

CURCIO LAW OFFICES

May 29, 2019

Committee Secretary
Supreme Court Rules Committee
222 N. LaSalle Street, 13th Floor
Chicago, IL 60601


Re: Proposal 18-01
Amends Supreme Court Rule 218
Offered by Cook County Circuit Court Judge John H. Ehrlich

Supreme Court Rules Committee Members,

Curcio Law Offices strongly opposes the amendment to Illinois Supreme Court Rule 218. The proposed language is overly broad and in no way, shape or form tailored to relevant information to the lawsuit. Being the victim of a tort should not force one to be victimized *again* by allowing unregulated access to their private medical history without regard to relevancy and the issues at hand. Most alarmingly, the tort victim's information is then recorded and logged for future use throughout the medical insurance and healthcare industries.

It is difficult to understand how a committee appointed by the Supreme Court can seriously consider a rule change that flies on the face of two Supreme Court opinions criticizing and undermining the very practice sought by this proposed rule change.

The proposed rule change defies the Illinois Supreme Court's pronouncement on this very subject which held, "confidentiality of personal medical information is, without question, at the core of what society regards as a fundamental component of individual privacy." *Kunkel v. Walton*, 179 Ill. 2d 519, 537-38 (1997). *Kunkel* held that section 2-1003(a) of the Code of Civil Procedure (735 ILCS 5/2-1003(a) (West 1994)), which required any party to a lawsuit who alleged a claim for bodily injury or disease to waive any privilege of confidentiality with his or her health care providers, violated our state constitution's privacy clause; The statute was unreasonable because the waiver requirement was overly broad, requiring full disclosure of medical information that was not relevant to the issues in the lawsuit. *Id.*

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In addition, this court has recognized that "[a] person has a reasonable expectation that he will not be forced to submit to a close scrutiny of his personal characteristics, unless for a valid reason. * * * [T]he individual's privacy interest in his physical person * * * must be protected." *Will County Grand Jury*, 152 Ill.2d 381, 391-92 (1992).

The privacy clause of the Illinois Constitution forbids unreasonable invasions of privacy. Ill. Const. 1970, art. I, § 6; *Kunkel*, 179 Ill. 2d at 538. A court order which forces a tort victim to sign it as a condition of exercising his or her constitutional rights to a remedy at law is both unconstitutional and preempted by HIPAA. The United States passed HIPAA legislation in 1996 in an effort to ensure the privacy and safeguarding of *all* individuals' medical data. HIPAA exists to protect private information. It was meant to minimize abuse, waste and scams in the medical insurance and healthcare industries. And instead, this proposed amendment clearly puts private business interests and those of the medical insurance and healthcare industries far above the constitutionally awarded privacy rights of an individual.

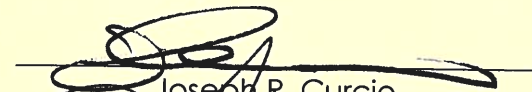
It is our position that there must be checks and balances in place to guarantee tort victims that their protected health information is not accessible, abused, wasted or scammed for the wrong purposes. That is exactly what the broad, sweeping and intrusive language of the proposed amendment permits.

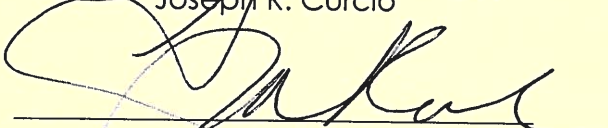
Thus, we strongly urge the committee to reject the proposed amended Rule 218 language.

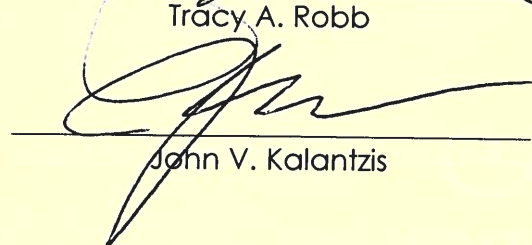
Thank you for your consideration.

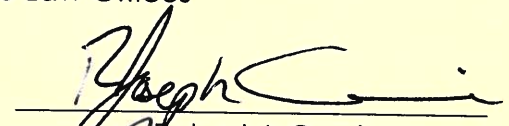
Sincerely,

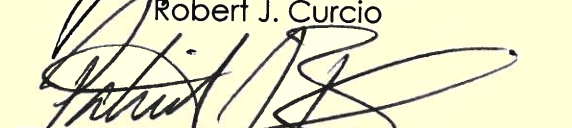
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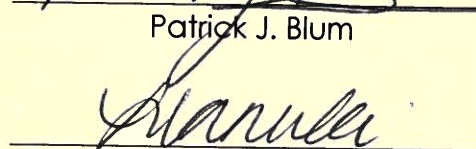

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