No. 125918

In the

Supreme Court of Illinois

AGNIESZKA SURLOCK and EDWARD SURLOCK,

Plaintiffs-Appellees,

v.

DRAGOSLAV STARCEVIC,

Defendant,

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Intervenor-Appellant.

ROSEMARIE HAAGE,

Plaintiff-Appellee,

v.

ALFONSO MONTIEL ZAVALA, PATRICIA SANTIAGO, JOSE PACHECO-VILLANUEVO, OKAN ESMEZ and ROSALINA ESMEZ,

Defendants,

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Intervenor-Appellant.

On Petition for Leave to Appeal from the Appellate Court of Illinois,
Second Judicial District, Consolidated Nos. 2-19-0499 & 2-19-0500.
There Heard on Appeal from the Circuit Court of the Nineteenth Judicial Circuit,
Lake County, Illinois, Nos. 18 L 39 and 17 L 897.
The Honorable **Mitchell L. Hoffman** and **Diane E. Winter**, Judges Presiding.

AMICUS CURIAE BRIEF OF ILLINOIS PUBLIC RESEARCH GROUP IN SUPPORT OF PLAINTIFFS-APPELLEES, ROSEMARIE HAAGE and AGNIESZKA SURLOCK

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TABLE OF CONTENTS AND STATEMENT OF POINTS AND AUTHORITIES

STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus Curiae Illinois Public Interest Research Group (PIRG) respectfully submits this brief in support of Plaintiff-Appellees Haage and Surlock. PIRG submits this *Amicus Curiae* brief to apprise the Court of the dangers that Intervenor-Appellant's proposed order brings to Illinoisans' right to privacy and the chilling effect such an intrusive order will have upon the physician-patient relationship.

PIRG is a not-for-profit advocate for the public interest. Through research, public education, and outreach, it serves as a counterweight to the powerful special interests that threaten our health, safety, and well-being. IL PIRG has been an active defender of Illinoisans' constitutional right to privacy and has been a leading advocate in the fight to maintain our right to privacy, including advocating for maintaining strong privacy protection through the legislative process.

ARGUMENT

I. Illinoisans enjoy a constitutional right to privacy in their medical records.

Privacy is a fundamental right in Illinois. Illinois is one of only ten states to expressly recognize the right to privacy as a fundamental constitutional right. Ill. Const. art. 1, Sec 6. This right exceeds the federal constitutional guarantees by expressly recognizing a zone of personal privacy, and the protection of that privacy is stated broadly and without restrictions. *Kunkel v. Walton*, 179 Ill. 2d 519, 537 (1997). The confidentiality of personal medical information is, without question, at the core of what society regards as a fundamental component of individual privacy. *Id.* Therefore, any attempt to invade that right to privacy, including an intrusion into one's private medical information, must be weighed carefully. This is especially so here, where the remedy sought by Intervenor-

Appellant is to create a judicially-mandated waiver of the constitutional right to privacy. The right to a remedy is also enshrined in the Illinois Constitution. Ill. Const. Art. 1, Sec 12. The ability to exercise the right to a remedy should not be conditioned on waiver of the right to privacy.

Intervenor-Appellant requests this Court approve and adopt state-wide its proposed order, which explicitly requires a plaintiff to waive her constitutional right of privacy as a condition of bringing her personal injury claim. When a person files a personal injury lawsuit to exercise her right to a remedy, she must not be forced to consent to, nor is it necessary to allow for, the unfettered collection of her personal healthcare information (PHI). Yet, Intervenor-Appellant would have this Court allow every liability insurer in Illinois to collect and retain, in every personal injury case, a plaintiff's PHI as long as the insurer wishes to do so, leaving it free to data mine and disseminate the PHI indefinitely and for purposes wholly unrelated to its need to defend its insured within the litigation context.

A litigant has no constitutional right to disseminate information made available only for purposes of trying his suit. *See May Ctrs., Inc. v. S.G. Adams Printing & Stationary Co.,* 153 Ill. App. 3d 1018, 1023 (5th Dist. 1987) (citing *Seattle Times Co. v. Rinehart*, 467 U.S. 20, 31-31. (1984)). In *May Ctrs., Inc.*, the appellate court found good cause existed for entry of a protective order to prevent dissemination of sensitive business information because, otherwise, a business injury would occur to the plaintiff. *Id*. at 1023. This, the appellate court reasoned, was neither a necessary nor a desirable price for the plaintiff to pay to vindicate its alleged rights. *Id*. at 1022. If a mere "business injury" was too high a price for a plaintiff to pay to vindicate its alleged rights, then the unfettered

retention, use and dissemination by a defendant or his insurer of inherently sensitive, constitutionally protected, personal medical information, even long after litigation has ended, cannot be the price a plaintiff must be made to pay to vindicate her rights in court.

