011), slip opinion available at <http://www.supremecourt.gov/opinions/10pdf/10-779.pdf>.

2 "High Court Voids Vermont Ban on Prescription Drug Data Mining" By Mark Sherman, The Washington Times, June 23, 2011, p. 1.

3 "Drug Makers Win Two Supreme Court Decisions" By Adam Liptak, The New York Times, June 23, 2011, p. 3.

4 "Supreme Court Nixes Vt. Prescription Data Mining Restrictions" By Jeff Byers, CMIO News Portal, June 23, 2011, http://www.cmio.net/index.php?option=com_articles&article=28411&publication=56&view=portals (Accessed 7/1/2011).

5 "Supreme Court Strikes Down Vermont Prescription Data Mining Law" By Marcy Wilder and Eric Bukstein, Health Law Reporter, Vol. 20, No. 1005, June 30, 2011.

6 "Supreme Court Strikes Down Vermont Prescription Data Mining Law" By Marcy Wilder and Eric Bukstein, Health Law

(Continued from previous page)

- Reporter, Vol. 20, No. 1005, June 30, 2011, p. 1; “Data Mining’ Ban Violates Free Speech, Court Rules” By Rich Daly, Psychiatric News, Vol. 46, No. 1, January 7, 2011, p. 1.
- 7 “Drug Makers Win Two Supreme Court Decisions” By Adam Liptak, The New York Times, June 23, 2011, p. 3.
- 8 “Supreme Court Hands Drug Companies Twin Wins” By Nina Totenberg, National Public Radio, June 23, 2011 <http://www.npr.org/2011/06/23/137382574/supreme-court-hands-drug-companies-twin-wins> (Accessed 7/1/2011).
- 9 “Supreme Court Hands Drug Companies Twin Wins” By Nina Totenberg, National Public Radio, June 23, 2011 <http://www.npr.org/2011/06/23/137382574/supreme-court-hands-drug-companies-twin-wins> (Accessed 7/1/2011).
- 10 “High Court Voids Vermont Ban on Prescription Drug Data Mining” By Mark Sherman, The Washington Times, June 23, 2011, p. 2.
- 11 “High Court Voids Vermont Ban on Prescription Drug Data Mining” By Mark Sherman, The Washington Times, June 23, 2011, p. 1.
- 12 “Supreme Court Strikes Down Vermont Prescription Data Mining Law” By Marcy Wilder and Eric Bukstein, Health Law Reporter, Vol. 20, No. 1005, June 30, 2011; “Supreme Court to Tackle Access to Prescription Data” By Alicia Gallegos, American Medical News, February 21, 2011, p. 1.
- 13 “PDRP: The Choice is Yours” American Medical Association, 2011, http://www.ama-assn.org/ama1/pub/upload/mm/432/pdrp_brochure.pdf (Accessed 7/5/2011).
- 14 “Supreme Court to Tackle Access to Prescription Data” By Alicia Gallegos, American Medical News, February 21, 2011, p. 1.
- 15 “Supreme Court Strikes Down Vermont Prescription Data Mining Law” By Marcy Wilder and Eric Bukstein, Health Law Reporter, Vol. 20, No. 1005, June 30, 2011.



(800) FYI - VALU

*Providing Solutions
in the Era of
Healthcare Reform*

Founded in 1993, HCC is a
nationally recognized healthcare
economic financial consulting firm

- [HCC Home](#)
- [Firm Profile](#)
- [HCC Services](#)
- [HCC Experts](#)
- [Clients Projects](#)
- [HCC News](#)
- [Upcoming Events](#)
- [Contact Us](#)
- [Email Us](#)

HEALTH CAPITAL CONSULTANTS (HCC) is an established, nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, Missouri, with regional personnel nationwide. Founded in 1993, HCC has served clients in over 45 states, in providing services including: valuation in all healthcare sectors; financial analysis, including the development of forecasts, budgets and income distribution plans; healthcare provider related intermediary services, including integration, affiliation, acquisition and divestiture; Certificate of Need (CON) and regulatory consulting; litigation support and expert witness services; and, industry research services for healthcare providers and their advisors. HCC's accredited professionals are supported by an experienced research and library support staff to maintain a thorough and extensive knowledge of the healthcare reimbursement, regulatory, technological and competitive environment.



