From:	Stephen Hoffman
To:	Amy Bowne
Subject:	Proposed Amendment to SC Rule 218
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The proposed amendment, which seeks to "fix" the objections to the HIPAA Protective Order required in Cook County and other jurisdictions, itself is objectionable.

My comments will be brief, in that so many of my trial bar colleagues have already voiced theirs far more eloquently.

Clearly, the thought of a plaintiff waiving all rights to privacy for his or her entire medical history acts to chill potential litigants from seeking justice. Already, plaintiffs are in a far from equal situation vis-à-vis large insurance companies. Plaintiffs and their attorneys must expend great sums of money in advance merely to prosecute their case. They have the burden of proof. In contrast, insurers have nearly unlimited resources and no burden of proving anything. They merely have to prevent the plaintiff from proving his case.

Further, the proposal seeks to allow insurance companies to retain and index this health privacy information. Not only does this hurt the plaintiff in the immediate action, but it also harms future plaintiffs in that this information will be used against others, to show patterns, and further analyzed by paid "experts."

The "old way" of handling plaintiffs personal health information required a clear showing of injuries to the same part of the body before defense counsel could go down the garden path and open the can of worms that was the private health information of the plaintiff. The rules proposed blows this up so that nearly everything is fair game.

Needless to say, there are a plethora of cases that seemingly forbid this.

Palm v. Holocker, 2018 IL 123152 references that the only things that can be issues of further investigation must be those placed there by the plaintiff. This would seemingly prevent the fishing expedition into ALL of the plaintiff's health records by defense counsel that would be allowed under the proposed amendment.

Further, Kunkel v. Walton, 179 Ill. 2d 518, found that a subpoena seeking personal information was unreasonably broad. That case found Section 2-1003(a) of the Illinois Code of Civil Procedure unconstitutional, in that it required a personal injury plaintiff to sign consents to furnish all of his or her health information, regardless of the relevance to the claim.

Clearly, there is emphatic objection to this proposal and to the current court-mandated HIPAA order. It is unfair, it is unconstitutional, it is overbroad, and it further diminishes the plaintiffs bargaining power both in the immediate case and in the future. It is nothing more than a gift to the insurance industry.

For all of those reasons, I object strenuously.

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