The breath of the Intervenor-Appellant's proposed order is staggering. There is no limitation as to time or scope in terms of what the order authorizes health care entities to disclose. The proposed order specifically does not anticipate further actions by the court to tailor discovery to protect privacy rights, as demonstrated by the statement within it that "any covered entity… that fails or refuses to disclose PHI in accordance with this court order may be subject to all sanctions…" (A.83). The plain language of that statement impermissibly requires the disclosure of all of a plaintiff's PHI by entities possessing it, regardless of disclosure requirements otherwise imposed on them by state and federal law, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, enacted on August 21, 1996.

The Supreme Court, in *Rinehart*, affirmed a ruling of the Washington Supreme Court that a plaintiff-newspaper's First Amendment right to free speech was not violated by a protective order preventing its public disclosure of confidential financial information concerning the defendant produced in litigation pursuant to that state's discovery rules. *Rinehart*, 467 U.S. at 36-37. Quoting approvingly the Washington Supreme Court statement that such disclosure might well cause plaintiffs to forego litigation, the *Rinehart* Court affirmed the entry of the protective order on the basis that disclosure outside of litigation would be damaging to the affected persons' reputation and privacy and would expose them to unwanted abuse. *Id*. at 37.

In *Rinehart*, the Supreme Court found that preventing the dissemination of private financial information outside of the litigation in which it was produced was necessary to protect the privacy rights of the individuals to whom the financial information belonged and to prevent the chilling effect such disclosure would have on those individuals' access to the courts. *Id.* Likewise, there is no doubt that a plaintiff in Illinois deserves that same level of protection in regard to her PHI, and to the physician-patient communications contained within it, in order to protect her from damage to her reputation and unwanted intrusion into her privacy as well.

II. Intervenor-Appellant's proposed order impermissibly requires a waiver of the fundamental right to privacy.

The very first paragraph of Intervenor-Appellant's proposed order states, "this Court explicitly finds that this court order is necessary to: 1) Protect a party's right to privacy as guaranteed by article I, section 6 of the Illinois constitution for each party in this lawsuit." (A.81). However, the proposed order goes on to "protect" the constitutional right to privacy by requiring that very right be waived without restriction as a condition of litigating the claim. Intervenor-Appellant offers no explanation as to why an unlimited waiver of a fundamental, constitutional right to privacy is necessary in exchange for the claimant being able to exercise her constitutional right to a remedy.

Intervenor-Appellant's proposed order states, in relevant part,:

> A party disclosing PHI explicitly stipulates that she or he:
>
> 1. Read this court order before signing their name to be bound by it;
> 2. Discussed the contents of this court order with their attorney of record in this litigation and had the opportunity to ask questions;
> 3. Was informed of and fully understands the consequences of the entry of this court order;
> 4. Freely and without reservation stipulates to the entire contents of this court order; and

> 5. Understands that by refusing to consent to the contents of this order, the court may impose sanctions up to and including dismissal of the complaint. (A.82)

It is disturbing that the proposed order requires a plaintiff to stipulate that she "freely and without reservation stipulates to the entire contents of this order," yet further stipulate that she, "understands that by refusing to consent to the contents of this order, the court may impose sanctions up to and including dismissal of the complaint." *Id*. Any action taken under threat of punishment, especially the act of waiving a constitutional right to privacy under the threat of deprivation of a plaintiff's constitutional right to a remedy, cannot ever be seen as being made "freely and without reservation."

If this Court were reviewing a statute that required a plaintiff to waive its constitutional right to privacy or risk being deprived of its constitutional right to a remedy, which is what Intervenor-Appellant's proposed order requires, the statute would need to pass muster under a strict scrutiny analysis. Thus, this Court should consider the waiver of the right to privacy contained within the Intervenor-Appellant's proposed order in this same light, as it undoubtedly acts as a governmental action, albeit judicially created, which infringes upon the fundamental right to privacy guaranteed by the Illinois Constitution. There is no situation in which the constitutional right to privacy in one's PHI can be properly subjugated to a private business's desire to collect, retain, disseminate and use that very personal information for its own business purposes.

