



## Breen v. Williams

(1996) 186 CLR 71; (1996) 43 ALD 481; (1996) 138 ALR 259; (1996) 70 ALJR 772; [1996] 13 Leg Rep 11; [1996] HCA 57

**Country:** Australia

**Region:** Oceania

**Year:** 1996

**Court:** High Court

**Health Topics:** Health information, Informed consent, Medical malpractice

**Human Rights:** Right of access to information, Right to bodily integrity, Right to property

### Facts

In 1977, Julie Breen had a bilateral augmentation mammoplasty which involved the insertion of a silicone implant in each of her breasts. She later developed a complication in the way of bilateral breast capsules. In 1978, she sought the opinion of Dr. Cholmondeley Williams, who had not performed the original procedure. Dr. Williams advised Breen that the capsules could be compressed and performed that operation. Breen continued to experience pain and in time, a final operation, a bilateral capsulotomy, was performed by Dr. Williams.

In 1984, another doctor diagnosed a lump in Breen's left breast as silicone gel which had leaked from the breast implant. A partial mastectomy was then performed on Breen. She later had further corrective surgery on both breasts.

A class action was filed against the manufacturer of the implants in the United States. It was alleged that the implants were defective. In 1994, Breen was given the opportunity to accept to a settlement approved by a United States court on the condition that she file copies of medical records in support of any claim which she wished to make.

Breen sought access to the records kept by Dr. Williams in order to fulfill this condition. She also maintained that she had a right of access to the medical records to ensure that she had all information relating to her health at her disposal, thereby enabling her to make decisions about her future treatment.

Breen had the option of obtaining access to the documents by way of compulsory court process or letters of rogatory. Instead, she commenced an action in the Supreme Court of New South Wales, claiming a declaration that she was entitled to access to the medical records kept by Dr. Williams in relation to herself.

Breen failed at first instance and in the Court of Appeal. She appealed to the High Court.

### Decision and Reasoning

Breen argued that she had a right to access her records based on contract law, property law, the law of fiduciary duties and a more general "right to know."

The Court rejected the argument that a right of a patient to access their medical records could be established under contract law. The Court noted that the duties of a doctor towards the patient are rarely set out expressly in a formal agreement. In the absence of a special contract, the contractual obligations placed on a doctor did not extend beyond a duty to treat patients with reasonable care and skill.

Breen also argued that a term should be implied into the contract imposing a duty on doctors to act in the "best interests" of the patient. The Court refused to imply this term into the contract as it was neither necessary to give effect to the contract, nor was it able to be presumed to be the intention of the parties.

Even if the term was implied, the Court commented that it would not necessarily guarantee patients access to their records. There may be situations in which denying access to medical records would be in the best interests of a client who may not understand the information in them or may be unduly worried by the contents of the records.

The Court also rejected the argument that Breen held any proprietary interest in the information contained in the medical records. Dr. Williams held the copyright to the information and thus the sole right to copy or permit the copy of the information. Dr. Williams also owned the physical property of the files.

Likewise, a right to access medical records could not be established on the basis of a fiduciary relationship. The Court was prepared to accept that a doctor-patient relationship exhibits many of the characteristics of established fiduciary relationships. However, the court stated that the fiduciary nature of the relationship would not cover the entire relationship. Hence, the duties imposed on the ascendant party would not extend beyond the duty to avoid a conflict of interest and the obligation to account for any profits obtained by virtue of his or her position as a fiduciary.

The Court refused to follow the Canadian case of *McInerney v. McDonald* (1992) 93 DLR (4th) 415 which recognized a right of access to records arising from the fiduciary duty of the doctor to his or her patient. The Court held that the divergences between Canadian and Australian fiduciary law were too great to apply this case as authority in Australia.

Finally, the Court found there was no "right to know" under Australian law. The Court rejected the argument that *Rogers v. Whitaker* (1992) 175 CLR 479 established a general common law right to know. Instead, *Rogers v. Whitaker* was confined to its facts, which involved the extent of a doctor's obligation to inform a patient of the risks of treatment.

### **Decision Excerpts**

"An undertaking to provide information is one thing; a duty to give the patient access to, and to permit the patient to copy, the doctor's records is another. The doctor's duty to provide information not only can be discharged, but in some circumstances ought to be discharged, without allowing the patient to see the doctor's records. Where that duty can be performed without giving the patient access to the doctor's records, there is no foundation for implying any obligation to give that access. There is no evidence in this case to suggest that access to the respondent's records might have been necessary to avoid or diminish the possibility of prejudice to the appellant's health." 43 ALD p. 484.

"No doubt there are people in this country who think that a patient should have an unrestricted right of access to medical records that concern that patient. Many others, Ms Breen among them, no doubt think that a patient should have access to such records, subject to limited exceptions. Perhaps only a very small minority of persons in Australia would think that in no circumstances should patients have access to information contained in their medical records. But absent a contractual right, the common law of Australia does not give a patient a right to have access to records, compiled by a medical practitioner, which relate to that patient. Nor, for the reasons that we have given, is it possible for this court to develop existing principles to create such a right."  
43 ALD p. 509.