Robert James Cimasi, MHA, ASA, FRICS, MCBA, AVA, CM&AA, serves as President of **HEALTH CAPITAL CONSULTANTS (HCC)**, a nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, MO, serving clients in 49 states since 1993. Mr. Cimasi has over thirty years of experience in serving clients, with a professional focus on the financial and economic aspects of healthcare service sector entities including: valuation consulting and capital formation services; healthcare industry transactions including joint ventures, mergers, acquisitions, and divestitures; litigation support & expert testimony; and, certificate-of-need and other regulatory and policy planning consulting.

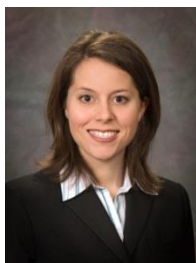
Mr. Cimasi holds a Masters in Health Administration from the University of Maryland, as well as several professional designations: Accredited Senior Appraiser (ASA – American Society of Appraisers); Fellow Royal Intuition of Chartered Surveyors (FRICS – Royal Institute of Chartered Surveyors); Master Certified Business Appraiser (MCBA – Institute of Business Appraisers); Accredited Valuation Analyst (AVA – National Association of Certified Valuators and Analysts); and, Certified Merger & Acquisition Advisor (CM&AA – Alliance of Merger & Acquisition Advisors). He has served as an expert witness on cases in numerous courts, and has provided testimony before federal and state legislative committees. He is a nationally known speaker on healthcare industry topics, the author of several books, the latest of which include: *“The U.S. Healthcare Certificate of Need Sourcebook”* [2005 - Beard Books], *“An Exciting Insight into the Healthcare Industry and Medical Practice Valuation”* [2002 – AICPA], and *“A Guide to Consulting Services for Emerging Healthcare Organizations”* [1999 John Wiley and Sons].

Mr. Cimasi is the author of numerous additional chapters in anthologies; books, and legal treatises; published articles in peer reviewed and industry trade journals; research papers and case studies; and, is often quoted by healthcare industry press. In 2006, Mr. Cimasi was honored with the prestigious *“Shannon Pratt Award in Business Valuation”* conferred by the Institute of Business Appraisers. Mr. Cimasi serves on the Editorial Board of the Business Appraisals Practice of the Institute of Business Appraisers, of which he is a member of the College of Fellows.



Todd A. Zigrang, MBA, MHA, ASA, FACHE, is the Senior Vice President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where he focuses on the areas valuation and financial analysis for hospitals and other healthcare enterprises. Mr. Zigrang has significant physician integration and financial analysis experience, and has participated in the development of a physician-owned multi-specialty MSO and networks involving a wide range of specialties; physician-owned hospitals, as well as several limited liability companies for the purpose of acquiring acute care and specialty hospitals, ASCs and other ancillary facilities; participated in the evaluation and negotiation of managed care contracts, performed and assisted in the valuation of various healthcare entities and related litigation support engagements; created pro-forma financials; written business plans; conducted a range of industry research; completed due diligence practice analysis; overseen the selection process for vendors, contractors, and architects; and, worked on the arrangement of financing.

Mr. Zigrang holds a Master of Science in Health Administration and a Masters in Business Administration from the University of Missouri at Columbia, and is a Fellow of the American College of Healthcare Executives. He has co-authored *“Research and Financial Benchmarking in the Healthcare Industry”* (STP Financial Management) and *“Healthcare Industry Research and its Application in Financial Consulting”* (Aspen Publishers). He has additionally taught before the Institute of Business Appraisers and CPA Leadership Institute, and has presented healthcare industry valuation related research papers before the Healthcare Financial Management Association; the National CPA Health Care Adviser's Association; Association for Corporate Growth; Infocast Executive Education Series; the St. Louis Business Valuation Roundtable; and, Physician Hospitals of America.



Anne P. Sharamitaro, Esq., is the Vice President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where she focuses on the areas of Certificate of Need (CON); regulatory compliance, managed care, and antitrust consulting. Ms. Sharamitaro is a member of the Missouri Bar and holds a J.D. and Health Law Certificate from Saint Louis University School of Law, where she served as an editor for the Journal of Health Law, published by the American Health Lawyers Association. She has presented healthcare industry related research papers before Physician Hospitals of America and the National Association of Certified Valuation Analysts and co-authored chapters in *“Healthcare Organizations: Financial Management Strategies,”* published in 2008.