The purported justification for allowing insurance companies such as Intervenor-Appellant to collect, retain, disseminate and use PHI is to comply with rules and regulations of the Illinois Department of Insurance. However, nothing in the record supports this contention. There has been no showing that any of the rules or regulations have been

interpreted by the Department of Insurance to require liability insurers to retain claimants' medical records obtained in litigation. In fact, the opposite conclusion is true. Protective orders requiring the destruction of medical records at the end of a personal injury case have been in place, and presumably abided with, for many years in Illinois. Pursuant to General Order 12-1, Standard HIPAA Qualified Protective Order, the Circuit Court of Cook County used a HIPAA order since 2012 until 2018 which contained use and destruction provisions. (S.A.1) On information and belief, similar protective orders requiring the destruction of a plaintiff's medical records at the conclusion of their litigation have been, and continue to be, entered by state and federal courts across Illinois. It is no stretch of the imagination to suggest that there have been thousands of cases, likely tens of thousands, statewide over the years, and continuing, in which entities such as Intervenor-Appellant complied with the protective orders, using PHI only in litigation and then destroying it. If the justification for the unrestricted collection, retention, dissemination and use of PHI was truly to allow liability insurers to comply with long-standing rules and regulations of the Department of Insurance, there would already have been many instances over the years in which Intervenor-Appellant and other insurance companies found themselves at odds with the Department of Insurance over the destruction of these records and penalized as a result. However, that has not been the case, and the Department of Insurance has clearly and unequivocally stated, "The department does not require or need protected health information. Further, neither the Insurance Department nor the Governor have taken action against an insurance company for destroying or otherwise failing to retain protected health information." (R.C.110, & 114).

III. Intervenor-Appellant's proposed protective order fails to safeguard the physician-patient privilege.

Section 8-802 of the Code of Civil Procedure provides that "[n]o physician or surgeon shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her professionally to serve the patient." 735 ILCS 5/8-802. This physician-patient privilege exists to encourage disclosure between a doctor and a patient and to protect the patient from invasions of privacy. *See Reagan v. Searcy*, 323 Ill. App. 3d 393, 395 (2001). The purpose of the privilege is to encourage full disclosure of all medical facts by the patient in order to ensure the best diagnosis and outcome for the patient. *See People v. Wilber*, 279 Ill. App. 3d 462, 467 (4th Dist. 1996). The legislature has recognized that patients have an interest in maintaining confidentiality in their medical dealings with physicians. *People v. Florendo*, 95 Ill. 2d 155, 158 (1983).

This Court has a longstanding history of protecting personal health information. *Kunkel v. Walton*, 179 Ill. 2d 519, 537 (1997) (The confidentiality of personal medical information is, without question, at the core of what society regards as a fundamental component of individual privacy); *Florendo* at 158 (Patients have an interest in maintaining confidentiality in their medical dealings with physicians); *Petrillo v. Syntex Laboratories, Inc*., 148 Ill. App. 3d 581, 587 (1st Dist. 1986) (Illinois has a strong and broad public policy in favor of protecting the privacy rights of individuals with respect to their medical information).

Recently, in *Palm v Holocker*, 2018 IL 123152 (2019), this Court reaffirmed that "only the patient may put his or her own medical condition at issue." *Palm* at ¶28*; see Kraima v. Ausman,* 365 Ill. App. 3d 530, 536 (1st Dist. 2006) (Determining records of

physician who treated plaintiff, which pertained only to his own healthcare he received, fell within the physician-patient privilege and not discoverable as the medical conditions had not been placed in issue). Likewise, where a plaintiff has placed an injury to a specific part of the body at issue, a broad order, which does not constitute a HIPAA Qualified Protective Order, such as the one Intervenor-Appellant has proposed, would invade the physician-patient privilege by giving it access to, and continuing use of, all of a plaintiff's PHI. The result would be disclosure of records related to physician-patient communications that have no relationship to the injury a plaintiff has placed at issue. This Court should not now abandon its protection of privacy rights afforded by the physician-patient privilege, as codified by 735 ILCS 5/8-802, merely to give insurers access to, and unfettered and continuing use of, records that bear no relationship to the condition a plaintiff has placed at issue.

IV. Intervenor-Appellant's proposed order infringes on the rights of innocent uninvolved third-party's rights.

Intervenor-Appellant's proposed order will allow for the unrestricted collection, retention, dissemination and use of a claimant's PHI in a manner that impacts and infringes upon the right of privacy of uninvolved third-parties, who are in no way connected to the claim. It is not only common, but in fact nearly a universal practice, for modern medical records to contain multiple generations and degrees of family members' medical histories and personal health information. For instance, the American Medical Association (AMA) states that a patient's family medical history should be detailed and include first-, second and third-degree relatives. https://www.ama-assn.org/delivering-care/precision-medicine/collecting-family-history. The AMA's model Adult Family History Form seeks such personal information as the names, dates of birth, gender and personal health

conditions of the claimants' spouse, brothers/sisters, nieces/nephews, half-siblings, biological mother, mother's brothers and sisters and their children (including stillbirths, miscarriages and deceased), maternal grandfather, maternal grandmother, biological father; father's brothers and sisters and their children (including stillbirths, miscarriages and deceased), paternal grandfather, and paternal grandmother. There can be no doubt that a plaintiff's grandparents, parents, siblings and children would be shocked and dismayed if this Court mandated the state-wide use of a protective order that permitted any of their private health information contained in the plaintiff's medical records to be disclosed to a liability insurer in Illinois for its private business use.

