From: James Coogan
To: Amy Bowne
Subject: Public Comment Protesting Change 18-01 (P.R. 0252) Amendment to Rule 218
Date: Tuesday, April 30, 2019 3:02:32 PM

Ms. Browne,

I write to you to oppose the proposed change to SCR 218. I am very familiar with Rule 218 and pre trial civil procedure in Illinois. I am also extremely familiar with the issues surrounding the disclosure, subpoena, and use of medical records and private health information in injury cases. I have been an Illinois attorney since 2006 and have spent my career working with injured people.

This means that virtually every client I have represented had their medical condition at issue. Thus, they have been advised that the Defendant and its Insurer are entitled to their health information. They are made aware that surrendering some level of privacy is necessary in order to obtain any measure of justice for their injury and their losses. But the process has always included important restrictions on how medical information is transmitted, how it is used, and how it is disposed of at the conclusion of a claim or lawsuit.

The Illinois Constitution's Preamble sets forth that the purpose of the Constitution is to "provide health, safety and welfare of the people;" as well as "social and economic justice." Section 6 declares that people "shall have the right to be secure in their persons…against unreasonable searches, seizures, invasions of privacy…" Section 12 ensures that every Illinoisan "shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation."

Those rights are all crucial to the economic welfare of Illinois citizens. And that means that Illinoisans have the right to a civil remedy for injuries caused by the negligence of others without completely-forfeiting their right to privacy in their person and their health information. Before the recent Cook County Rule that required the entry of an Order pertaining to Health information, there had been 'Qualified HIPAA Orders' that set forth that Plaintiffs in injury cases had a right to privacy, but that the Defendant would have the right to obtain medical records and bills subject to qualifications. Those qualifications restricted the scope of records, which providers records may be sought from, the time period for the records, and required that the records be turned over or destroyed once the litigation was complete. It also set forth that the Mental Health, Substance Abuse, and Communicable disease information was protected by Statute.

That system made sense. It allowed a person to make a claim for injuries as well as respecting the right of defendants to examine evidence of injuries and defend themselves. It placed reasonable and rational restrictions on the scope of information that was produced. Injured people were also protected by the law of *Petrillo v. Syntex Laboratories, Inc.*, 148 Ill. App. 3d 581 (1st Dist. 1986) that prohibited defendants, their attorneys, or insurance companies from direct communication with the Plaintiff's healthcare providers. It was logically based upon the confidentiality of communications between patients and their doctors.

All of these reasonable and rational restrictions, tailored to promote the rights of the injured as well as the liable, would be upended by the proposal to Rule 218. Rather than respect the Illinois Constitutional limits on the information that insurance companies may receive when liable for injuries, the new rule *would require an injured person to waive their right to privacy*.

(b) Protective Order for the Release of Medical Information.

In any case in which the plaintiff's medical condition is at issue, the plaintiff shall present at the initial case management conference an executed waiver of the plaintiff's right to privacy over the plaintiff's medical information to be produced in discovery. The waiver shall be contained in the court order for the release of those records and shall be in the form provided.

Not only is this completely-unnecessary, but it violates all of the Illinois Constitutional protections for privacy, the ability to seek economic justice, and a right to a remedy. Choosing between waiving all privacy rights and a legal remedy is no choice at all. No one should have to surrender all of the Constitution's protections just to make a simple back injury claim for a motor vehicle collision. The additional $20,000 or $30,000 could make all the difference for someone who needs every paycheck and missed 2 months of work due to injuries and also had to pay medical bills.

This change to the rule would require them to surrender all of their medical history to State Farm or Allstate just to obtain a small measure of justice (and avoid losing their house or missing a payment for their mother's nursing home).

It is obvious why this rule would be popular for the Defense bar and Insurance companies. This would allow them to legally catalogue every piece of health information for every person who makes any kind of injury claim in Illinois forever. It would allow them to do whatever they like with that information: sell to third-parties? Advertisers? Drug makers? And it means that many people would opt not to make a claim in order to preserve rights that the Constitution had already guaranteed.

These ends are contrary to the spirit of the law and any reasonable notion of justice. And they defeat the rights of individual Illinoisans who simply seek justice.

I strongly oppose this change and believe that it must be rejected.

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