From:	Chelsea L. Caldwell
To:	Amy Bowne
Subject:	Proposal 18-01- ISCR 218 Changes
Date:	Wednesday, May 22, 2019 3:42:19 PM
Attachments:	image001.png

Ms. Bowne,

I am an attorney who has committed my entire career to representing wrongfully injured individual in Illinois against tortfeasors and the insurance companies who back them. I have reviewed the proposed amendment to ILCS 218 which would require all plaintiffs at the initial case management to waive their constitutional right to privacy over his or her medial information produced in discovery. This would be a dramatic change in how these cases have been handled for years. A change which, in my opinion, would be a step in the wrong direction. I have also reviewed many of the comments submitted to date and agree with a vast majority of the same. In the interest of efficacy, I will briefly highlight my concerns.

First, by filing a personal injury lawsuit an accident victim does not place the entirety of her medical history of health information at issue. Currently the proposal is written without any limitations in time or scope. More devastatingly, there are no limitations on the use of private health information obtained throughout discovery. This would allow defendants and their insurance companies to review, record, catalogue, disseminate and retain otherwise private information carte blanche. This requirement is directly against Illinois law. For example, a subpoena seeking personal information unreasonably broad in its demand and general in its terms constitutes an unreasonable search and seizure. *Kunkel v. Walton*, 179 Ill.2d 519, 540 (1998). In its decision the Illinois Supreme Court ruled unconstitutional Section 2-1003(a) of the Illinois Code of Civil Procedure, which required a personal injury plaintiff to sign consents furnishing all of her medical information, regardless of its relevance to the claim. Similar to that requirement, the proposed change unconstitutionally requires a plaintiff to sign a consent to furnish her medical information regardless of relevance.

Also, the sample proposed HIPAA Qualified Protective Order, despite its name, does not comply with the requirements of HIPAA. Under the requirements outlined by HIPAA a Qualified Protective Order must contain, in part, provisions which prohibit parties from using or disclosing protected health protected health information for any purpose other than the litigation and requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding. *See* 164.512(e)(l)(v)(A) and 164.512(e)(l)(v)(B). As written, the proposed order does not contain those two requirements and is therefore not in compliance with federal law.

Thank you for your time, consideration and the work you are doing. I sincerely hope we are able to come to a reasonable conclusion which is fair to all persons involved. Should you have any questions or require any additional information, please do not hesitate to contact me.

Regards,
Chelsea

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