Furthermore, the well-known Mayo Clinic Health System often looked to as offering the gold standard for healthcare, uses a four-page patient/family history form which covers the full body and all body systems- from the eyes and ears to bowel and bladder and testicles to ovaries- and much of the information provided on that form is certainly not going to relate to the claimed injury in any given litigation. The medical history seeks information on thirty-five separate and specific medical conditions, including those for the patient, father, mother, brothers, sisters, sons, daughters and grandparents, as well as an additional "other" term, which acts as a catch-all to be discussed with the health care provider. The form seeks information on medical conditions ranging from various cancers to genetic disorders, asthma to arthritis, and even attempted suicide. It also requests information on multiple statutorily protected conditions such as depression, psychiatric/mental illness, alcohol abuse, recreational/street drug use and sexually transmitted diseases. (S.A.4). The truthful disclosure of information related to these family and extended family member's health conditions is necessary to ensure the best healthcare

possible is provided; however, the fact that this information has been provided becomes problematic for the patient and the patient's family members when the records that contain the private health information are allowed to be disclosed and used for other purposes outside of healthcare, such as litigation. This problem becomes a potential nightmare when liability insurers are permitted to obtain the records for private business uses, with no limit in place on how long they may be retained.

The order sought by Intervenor-Appellant does not take into consideration the PHI of any of these third-party family and extended family members, none of whom are making a claim. It cannot reasonably be said that any of these family members have waived their right to privacy or the physician-patient privilege as codified by 735 ILCS 5/8-802. The family members have not placed their physical or mental health at issue in litigation to which they are not parties. Yet, the disclosure of their PHI is exactly what will occur if this Court allows for use of Intervenor-Appellant's proposed protective order. The HIPAA Qualified Protective Orders entered by the trial court in the Haage and Surlock cases protect against this harm by limiting the scope and time of the PHI to be disclosed, by requiring that the PHI may only be used in those cases and by requiring the destruction of the PHI upon termination of the litigation. (A.57).

V. Intervenor-Appellant's proposed order creates a continuing invasion of privacy.

Intervenor-Appellant's proposed protective order allows for the collection, and unlimited use, retention and re-disclosure of protected health information after litigation has concluded. (A.80). The result is not only an initial invasion of a plaintiff's (and, potentially, a plaintiff's family member's) privacy rights, but a continuing violation for an indefinite period.

Illinois has a strong and broad public policy in favor of protecting the privacy rights of individuals with respect to their medical information. This public policy is articulated and reflected in numerous Illinois statutes. *E.g.,* 735 ILCS 5/8-802 (Privileged Communications, physician and patient); 410 ILCS 305/9 (AIDS Confidentiality Act, Confidentiality; exceptions); 740 ILCS 110/3 (Mental Health and Developmental Disabilities Confidentiality Act, Confidentiality Exceptions); 410 ILCS 513/15 (Genetic Information Privacy Act, Confidentiality Exceptions); 20 ILCS 301/30-5(b) (Substance Use Disorder Act, Patients' rights established); *see also Petrillo v. Syntex Laboratories, Inc*., 148 Ill. App. 3d 581, 587 (1st Dist. 1986) (public policy is found in a state's constitution and statutes).

When a trial court in Illinois enters a HIPAA Qualified Protective Order, it should not be considering whether or how the order will permit a plaintiff's private health information to be disclosed or used by liability insurers to uncover healthcare fraud. That should not be one of the functions of a trial court. Instead, when entering a HIPAA QPO, a trial court's goal should be the protection of the plaintiff's (and, potentially, plaintiff's family member's) privacy rights to the fullest extent possible while still allowing the defendants and insurers sufficient access and use of the plaintiff's private health information to investigate and defend the claims at issue in the litigation. This goal is squarely within the ambit of a trial court's responsibility to prevent abuse of the litigation process in the individual cases that come before it. *See D.C. v. S.A.*, 178 Ill.2d 551, 560 (1997) (finding that a court must balance competing important interests and consider factual matters in determinations related to use of protected mental health records).

There is no statutory or common law authority supporting the mass collection, retention, and private use of personal injury victims' personal health information, including both medical records and bills. Intervenor-Appellant claims that liability insurance companies are required to collect and retain all PHI which may be disclosed in any given case pursuant to 215 ILCS 5/155.23. (R.C.153). This claim is false. The cited statutory provision only requires insurers to report factual information in their possession pertinent to suspected fraudulent insurance claims, fraudulent insurance applications, or premium fraud. It does not allow for the sharing of such information unless it is "pertinent to *suspected* [emphasis added] fraudulent insurance claims, fraudulent insurance applications, or premium fraud…" *Id*. It is not a blanket authorization to retain PHI once litigation is over just in case it somehow becomes relevant at some later point in time to detect fraud. In other words, the cited statute does not require or permit fishing expeditions by liability insurers, nor does it bestow upon liability insurers a right that trumps a plaintiff's constitutional right to privacy or the physician-patient privilege as codified by Illinois statute.

If this Court mandates or even just permits the entry of Intervenor-Appellant's proposed protective order, and allows insurance companies to retain plaintiffs' medical records, without limitation to time or scope, and without restriction on the use and destruction, then nothing will prevent those insurance companies from using plaintiffs' PHI for their own business uses and redisclosing the PHI to others. This creates a continuing harm to plaintiffs and innocent, uninvolved third parties whose own PHI is contained in the retained records as well. This continuous harm runs afoul of the intent of HIPAA, the

Illinois constitutional right to privacy, the physician-patient privilege as codified by 735 ILCS 5/8-802, and the public policy of this State.

Furthermore, Intervenor-Appellant's proposed protective order specifically and expressly allows for insurance companies to disclose, retain and use protected health information for purely private business interests and activities such as "Reporting; investigating; evaluating, adjusting, negotiating, arbitrating, litigating, or settling claims"; "Rate setting and regulation"; "Statistical information gathering"; "Underwriting, reserve, loss, and actuarial calculation"; "Drafting policy language"; "Workers' compensation"; and "Determining the need for and procuring excess or umbrella coverage or reinsurance." (A.80). Whether taken separately or even as a whole, the uses of PHI by liability insurers permitted by the subject proposed protective order do not justify the intrusion into Illinoisans' constitutional right to privacy or the inherent violation of the physician-patient privilege. Illinoisans should be secure in the knowledge that their most private and personal information, their medical history as contained in their medical records, will be kept private, and disclosed for non-medical purposes only if and when they put their medical condition at issue in litigation, and even then, only to the extent necessary to allow a defendant or insurer the ability to evaluate and defend the lawsuit. To mandate or even just permit the entry of Intervenor-Appellant's proposed order in this or any case would allow liability insurers to potentially collect, retain and disseminate PHI that is unrelated to medical conditions put at issue in the case and to use the PHI for purposes unrelated to the case, in some instances long after the case has concluded. In short, Intervenor-Appellant's proposed protective order would result in an unjustified violation of the constitutional established right to privacy and, thus, should be rejected by this Court.

CONCLUSION

For the reasons stated herein, *Amicus Curiae* Illinois Public Interest Research Group respectfully requests that this Court affirm the lower court entry of Plaintiffs' Qualified Protective Orders and reject the Intervenor-Appellant's proposed protective order.

Respectfully Submitted,

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Counsel for Amicus Curiae
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CERTIFICATE OF COMPLAINCE

I certify that this brief conforms to the requirements of Rules 341 and 345. The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, is 14 pages.

/s/Cynthia S. Kisser
Cynthia S. Kisser

SUPPLEMENTAL APPENDIX

TABLE OF CONTENTS TO SUPPLEMENTAL APPENDIX

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

GENERAL ADMINISTRATIVE ORDER 12-1
STANDARD HIPAA QUALIFIED PROTECTIVE ORDER

Effective immediately, all Qualified Protective Orders, entered pursuant to the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") shall conform to the attached standard approved format, in Room 2005, as well as on all motion and individual calendar calls.

Pursuant to Law Division General Administrative Order 03-4, all motions and orders for HIPAA Qualified Protective Orders shall be presented in Room 2005 and on all motion and individual calendars as "Routine Motions," with proper notice, and must be specifically labeled and contain a specific reference to the HIPAA statute.

Any objections to the entry of HIPAA Qualified Protective Orders shall be submitted in accordance with the routine motion rules and/or standing orders of motion judges and calendar judges.

IT IS HEREBY ORDERED that this Order is effective September 19, 2012, and will be spread upon the records of this court.

Dated at Chicago, Illinois, this 19th day of September, 2012.

ENTER: William D. Maddux
HON. WILLIAM D. MADDUX
Presiding Judge
Law Division

ENTERED
JUDGE WILLIAM D. MADDUX-1559
SEP 19 2012
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Plaintiff(s)	)	
-v-	)	NO:
Defendant(s)	)	

HIPAA QUALIFIED PROTECTIVE ORDER

This cause coming to be heard on the Motion of _____, for entry of a Qualified Protective Order pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA,"), due notice having been given, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED AS FOLLOWS:

(1) The current parties (and their attorneys) and any future parties (and their attorneys) to the above-captioned matter are hereby authorized to receive, subpoena, and transmit "protected health information ("PHI") pertaining to _____, to the extent and subject to the conditions outlined herein;

(2) For purposes of this Qualified Protective Order, "protected health information" or "PHI" shall have the same scope and definition as set forth in 45 CFR 160.103 and 160.501. Without limiting the generality of the foregoing, "PHI" includes, but is not limited to, health information, including demographic information, relating to either:

(a) the past, present or future physical condition of an individual;
(b) the provision of care to an individual; and/or
(c) the payment for care provided to an individual, which identifies the individual or which reasonably could be expected to identify the individual.

(3) All "covered entities" (as defined by 45 CFR 160.13) are hereby authorized to disclose "PHI" pertaining to _____ to all attorneys, now of record, or who may become of record in the future of this litigation;

(4) The parties and their attorneys shall be permitted to use the "PHI" of

_____ in any manner reasonably connected with the above-captioned litigation. This includes, but is not limited to, disclosure to the parties, the attorneys' firm (*i.e.*, attorneys, support staff, agents and consultants), the parties' insurers, experts, consultants, court personnel, court reporters, copy services, trial consultants, jurors, venire members and other entities involved in the litigation process;

(5) At the conclusion of the litigation as to any defendant (defined as the point at which final orders disposing of the entire case as to any defendant have been entered, or the time at which all trial and appellate proceedings have been exhausted as to any defendant), that defendant, and any person or entity in possession of "PHI" received pursuant to Paragraph 4, *supra*, shall destroy any and all copies of "PHI" pertaining to _____, *except*:

(a) the defendant that is no longer in the litigation may retain "PHI" generated by him/her/it; and
(b) the remaining defendants in the litigation, and persons or entities receiving "PHI" from those defendants, pursuant to Paragraph 4, *supra*, may retain "PHI" in their possession;

(6) This order shall not control or limit the use of "PHI" pertaining to _____ that comes into possession of any party, or any party's attorney, from a source *other than* a "covered entity" (as defined in 45 CFR 160.103);

(7) Nothing in this order authorizes defense counsel to obtain medical records or information through means *other than* formal discovery requests, subpoena, depositions, patient authorization, or through attorney-client communications;

(8) Nothing in this order relieves any party from complying with the requirements of:

(a) the Illinois Mental Health & Developmental Disabilities Confidentiality Act (740 ILCS 110/1 *et. seq.*);
(b) the Aids Confidentiality Act (410 ILCS 305/1 *et. seq*); or
(c) state and federal law which protects certain drug and alcohol records (20 ILCS 301/30-5; 42 USC 290dd-3, 290ee-3 and 42 CFR Part 2).

Name/#:
Atty for:
Address:
City/State:
Phone:

ENTER:

_____
JUDGE NO.

MAYO CLINIC HEALTH SYSTEM

Mankato

Patient/ Family History

Location: ☐ Mankato ☐ Fairmont ☐ New Prague ☐ Springfield ☐ St. James ☐ Waseca

PATIENT PROVIDED INFORMATION

The information you provide us will greatly help us to provide the highest quality and comprehensive care for you.

Date _____ Gender ☐ Male ☐ Female Date of birth *(Month/Day/Year)* _____

A. PAST MEDICAL HISTORY

1. Have you ever traveled or lived outside of the United States or Canada? ☐ Do not know ☐ No ☐ Yes

2. Have you ever received a blood transfusion? ☐ Do not know ☐ No ☐ Yes (If yes, check all that apply.)

☐ Before 1980 ☐ 1980-1990 ☐ After 1990

3. Have you received the following immunizations and/or had the disease?

Pneumococcal *(For pneumonia)*	☐ Do not know	☐ No	☐ Yes	Mumps	☐ Do not know	☐ No	☐ Yes
Hepatitis B	☐ Do not know	☐ No	☐ Yes	Rubella	☐ Do not know	☐ No	☐ Yes
Hepatitis A	☐ Do not know	☐ No	☐ Yes	Polio	☐ Do not know	☐ No	☐ Yes
Measles	☐ Do not know	☐ No	☐ Yes	Varicella *(For chicken pox)*	☐ Do not know	☐ No	☐ Yes

4. Indicate whether you have ever had a medical problem or surgery related to each of the following. Check all that apply.

Medical Problem	Surgery/Year	Medical Problem	Surgery/Year
Eyes _____	☐ ____	Lungs _____	☐ ____
Ears _____	☐ ____	Esophagus *(Food or swallowing pipe)* _____	☐ ____
Nose _____	☐ ____	Stomach *(Ulcer)* _____	☐ ____
Sinuses _____	☐ ____	Bowel *(Small or large intestine, rectum)* _____	☐ ____
Tonsils _____	☐ ____	Appendix _____	☐ ____
Thyroid or parathyroid gland _____	☐ ____	Lymph nodes _____	☐ ____
Heart problems:		Spleen _____	☐ ____
Heart attack _____	☐ ____	Liver _____	☐ ____
Heart valves _____	☐ ____	Gallbladder _____	☐ ____
Abnormal heart rhythm _____	☐ ____	Pancreas _____	☐ ____
Narrowed coronary arteries _____	☐ ____	Hernia _____	☐ ____
Other _____	☐ ____	Kidneys _____	☐ ____
Arteries *(Head, arms, legs, aorta, etc.)* _____	☐ ____	Bladder _____	☐ ____
Veins or blood clots in the veins _____	☐ ____	Bones _____	☐ ____

S.A.4

(Label)

Patient Name _____ DOB _____ Unit No. _____

A. PAST MEDICAL HISTORY *(Continued)*

Medical Problem	Surgery/Year	Medical Problem	Surgery/Year
Joints _____	☐ ____	Spine _____	☐ ____
Muscles _____	☐ ____	Brain _____	☐ ____
Back _____	☐ ____	Skin _____	☐ ____
Neck _____	☐ ____	Breasts _____	☐ ____
Females:		Males:	
Uterus _____	☐ ____	Prostate _____	☐ ____
Ovaries _____	☐ ____	Penis _____	☐ ____
Fallopian tubes _____	☐ ____	Testicles _____	☐ ____
Hysterectomy _____	☐ ____	Vasectomy _____	☐ ____
Other _____	☐ ____	Other _____	☐ ____
			☐ None

5. Have you been hospitalized for any other surgeries **not** listed above? ☐ No ☐ Yes What was the problem? _____

_____ When? _____

B. PERSONAL AND FAMILY HISTORY

If known, complete the following information about your blood relatives *(Include children)*.

6. Are you adopted? ☐ No ☐ Yes

7. Father: ☐ Do not know
☐ Alive
☐ Deceased + age at death: ☐ Under 30 ☐ 30-40 ☐ 41-50 ☐ 51-60 ☐ 61-70 ☐ Over 70
Cause of death _____

8. Mother: ☐ Do not know
☐ Alive
☐ Deceased + age at death: ☐ Under 30 ☐ 31-40 ☐ 41-50 ☐ 51-60 ☐ 61-70 ☐ Over 70
Cause of death _____

	0 1	2 3	4 5	6 7+	Do not know
9. Brothers: Number alive:	☐☐	☐☐	☐☐	☐☐	☐
Number deceased:	☐☐	☐☐	☐☐	☐☐	☐
11. Sons: Number alive:	☐☐	☐☐	☐☐	☐☐	☐
Number deceased:	☐☐	☐☐	☐☐	☐☐	☐

	0 1	2 3	4 5	6 7+	Do not know
10. Sisters: Number alive:	☐☐	☐☐	☐☐	☐☐	☐
Number deceased:	☐☐	☐☐	☐☐	☐☐	☐
12. Daughters: Number alive:	☐☐	☐☐	☐☐	☐☐	☐
Number deceased:	☐☐	☐☐	☐☐	☐☐	☐

(Label)

Patient Name _____ DOB _____ Unit No. _____

B. PERSONAL AND FAMILY HISTORY *(Continued)*

To help us understand any special circumstances for your family, we need to know if you or any of your family has had any of the following. Please check the appropriate boxes. Identify **all** illnesses or conditions which you know have occured in you or your blood relatives. Indicate "None" if you are unsure.

	Self	Father	Mother	Brothers	Sisters	Sons	Daughters	Grand-parents	None
13. Lung cancer	☐	☐	☐	☐	☐	☐	☐	☐	☐
14. Colon cancer/rectal cancer	☐	☐	☐	☐	☐	☐	☐	☐	☐
15. Colon polyp	☐	☐	☐	☐	☐	☐	☐	☐	☐
16. Breast cancer	☐	☐	☐	☐	☐	☐	☐	☐	☐
17. Prostate cancer	☐	☐	☐	☐	☐	☐	☐	☐	☐
18. Ovarian cancer	☐	☐	☐	☐	☐	☐	☐	☐	☐
19. Pancreatic cancer	☐	☐	☐	☐	☐	☐	☐	☐	☐
20. Other cancer	☐	☐	☐	☐	☐	☐	☐	☐	☐
21. Heart disease	☐	☐	☐	☐	☐	☐	☐	☐	☐
22. Diabetes	☐	☐	☐	☐	☐	☐	☐	☐	☐
23. Asthma	☐	☐	☐	☐	☐	☐	☐	☐	☐
24. Eczema/psoriasis	☐	☐	☐	☐	☐	☐	☐	☐	☐
25. Migraine headache	☐	☐	☐	☐	☐	☐	☐	☐	☐
26. Seizure disorder	☐	☐	☐	☐	☐	☐	☐	☐	☐
27. Stroke/TIA	☐	☐	☐	☐	☐	☐	☐	☐	☐
28. High cholesterol	☐	☐	☐	☐	☐	☐	☐	☐	☐
29. Abnormal bleeding *(Bleeding disorder)*	☐	☐	☐	☐	☐	☐	☐	☐	☐
30. High or low white count	☐	☐	☐	☐	☐	☐	☐	☐	☐
31. High blood pressure	☐	☐	☐	☐	☐	☐	☐	☐	☐
32. Anemia	☐	☐	☐	☐	☐	☐	☐	☐	☐
33. Liver disease	☐	☐	☐	☐	☐	☐	☐	☐	☐
34. Hepatitis	☐	☐	☐	☐	☐	☐	☐	☐	☐
35. Arthritis	☐	☐	☐	☐	☐	☐	☐	☐	☐
36. Osteoporosis	☐	☐	☐	☐	☐	☐	☐	☐	☐
37. Alcohol abuse	☐	☐	☐	☐	☐	☐	☐	☐	☐
38. Recreational/street drug use	☐	☐	☐	☐	☐	☐	☐	☐	☐
39. Sexually transmitted disease*(s)*	☐	☐	☐	☐	☐	☐	☐	☐	☐
40. Depression	☐	☐	☐	☐	☐	☐	☐	☐	☐
41. Other psychiatric/mental illness	☐	☐	☐	☐	☐	☐	☐	☐	☐
42. Suicide *(Or attempted suicide)*	☐	☐	☐	☐	☐	☐	☐	☐	☐
43. Tuberculosis *(TB)*	☐	☐	☐	☐	☐	☐	☐	☐	☐

(Label)

Patient Name _____ DOB _____ Unit No. _____

B. PERSONAL AND FAMILY HISTORY *(Continued)*

	Self	Father	Mother	Brothers	Sisters	Sons	Daughters	Grand-parents	None
44. Anesthesia complications	☐	☐	☐	☐	☐	☐	☐	☐	☐
45. Genetic disorder	☐	☐	☐	☐	☐	☐	☐	☐	☐
46. COPD/Emphysema	☐	☐	☐	☐	☐	☐	☐	☐	☐
47. Allergies/Allergic reactions *(Specify)*	☐	☐	☐	☐	☐	☐	☐	☐	☐
48. Other *(Discuss with care provider)*	☐	☐	☐	☐	☐	☐	☐	☐	☐

Provider Updates/Comments: *(Sign and Date)*

_____ _____ _____
(Signature of Person Completing Form) *(Relationship to Patient)* *(Date)*

_____ _____
(Signature of Provider) *(Reviewed/Dated)*

Signature of Provider	_____	Reviewed/Updated	_____
Signature of Provider	_____	Reviewed/Updated	_____
Signature of Provider	_____	Reviewed/Updated	_____
Signature of Provider	_____	Reviewed/Updated	_____
Signature of Provider	_____	Reviewed/Updated	_____
Signature of Provider	_____	Reviewed/Updated	_____

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

AGNIESZKA SURLOCK, et al., *Plaintiff-Appellees,* v. DRAGOSLAV STARCEVIC, et al., *Defendant,* STATE FARM MUTUAL INSURANCE AUTO-MOBILE INSURANCE COMPANY, *Intervenor-Appellant.*	)	No. 125918
ROSEMARIE HAAGE, *Plaintiff-Appellee,* v. ALFONSO MONTIEL ZAVALA, et al., *Defendant,* STATE FARM MUTUAL INSURANCE AUTO-MOBILE INSURANCE COMPANY, *Intervenor-Appellant.*	)	

The undersigned, being first duly sworn, deposes and states that on April 7, 2021, there was electronically filed and served upon the Clerk of the above court the *Amicus Curiae* Brief of Illinois Public Research Group. Service of the Brief will be accomplished via by email as well as electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Cynthia S. Kisser
Cynthia S. Kisser

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Cynthia S. Kisser
Cynthia S. Kisser

E-FILED
4/14/2021 3:10 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK