

STATE OF MICHIGAN

SUPREME COURT

TAMARA FILAS,

Plaintiff-Appellant,

Supreme Court No. 151198

Court of Appeals No: 317972

Circuit Court No: 13-000652-NI

-vs-

KEVIN THOMAS CULPERT, AND
EFFICIENT DESIGN, INC., A Michigan
Corporation.

Defendants-Appellees.

<p>TAMARA FILAS Plaintiff-Appellant 6477 Edgewood Rd. Canton, MI 48187 (734) 751-0103 e-mail redacted</p>	<p>MICHAEL C. O'MALLEY (P59108) Attorney for Defendant Efficient Design Vandever Garzia 840 W. Long Lake Rd., Suite 600 Troy, MI 48098 (248) 312-2940 momalley@vgpclaw.com</p>
<p>DREW W. BROADDUS (P64658) Attorney for Defendant Culpert Secret Wardle 2600 Troy Center Drive, P.O. Box 5025 Troy, MI 48007-5025 (616) 272-7966 dbroaddus@secrestwardle.com</p>	<p>JAMES C. WRIGHT (P67613) Attorney for Defendant Efficient Design Zausmer, Kaufman, August & Caldwell, P.C. 31700 Middlebelt Rd., Suite 150 Farmington Hills, MI 48334 (248) 851-4111 jwright@zkac.com</p>

**PLAINTIFF-APPELLANT'S CORRECTED MOTION FOR RECONSIDERATION* OF
9-2-15 ORDER DENYING
PLAINTIFF-APPELLANT'S 3-10-15 APPLICATION FOR LEAVE TO APPEAL**

*This Motion replaces the Motion for Reconsideration timely filed 9-30-15 to correct the number of pages to ten, and is also considered timely filed per MSC court clerk, Inger Meyer's October 1, 2015 and October 2, 2015 correspondence with PL-AT (Exhibit X).

Dated: October 5, 2015

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Argument I: The COA violated Plaintiff-Appellant's ("PL-AT's") due process rights to oral argument before the COA in violation of MCR 7.214(E) and the MI Court of Appeals Internal Operating Procedures ("IOP"), IOP 7.214(E), when it upheld the dismissal of PL-AT's entire third party tort case against Kevin Culpert and EDI (LC No. 13-000652-NI) without holding oral arguments prior to the entry of the 11-25-14 final order of dismissal and without notifying the parties the case would be decided without oral arguments.

DF-AEs purposely concealed the true basis of PL-AT's arguments in regard to why she was entitled to oral arguments on Culpert's 10-17-14 Motion to Affirm, and on her case in general, by presenting faulty arguments and claiming they were the PL-AT's arguments, avoiding mention of PL-AT's real arguments, mis-citing MCR 7.214(E) to give the appearance PL-AT did not already argue it, mis-citing the corresponding IOP 7.214(E) and avoiding mention of the true basis of said IOP that clearly outlines the procedures for deciding a case without oral argument. DF-AE has therefore not provided any valid arguments in regard to why PL-AT was not entitled to oral arguments on her appeal to the COA. A party filing timely briefs, as PL-AT did, is entitled to oral argument in accordance with MCR 7.214(A). MCR 7.214(E)(1) only allows for motions to be heard without oral argument if they met specific criteria, which were not met, as explained in argument I(B)(2) of PL-AT's 3-10-15 Application for Leave to Appeal to the MSC, pg. 15-16. PL-AT understands that ordinary motions before the COA are generally not subject to oral argument, but the granting of this particular motion Culpert's 10-17-14 Motion to Affirm in the COA's 11-25-14 Order (not to be confused with his 12-30-13 Motion to Affirm denied on 2-11-14), dismissed the entire case by its inclusion of Issue III from PL-AT's 12-20-13 Brief on Appeal to the COA, thereby rendering PL-AT's oral argument session on 3-3-15 illegitimate since the COA could not reverse the dismissal already ordered on 11-25-14. Further, not only was PL-AT denied oral arguments on DF-AE's 10-17-14 Motion to Affirm, but she was also denied a legitimate oral argument session on Issues IV and V at the 3-3-15 hearing because even though the COA left these issues for oral argument, the Court could not reverse the

11-25-14 dismissal based on any arguments heard afterward. Therefore, PL-AT received no legitimate oral arguments on any of the six issues presented in her 12-20-13 Appeal to the COA. The Michigan Court of Appeals IOP 7.214(E) does not allow for the COA to decide a case without oral arguments without notifying the parties that the appeal is going to be submitted to a panel without oral arguments and without allowing the parties to object by motion. Plaintiff was never notified by the COA that her case was going to be submitted to a panel without oral argument, and was not provided the opportunity to object, thus IOP 7.214(E) was violated. DF-AE only discusses the court rule that allows a motion to affirm to be decided without oral arguments, MCR 7.214(E), which is erroneously referred to by DF-AE as MCR 7.213(E). However, it is the corresponding IOP, IOP **7.214(E)**, that would not have allowed for the decision on the motion to affirm to have been made without oral arguments without first notifying the parties. DF-AE conceals this fact by using a nonexistent IOP procedure number, as explained below, and not citing the pertinent content of IOP 7.214(E), which corresponds to MCR 7.214(E) in regard to deciding motions without oral argument. On pg. 29, ¶2 of EDI's 3-30-15 Answer, it is stated, "*The Michigan Court of Appeals Internal Operating Procedures at IOP 714(E) expressly state that unanimity is not required to decide a case without oral argument.*" There is no such thing as IOP 714(E). The pertinent IOP in regard to decisions without oral argument is IOP 7.214(E), the procedure corresponding to court rule 7.214(E), in regard to deciding motions without oral argument:

IOP 7.214(E)—Decision Without Oral Argument

The parties will be notified in writing if a case is submitted to a panel without oral argument pursuant to MCR 7.214(E). If a party believes oral argument is necessary in the case, the party should immediately file a motion for oral argument before the panel. The panel has the discretion, even absent a motion, to determine that the case requires oral argument. If this occurs, the parties will be notified of the date and location of the hearing before that panel.

Therefore, PL-AT should have been notified by the COA in writing that her case was going to be

submitted to a panel without oral argument so that she could have filed a motion to object.

Since there are provisions for hearing motions without oral arguments in MCR 7.214(E) and IOP 7.214(E), it would be expected that the COA would follow these procedures and provide the appropriate notice to the parties when the COA believes it has a legitimate reason to deny oral arguments on a case. DF-AE suggests that nothing prevents the COA from giving the opportunity to present oral arguments anyway, but one would not expect that the COA would hold a bogus hearing, and waste judicial resources and everyone's time if the COA was not legally required to hear oral arguments, because this simply would not make any common sense. More importantly, PL-AT argues that MCR 7.214(E) and its associated IOP would never allow for oral arguments to take place once it was decided that they were not necessary because the appeal would go straight to the panel for a decision, in accordance with IOP 7.214(E). If this IOP were actually followed, the COA would be prevented from even *scheduling* an oral arguments session, and a situation like the PL-AT's would never have even occurred. DF-AE's argument is therefore without merit.

On pg. 27-28 of EDI's 3-30-15 Answer, DF-AE claims that PL-AT failed to provide this court with any source of law whatsoever regarding her argument that she was denied due process because she was denied oral arguments for the issues on appeal, and states that the court should not determine this for her. PL-AT clearly explained that MCR 7.214(E) was violated. This court rule was directly in the heading of argument I on page 4 of PL-AT's 3-10-15 MSC Application. It would be misleading enough for DF-AE to argue that PL-AT did not cite any legal justification for arguments, but even worse, the DF-AE *has* cited the very court rule PL-AT argued in her application, but gave it the wrong number, and referred to it as MCR 7.213(E) instead of MCR 7.214(E) so the court may think PL-AT did not argue against the only court rule that pertains to

motions being heard without oral arguments, 7.214(E), when she clearly rebutted each of the three items listed in this rule that could have allowed the COA to make a ruling without oral arguments on pgs. 15-16 of her 3-10-15 Application, explaining that none of them applied. According to MCR 7.214(E)(1), there are only three reasons that the COA is permitted to make a decision without providing oral arguments. There must be a unanimous decision by the panel concluding that: a) The dispositive issue or issues have been recently authoritatively decided; b) the briefs and record adequately present the facts and legal arguments, and the court's deliberations would not be significantly aided by oral argument; or c) the appeal is without merit. There is no document in the court file that indicates that the panel that made the 11-25-14 order to grant Culpert's Motion to Affirm, unanimously concluded any of the three items above. MCR 7.214(E)(1)(a) clearly would not apply because the issue of whether or not a plaintiff can use SCAO-mandated Form MC 315 has never been authoritatively decided by the COA. In the MEEMIC case, MSC Case #150510, the COA avoided ruling on this issue by presenting the novel argument that it was a PO entered in this case that prevented PL-AT from being able to use MC 315 to provide her medical records to the defendant. MCR 7.214(E)(1)(b) clearly would not apply because if the COA wanted to claim that the briefs and record adequately presented the facts and legal arguments, and that the court's deliberations would not be significantly aided by oral argument, then the 11-25-14 order would not have separated out items IV and V for oral argument to be heard on 3-3-15. MCR 7.214(E)(1)(c) clearly would not apply because if the COA wanted to claim that PL-AT's appeal was without merit, it could have done so in its 11-25-14 order, rather than leaving items IV and V for oral argument to be heard on 3-3-15. Therefore, since no oral arguments were held on Culpert's 10-17-14 Motion to Affirm, against PL-AT's request under MCR 7.214(A), and the oral arguments session held 3-3-15 in regard to items IV

and V was meaningless due to the prior 11-25-14 final Order that upheld dismissal of the entire case¹, the COA violated MCR 7.214(E) by making a decision without providing a legitimate oral argument hearing. Therefore, PL-AT's constitutional right of due process was denied and the MSC should grant her leave to appeal to the MSC.

Argument II: PL-AT was denied her due process right to counter DF-AE EDI's arguments when the MSC denied PL-AT's motion to accept her 6-10-15 re-done 57-page Reply to DF-AE EDI's 31-page Answer, shortened from 91-pages, that merely addressed the statements from EDI's Answer, in which nearly every sentence was erroneous and required rebuttals that could not be condensed into a shorter document by PL-AT acting pro per. Not only did the MSC deny PL-AT's motion, but instead, completely struck the 57-page Reply without providing an opportunity for PL-AT to try again to condense it to 20 pages, thereby refusing PL-AT the chance to re-but any issues at all (Ex. W).

Numerous false, untrue and inaccurate statements DF-AE's attorney representing EDI made in their answers and filings are still preserved as public record in the court file and will have no rebuttal from PL-AT included in the court file regarding issues of the case itself or rebuttal to other attacks on her character, integrity and mental status made by EDI that can cause long-term harm to PL-AT because of the refusal of the MSC panel to allow PL-AT to enter any reply at all to DF-AE's statements by striking and removing PL-AT's 6-10-15 Reply from the case file. Without a written denials and rebuttals by PL-AT in the court file, the DF-AE's filings will be considered as fact and true and accurate accountings even when in reality, they are not. By striking and removing PL-AT's 6-10-15 Reply, the MSC panel ensured there would be no real controversy remaining to be adjudicated by the MSC thereby paving the way to deny PL-AT's appeal for leave to the MSC. Absent PL-AT's Reply and rebuttals in the MSC court file, all of the DF-AE's answers would be considered admitted by the PL-AT when in reality, they were not admitted. PL-AT should have had a reasonable and fair opportunity to rebut DF-AE's

¹ The 11-25-14 Order that dismissed PL-AT's case is the only valid final order in accordance with MCR 7.202(6)(a)(i), whereby a "final judgment" or "final order" is defined as "the first judgment or order that disposes of all the claims." Because the 11-25-14 Order was the first Order disposing of all claims, PL-AT has applied for leave to appeal the 3-10-15 COA Opinion to the MSC, since it upholds dismissal of PL-AT's case for different reasons than the 11-25-14 final Order that already upheld dismissal of the entire case (MSC Case No. 151463).

Answer, with the MSC panel determining the page allotment needed for PL-AT to be sufficient for PL-AT to answer to the numerous untruths and inaccuracies in DF-AE's 31-page answer that required rebuttal based upon PL-AT's breakdown included in her 6-10-15 Motion to Reconsider the 20-page limit that was denied. Denying PL-AT's motion for reconsideration of the 20-page limit should have just resulted in PL-AT having to re-submit a 20 page Reply, and should not have eliminated her right to reply at all. Even though the DF-AE's statements could not possibly have been fairly or adequately addressed in a reply restricted to 20 pages written by a *pro per* or any legal professional, Plaintiff at the very least, should still have been allowed to reply and given 7 days to enter a 20-page reply with *some* rebuttals and an explanation that there were no more pages available for a complete answer. Striking PL-AT's answer enabled the MSC panel to deny PL-AT's leave for appeal to the MSC, and allows the lower courts to continue to operate outside of the law without any real or genuine oversight or correction from the MSC. By striking PL-AT's 57-page reply which reduced down her original 93-page reply as much as she could at the time, and providing no opportunity for PL-AT to enter any reply at all, PL-AT was denied her due process right to counter DF-AE's arguments. Thus, the denial of PL-AT's application for leave to appeal to the MSC should be reconsidered.

Argument III: The Court of Appeals ("COA") erred in its issuance of the 11-25-14 final order, the subject of the instant MSC Application, upholding the dismissal of PL-AT's entire third party tort case in the Circuit Court (Case No. 13-000652-NI) against Kevin Culpert and Efficient Design Inc. ("EDI") basing their decision upon Defendant Kevin Culpert's 10-17-14 Motion to Affirm claiming the Doctrine of Collateral Estoppel applied when Culpert did not have just cause to make said claim because the dismissal of the MEEMIC case upon which Culpert based the Doctrine of Collateral Estoppel was not final when the COA granted Culpert's Motion to Affirm. Similarly, the MSC prematurely denied PL-AT's 3-10-15 MSC Application for Leave to Appeal because the MEEMIC case was still under reconsideration by the MSC when the MSC ruled to deny the Culpert and EDI MSC Application on 9-9-15.

The primary principle of collateral estoppel required a final order in the MEEMIC case before Culpert could legitimately apply the doctrine of collateral estoppel. In order to base one

case on another, the decision in the first case must be a final decision. The COA's 10-14-14 Order to uphold dismissal of the MEEMIC case was not final when the COA made the 11-25-14 decision to Grant Culpert's Motion to Affirm on the basis that the Doctrine of Collateral Estoppel prevented PL-AT from litigating her claims against Culpert and EDI, alleging that PL-AT's claims in the MEEMIC case were the same as those in the instant case. Thus, Culpert's Motion to Affirm lacked just cause and the COA erred in granting it in part on 11-25-14, including Issue III from PL-AT's 12-20-13 COA Appeal which resulted in dismissal of PL-AT's entire third-party tort case. *Monat v. State Farm* addressed the meaning of a full and fair opportunity, which "normally encompasses the opportunity to both litigate and appeal." *Monat v. State Farm Insurance Co.*, 469 Mich 679, 691-692; 677 MW2d 843 (2004). DF-AE's never addressed PL-AT's arguments regarding her pending application for leave to appeal the MEEMIC Case (MSC No 150510). PL-AT is not asking the MSC to interpret an ambiguous rule, law or case, but rather to determine if the COA decision to uphold the dismissal of PL-AT's entire third-party case based upon the COA's granting of Culpert's motion to affirm based upon principles of the doctrine of collateral estoppel was a legitimate and valid action by the COA, since the Order dismissing MEEMIC was not a final order on 11-25-14. Even if the MEEMIC order had been final, the doctrine still would not have been applicable because the instant case did not meet the criteria of the doctrine of collateral estoppel because the issues were not the same, as explained below in Argument IV.

On September 9, 2015, PL-AT's application for leave to appeal to the Michigan Supreme Court, Case No. MSC 151198 was denied by the MSC before a final decision was made on PL-AT's application for leave to the MSC regarding COA Case No. 150510 regarding the dismissal of PL-AT's claims against MEEMIC Insurance Co. in Circuit Court Case No. 13-000652, upon

which the COA granted Kevin Culpert's 10-17-14 Motion to Affirm based upon the Doctrine of Collateral Estoppel that upheld the dismissal of PL-AT's entire third part tort case (COA Case No. 317972). Because a final decision had not been made in the MEEMIC case, the MSC panel's decision could not have been made by taking all of the facts or rules into consideration regarding the dismissal of PL-AT's entire third party case by the COA, because, as in the 11-25-14 COA Order, the primary principle of collateral estoppel requiring the decision of the MEEMIC case to be final was not yet met before the MSC denied PL-AT leave to appeal, just as there was no final decision made in the MEEMIC case in the instant case when the COA granted Culpert's faulty Motion to Affirm based upon the doctrine of collateral estoppel on 11-25-14 when no final decision had been made in the MEEMIC case and when the COA erred in upholding the lower court's dismissal of PL-AT's entire case. It was more than ten months after Culpert filed his faulty motion to affirm that MSC prematurely denied PL-AT's application for leave to appeal to the MSC. When the MSC office realized the MEEMIC order to dismiss her case from the lower court was not final, PL-AT's application for leave to appeal to the MSC should have been granted. PL-AT did not see any entry on the Register of Actions on 9-30-15 denying her reconsideration for leave to appeal the MEEMIC case before she filed the original application for leave to appeal the instant case on 9-30-15. For these reasons, the denial of PL-AT's Application for leave to appeal to the MSC should be reconsidered and granted.

Argument IV: The issues presented in PL-AT's MEEMIC COA Appeal were not the same as those in the Culpert and EDI COA Appeal, nor were the MEEMIC issues even litigated, making the doctrine of collateral estoppel inapplicable and rendering the COA's 11-25-14 Order granting Culpert's 10-17-14 Motion to Affirm based on the doctrine erroneous.

DF-AEs' presentation of the issues that were supposedly "the same" in the MEEMIC case and the instant case, is based on false statements and an avoidance of the true issue that was at least similar in the two cases, which was PL-AT's *desire* to use SCAO-mandated MC 315 in

the MEEMIC case, and her *actual use of* MC 315 in the instant case, and the fact that the circuit court would not allow the use of MC 315 even though it is the form mandated under MCR 2.314(C)(1)(d). PL-AT's argument VI from her 12-20-13 Brief, included in the 11-25-14 Order, was a comparison between Mr. Wright's forms and form MC 315. PL-AT's argument was that any authorization form can be used as long as it does not require PL-AT to give up rights she would have had by signing MC 315 instead. PL-AT cannot be required to do anything above and beyond what the court rules require, and therefore cannot be required to do anything beyond what MC 315 requires. Refer to Argument 6 on pgs. 32-29 of 12-20-13 COA Brief for details of the differences between Mr. Wright's forms and MC 315. Still, the MSC is only required to determine whether Issue VI (6) from PL-AT's 12-20-13 COA brief has been litigated in PL-AT's MEEMIC case, and therefore can be collaterally estopped from being litigated in the instant case.

PL-AT provided a detailed analysis of the questions presented in *Filas v MEEMIC* compared with *Filas v Culpert and Efficient Design Inc.* in Argument IIB on pgs. 18-23 of PL-AT's 3-10-15 MSC Application, showing that the issues are definitely not the same, and in some cases, not even similar, for which no counter-analysis or rebuttal arguments have been provided by either DF-AE. Most importantly, even if the issues were somehow deemed "the same," they were not actually litigated, which is a requirement for the doctrine of collateral estoppel to apply. The COA, in their unpublished Opinion dated 10-14-14, Case no. 150510, avoided a response to the Plaintiff-Appellant's questions in the MEEMIC case by using the novel argument that Plaintiff-Appellant was required to sign Records Deposition Services Inc. ("RDS") forms solely due to wording in a PO entered in the MEEMIC case by PL-AT's attorney, that was entered in breach of a mutual agreement between PL-AT and her attorney before she hired him that a different PO would be entered. The COA came up with this argument on its own, because it

never appeared in any of MEEMIC's pleadings, which is unjust and contrary to proper court procedure in which judges may only rule on the arguments presented and cannot help out either party by presenting novel arguments to justify their ruling, as the Court of Appeals has done in the MEEMIC case Opinion. As no PO was entered in the instant case, the DF-AE is left with no argument as to why PL-AT's executed copies of SCAO-mandated Form MC 315 were not acceptable. In an interesting choice of words, pg. 26 of EDI's 3-30-15 Answer, states "*the important consideration is whether Plaintiff-Appellant had an opportunity to litigate the issue in the previous lawsuit. Plaintiff-Appellant had this opportunity in Filas v. MEEMIC while the matter was in the Circuit Court and when the matter reached the Court of Appeals.*" In other words, DF-AE claims PL-AT only had the opportunity to litigate her issues while the matter was in the Circuit Court. That is because once the matter was processed by the COA in its 10-14-14 Opinion in the MEEMIC case, the COA ruled that due to the PO entered in the MEEMIC case, PL-AT was required to sign only RDS forms. Then, the COA used the COA's 10-14-14 Opinion in the MEEMIC case to dispose of the instant case by erroneously applying the doctrine of collateral estoppel. The matter of a plaintiff using MC 315 when no PO exists has never been litigated, thus the criteria for the Doctrine of Collateral Estoppel to apply has not been met.

CONCLUSION

Per the information contained therein regarding issues included in this Motion for Reconsideration that require resolution by the MSC, Plaintiff requests that denial of PL-AT's application for leave to appeal is reconsidered and she is granted leave to appeal to the MSC.

Exhibits Attached: Copy of 9-2-15 MSC Order and Exhibits A, B, E, I, J (64 pages); Exhibits K, L, O, P, T, U (98 pages); Exhibits V, W, X (86 pages)

signature redacted

10-5-15
Date

Tamara Filas; 6477 Edgewood; Canton, MI 48187
734-751-0103; e-mail redacted

Order

Michigan Supreme Court
Lansing, Michigan

September 9, 2015

Robert P. Young, Jr.,
Chief Justice

151198

Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein,
Justices

TAMARA FILAS,
Plaintiff-Appellant,

v

SC: 151198
COA: 317972
Wayne CC: 13-000652-NI

KEVIN THOMAS CULPERT and EFFICIENT
DESIGN, INC.,
Defendants-Appellees.

On order of the Court, the application for leave to appeal the November 25, 2014 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.



a0831

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 9, 2015

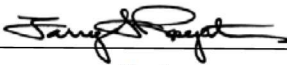

Clerk

Exhibit A

6477 Edgewood
Canton, MI 48187
June 24, 2013

Mr. James Wright
31700 Middlebelt Rd., Suite 150
Farmington Hills, MI 48334

Dear Mr. Wright,

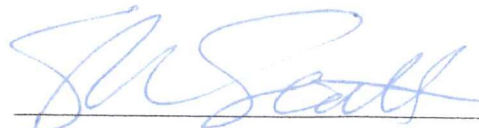
Attached please find copies of fully executed authorizations to health care providers. Copies of certificates of mailing are attached to verify mailing on June 21, 2013.

Yours truly,

signature redacted

Tamara Filas

Received by:



Date/time:

6-24-13 11:24 AM

Exhibit B

6477 Edgewood
Canton, MI 48187
June 24, 2013

Henry Ford West Bloomfield Hospital
Attn: Medical Records
6777 West Maple Rd.
West Bloomfield, MI 48322

RE: Correction of mailing address on medical authorizations dated June 21, 2013

Dear Medical Records Custodian,

On June 21, 2013, I sent a signed authorization and request to release certified copies of my medical records to Attorney James Wright. I **mistakenly** listed **31200 Middlebelt Rd.**, Suite 150, Farmington Hills, MI 48334 as the address to send the records. The **correct address** to send the records to is **31700 Middlebelt Rd.**, Suite 150, Farmington Hills MI 48334.

I have enclosed a cover letter and signed authorization forms reflecting the correct address to mail the certified copies of the records to Mr. Wright.

That address is:
Mr. James Wright
Zausmer, Kaufman, August & Caldwell, P.C.
31700 Middlebelt Rd., Suite 150
Farmington Hills, MI 48334

I apologize for any inconvenience this may have caused. Thank you for your patience.

Yours truly,

signature redacted

Tamara Filas

6477 Edgewood
Canton, MI 48187
June 21, 2013
(revised June 24, 2013)

Henry Ford West Bloomfield Hospital
Attn: Medical Records
6777 West Maple Rd.
West Bloomfield, MI 48322

RE: Request for records pertaining to Tamara Filas, DOB [REDACTED]

Dear Medical Records Custodian,

This cover letter replaces the original cover letter sent June 21, 2013, and corrects the mailing address of the records recipient only.

Attached is a signed Authorization for Release of Medical Information and Authentication Certificate, permitting the disclosure of records pertaining to Tamara Filas, DOB [REDACTED], as described in detail below, to:

Mr. James Wright
Zausmer, Kaufman, August & Caldwell, P.C.
31700 Middlebelt Rd., Suite 150
Farmington Hills, MI 48334

It is necessary that the attached Certificate, to be completed by the Records Custodian, is notarized, and sent by U.S. Certified Mail with Return Receipt, in order to satisfy MCR 2.506(I)(1)(b).

Description of records requested:

Redacted: Below was DOB

Any and all PHI from [REDACTED] until present.

Redacted: Below was DOB

Redacted: Below was DOB

Any and all medical records from [REDACTED] to present pertaining to Tamara Filas DOB [REDACTED], including all medical reports, doctor notes/reports, nurse's notes/reports, consultation notes/reports, admission notes, treatment notes/history, radiographic study reports, medical orders, physical therapy notes/orders/regimen, performance appraisals, exam results, discharge summaries and the like, including, but not limited to the following practitioner visits:

Redacted: Additional letters of caregivers' names and type of report

4-7-10, K [REDACTED] S [REDACTED]

5-5-10, J [REDACTED] L [REDACTED] and C [REDACTED] E [REDACTED]

8-31-10, C [REDACTED] L [REDACTED]

9-16-10, V [REDACTED] S [REDACTED]

11-2-10, C [REDACTED] E [REDACTED]
4-14-11, N [REDACTED] C [REDACTED]
9-12-11, C [REDACTED] E [REDACTED] and J [REDACTED] M [REDACTED]
10-3-11, [REDACTED] testing reports
10-5-11, C [REDACTED] E [REDACTED]
12-13-11, C [REDACTED] L [REDACTED]
2-17-12, C [REDACTED] L [REDACTED]
3-8-12, J [REDACTED] N [REDACTED]
4-4-12, J [REDACTED] N [REDACTED]
4-9-12, J [REDACTED] N [REDACTED]
4-16-12, J [REDACTED] N [REDACTED]
4-19-12, J [REDACTED] N [REDACTED]
7-13-12, C [REDACTED] L [REDACTED]
10-5-12, C [REDACTED] L [REDACTED]

Thank you in advance for your assistance.

Yours truly,

signature redacted

Tamara Filas

Approved, SCAO

Original - Records custodian
1st copy - Requesting party
2nd copy - Patient

STATE OF MICHIGAN JUDICIAL DISTRICT 3rd JUDICIAL CIRCUIT COUNTY PROBATE	AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION	CASE NO. 13-00652-NI 13-000652-NI
---	--	--

Court address: 2 Woodward Ave., Detroit, MI 48226
 Court telephone no.: (313) 224-5261

Plaintiff Tamara Filas	v	Defendant Kevin Culpert and Efficient Design, Inc.
----------------------------------	---	--

Probate In the matter of _____

1. Tamara Filas [REDACTED]
 Patient's name Date of birth

2. I authorize Henry Ford West Bloomfield Hospital, Attn: Medical Records, 6777 West Maple Rd., West Bloomfield, MI 48322
 Name and address of doctor, hospital, or other custodian of medical information

to release (see attached letter dated 6-24-13)
 Description of medical information to be released (include dates where appropriate)

to Mr. James Wright; Zausmer, Kaufman, August & Caldwell, P.C.; 31700 Middlebelt Rd., Suite 150; Farmington Hills, MI 48334
 Name and address of party to whom the information is to be given

3. I understand that unless I expressly direct otherwise:
- a) the custodian will make the medical information reasonably available for inspection and copying, or
 - b) the custodian will deliver to the requesting party the original information or a true and exact copy of the original information accompanied by the certificate on the reverse side of this authorization.
- I understand that medical information may include records, if any, on alcohol and drug abuse, psychology, social work, and information about HIV, AIDS, ARC, and any other communicable disease.
4. This authorization is valid for 60 days and is signed to make medical information regarding me available to the other party(ies) to the lawsuit listed above for their use in any stage of the lawsuit. The medical information covered by this release is relevant because my mental or physical condition is in controversy in the lawsuit.
5. I understand that by signing this authorization there is potential for protected health information to be redisclosed by the recipient.
6. I understand that I may revoke this authorization, except to the extent action has already been taken in reliance upon this authorization, at any time by sending a written revocation to the doctor, hospital, or other custodian of medical information.

06/24/2013

Date

signature redacted

Signature
Tamara Filas

Name (type or print) (if signing as Personal Representative, please state under what authority you are acting)

6477 Edgewood

Address
Canton, MI 48187

City, state, zip

(734) 751-0103

Telephone no.

CERTIFICATE

- 1. I am the custodian of medical information for _____
Organization
- 2. I received the attached authorization for release of medical information on _____
Date
- 3. I have examined the original medical information regarding this patient and have attached a true and complete copy of the information that was described in the authorization.
- 4. This certificate is made in accordance with Michigan Court Rule.

I declare that the statements above are true to the best of my information, knowledge, and belief.

Date

Signature

Name (type or print)

Address

City, state, zip

Telephone no.



Certificate Of Mailing

This Certificate of Mailing provides evidence that mail has been presented to USPS® for mailing. This form may be used for domestic and international mail.

From:



Ms. Tamara Filas
6477 Edgewood Rd.
Canton, MI 48187

1000



To: *Henry Ford West Bloomfield Hospital*
Attn: Medical Records Custodian
6777 West Maple Rd.
West Bloomfield MI 4832

00011429-04

\$120

U.S. POSTAGE
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48187
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AMOUNT

Exhibit E

1 STATE OF MICHIGAN
2 IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE
3 CIVIL DIVISION

4 TAMARA FILAS,

5 Plaintiff,

Case No. 13-000652 NI

6 vs.

7 KEVIN CULPERT and EFFICIENT DESIGN,

8 Defendants.

9 _____ /
10 MOTION

11 BEFORE THE HONORABLE SUSAN D. BORMAN, Circuit Judge,
12 Detroit, Michigan on Friday, June 21, 2013.

13 APPEARANCES:

14 Pro Per Plaintiff: TAMARA FILAS
15 6477 Edgewood
16 Canton, MI 48187
(734) 751-0103

17 For the Defendant: JAMES WRIGHT, P67613
18 (Efficient Design) Zausmer, Kaufman, August & Caldwell, P.C.
19 31700 Middlebelt Road, Suite 150
Farmington Hills, MI 48334
(248) 851-4111

20 For the Defendant: AHMED HASSOUNA, P67995
21 (Kevin Culpert) Vandever Garzia
22 1450 W. Long Lake Road, Suite 100
Troy, MI 48098
(248) 312-2940

23
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COPY

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WITNESS:

None

EXHIBITS:

None

IDENTIFIED

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Detroit, Michigan
Friday, June 21, 2013
Morning session - 9:54 a.m.

- - -

THE CLERK: Filas.

THE COURT: Okay, is everybody here on
this? Okay, good morning.

MS. FILAS: Good morning.

THE COURT: Okay, whose motion is this?

MR. WRIGHT: It is mine, Your Honor.

THE COURT: Go ahead.

COURT REPORTER: And you are who?

MR. WRIGHT: I am James Wright. I
represent Efficient Design.

THE COURT: Yeah, please, everybody
identify yourself for the record.

MR. WRIGHT: I'm James Wright and I
represent Efficient Design.

MS. McGRATH: Jennifer McGrath, co-counsel
for Efficient Design.

MS. McGRATH: Good morning.

THE COURT: You're co-counsel?

MS. McGRATH: Yes, Your Honor.

THE COURT: Why are you up here too?

MS. McGRATH: There's two insurance

1 policies.

2 MR. WRIGHT: There's a general automobile
3 liability policy and there's a CGL policy, so there's
4 two different --

5 THE COURT: What is CGEL for?

6 MR. WRIGHT: CGL.

7 THE COURT: What is it?

8 MR. WRIGHT: It's the commercial liability
9 portion of their policy. They have an auto and
10 commercial.

11 THE COURT: What does CGL stand for?

12 MR. WRIGHT: Commercial General Liability.

13 THE COURT: I don't like abbreviations.

14 MR. WRIGHT: Sorry, Your Honor.

15 THE COURT: I don't know what they are.

16 MS. McGRATH: I'm Ahmed Hassouna for Mr.
17 Culpert, Your Honor. Thank you.

18 THE COURT: You're what?

19 MS. McGRATH: For Mr. Culpert.

20 THE COURT: Yeah, but you said I'm a -- I
21 can't understand what you're saying.

22 MR. HASSOUNA: Ahmed Hassouna, Ahmed, last
23 name Hassouna.

24 THE COURT: Oh, that's your name.

25 MR. HASSOUNA: H-a-s-s-o-u-n-a, yes, Your

1 Honor.

2 THE COURT: You're representing whom?

3 MR. HASSOUNA: Mr. Culpert, Your Honor.

4 THE COURT: Okay, and he's the individual
5 defendant?

6 MR. HASSOUNA: That's correct.

7 Third party defendant?

8 MR. HASSOUNA: Yes, Your Honor.

9 THE COURT: And Efficient Design is his
10 employer, I'm guessing?

11 MR. HASSOUNA: Yes, Your Honor.

12 THE COURT: Okay, all right, so this is
13 your motion, go ahead.

14 MR. WRIGHT: This is just a general basic
15 motion to compel, Your Honor. I sent request for
16 admission, interrogatories and request for production
17 of documents.

18 THE COURT: Okay.

19 MR. WRIGHT: The request and admissions are
20 long overdue. They were sent back in February, so I
21 think they're due in the middle -- but the real
22 problem we have, I got interrogatory answers this
23 morning.

24 THE COURT: Yeah, how many interrogatories
25 are there?

1 MR. WRIGHT: Probably --

2 THE COURT: A hundred?

3 MR. WRIGHT: No, there's not a 100. There
4 are --

5 THE COURT: I think we should have a
6 Federal system.

7 MR. WRIGHT: I would agree with you, Your
8 Honor.

9 THE COURT: Well, then you can do that. It
10 is in within your power to do that.

11 MR. WRIGHT: They're 57.

12 THE COURT: Okay, so you got them this
13 morning and you've looked at them?

14 MR. WRIGHT: I've looked at them and the
15 problem is that I think what we've been having going
16 on with this case since when I was involved back to
17 2010 is that Ms. Filas is refusing to provide signed
18 medical authorizations. She has revealed 27 treating
19 in this milage log.

20 THE COURT: Right, and you know you have to
21 do that, Ms. Filas. So you know you're going to
22 leave the Court no alternative but to dismiss this
23 case too.

24 MS. FILAS: Well, in my motion though I
25 asked that I could have time to investigate whether

1 or not they're even liable because right now they're
2 not even admitting that Mr. Culpert -- that they are
3 the employer of Mr. Culpert.

4 THE COURT: We don't wait for liability.
5 No, no. That's not the way --

6 MS. FILAS: I shouldn't have to give my
7 records to a party that may not even be party to this
8 case though. They haven't --

9 THE COURT: No, they are party to this
10 case.

11 MS. FILAS: But they haven't admitted any
12 liability.

13 THE COURT: They don't -- that's not how it
14 works. You have a choice, you either do it or no
15 case. Now, we've been through this before with your
16 first party case. Nobody cares about your medical
17 records.

18 MS. FILAS: Well, I understand that they
19 have to go to the first party and have them all
20 filled out for Mr. Hassouna as well.

21 THE COURT: Either do it or no case, okay.

22 MS. FILAS: Okay, it's just that Efficient
23 Design hasn't said they were liable, so.

24 THE COURT: Do it or no case.

25 MS. FILAS: Okay.

1 THE COURT: Now are you going to sign the
2 authorizations or not?

3 MS. FILAS: I will fill out authorizations
4 for them.

5 THE COURT: Now, today. Sit down and do
6 it. We'll recall this case if necessary.

7 MR. WRIGHT: I have authorizations.

8 MS. FILAS: It takes a lot more time than
9 that.

10 MR. WRIGHT: I can have my office fax them
11 over. But I just found out who the --

12 THE COURT: Okay, I will adjourn this until
13 Monday.

14 MR. WRIGHT: Okay.

15 THE COURT: If he does not get those
16 authorizations by Monday or you can come back Monday
17 at 2 o'clock, and you can come back with the
18 authorizations. No game playing, Ms. Filas.

19 MS. FILAS: I'm not trying to --

20 THE COURT: Either do it or I'm going to
21 dismiss the case on Monday. It's simple.

22 MR. WRIGHT: Okay, I need a number or fax
23 number or e-mail to send the authorizations too, Your
24 Honor, for her to sign.

25 THE COURT: Okay, would you please give him

1 that.

2 MS. FILAS: Sure. It's F-I-L-A --

3 THE COURT: Okay, you can do that off the
4 record. Are we done?

5 MR. HASSOUNA: Your Honor, I would simply
6 ask for the same relief before you do Efficient
7 Design for Mr. Culpert.

8 MS. FILAS: I have his though.

9 THE COURT: Excuse me, what same relief?

10 MR. HASSOUNA: I would like authorizations
11 as well and I would like the answers to
12 interrogatories.

13 THE COURT: Okay, who are you representing?

14 MR. WRIGHT: I represent Efficient Design.

15 MR. HASSOUNA: I represent Mr. Culpert.

16 THE COURT: Well, you're the same party.

17 MR. WRIGHT: No, Your Honor.

18 THE COURT: He's the employee; he's the
19 employer.

20 MR. WRIGHT: Well, we're not --

21 THE COURT: It's vicarious liability.

22 MR. WRIGHT: Well, we're not -- but, yeah,
23 you're right, Your Honor.

24 MS. FILAS: So they have two separate
25 motions. But I have everything for Mr. Hassouna.

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THE COURT: Ma'am, just a second.

MS. FILAS: Okay.

THE COURT: I cannot listen to more than one person at a time and I'm asking them questions. Okay, so was he driving, this Mr. --

MR. HASSOUNA: Mr. Culpert.

THE COURT: Culpert. Was he on the job?

MR. WRIGHT: No, not according to us. He was driving his own private vehicle on the way to work. There's an allegation that he was on his cell phone talking to his employer which hasn't been verified which is the theory.

THE COURT: Well, that should be very easy to verify. In all this time why hasn't it been verified yet?

MR. WRIGHT: Well, because this case just got off stay, Your Honor, and we haven't been able to take any depositions.

THE COURT: Stay?

MR. WRIGHT: It was stayed, yes.

THE COURT: No, I didn't stay it. It wasn't stayed.

MS. McGRATH: He stayed the discovery.

THE COURT: What?

MR. WRIGHT: Yes, Your Honor, it was

1 stayed.

2 THE COURT: No, it might have been stayed
3 for a month or something, but this case has been
4 pending since when?

5 MR. WRIGHT: I came into the case in
6 January.

7 THE COURT: Are you saying that I stayed
8 it?

9 MR. WRIGHT: Yes.

10 THE COURT: What?

11 MR. WRIGHT: Yes, Your Honor.

12 THE COURT: No, there's an '11 case. I see
13 that, but this isn't an '11 case. This is a '13
14 case. So it was stayed?

15 MR. WRIGHT: The last time we were here,
16 Your Honor, it was my motion to compel and you stayed
17 it to allow Ms. Filas to obtain successor counsel
18 which she has yet to do.

19 THE COURT: Okay. But that was when, when
20 was the last time you were here? It wasn't that long
21 ago, and there was a time before that. In any event,
22 that's not something that she's involved in. All you
23 have to do is check the cell phone records to see if
24 he was at the time talking on the phone to his
25 employer.

1 MR. WRIGHT: We have this, Your Honor.
2 We've been working. We need to take his deposition.
3 That's really it. We were waiting for the stay to
4 get lifted and getting authorizations. We're trying
5 to move forward on this. That's why we're here.

6 THE COURT: Okay, I'll see you Monday.

7 MR. WRIGHT: Okay.

8 MS. FILAS: I also had motions too to be
9 heard.

10 THE COURT: For what?

11 MS. FILAS: One to vacate the Protection
12 Order that was in place from last year. I couldn't
13 get clarification from the other attorneys.

14 THE COURT: What Protection Order?

15 MS. FILAS: The one that was filed in the
16 case the first time it was originally filed back
17 in --

18 THE COURT: Well, may I see that. Do you
19 know what she's talking about?

20 THE CLERK: That's up next Friday.

21 THE COURT: Oh, yeah, your motions are up
22 next Friday.

23 MS. FILAS: Why are they next Friday when I
24 got the praecipe approved. It's supposed to be
25 today. It says on the Register of Actions they're

1 both being heard today.

2 THE COURT: Does it?

3 THE CLERK: One was just received yesterday
4 or the day before.

5 THE COURT: When did you file it?

6 MS. FILAS: Last week. I noticed the
7 hearing for today.

8 THE COURT: Well, I can hear it today. I
9 can --

10 MS. FILAS: And they're already answered.

11 THE COURT: Don't keep me talking over me.

12 MS. FILAS: Sorry.

13 THE COURT: I can hear it today.

14 MS. FILAS: Okay.

15 THE COURT: Have you guys seen these
16 motions?

17 MR. WRIGHT: Yes, Your Honor.

18 MR. HASSOUNA: Yes, Your Honor.

19 THE COURT: Let's deal with all of them,
20 okay.

21 LAW CLERK: We had them for next Friday.

22 THE COURT: I know. We're going to do them
23 today.

24 LAW CLERK: Okay.

25 THE COURT: Okay, we'll recall this case

1 when I get a chance I'll look at them. I don't think
2 they were -- I think I've already looked at them
3 actually, and I don't think they're very difficult.

4 MS. McGRATH: If I may just to make this
5 easy on us on Monday, can we agree today that there
6 can be no amendments to the authorizations?

7 THE COURT: What do you mean amendments?

8 MS. McGRATH: During the --

9 THE COURT: We're going to give her the
10 authorizations. She's going to sign them. Either
11 she signs them or she doesn't sign them. I said to
12 Ms. Filas no game playing, no alterations, okay.

13 MS. McGRATH: Thank you, Your Honor.

14 MR. WRIGHT: Thank you, Your Honor.

15 MR. HASSOUNA: Thank you, Your Honor.

16 (Off the record - 10:10 a.m.)

17 (On the record - 11:10 a.m.)

18 THE COURT: Filas versus Culpert.

19 Okay, we're going to entertain the motions,
20 Plaintiff's motions today. Okay, one of them -- and
21 I'm going to place you under oath, Ms. Filas since
22 you're not an attorney. You do solemnly swear that
23 any testimony that you give or any statements that
24 you make are true?

25 MS. FILAS: I do.

1 THE COURT: Okay, one of her motions is to
2 vacate this Protective Order that wasn't even in this
3 case. Anybody have an objection to that?

4 MR. WRIGHT: No.

5 MR. HASSOUNA: No.

6 THE COURT: Gone. No Protective Order.
7 Okay, the other motion was to return discovery that
8 plaintiff claims that her now fired counsel sent to
9 defendants which was unsigned by her and which was in
10 draft form, correct?

11 MS. FILAS: Yes.

12 THE COURT: And by the way, counsel, I
13 didn't appreciate that sentence in your Reply.

14 MR. WRIGHT: About?

15 THE COURT: Scolding the Court.

16 MR. WRIGHT: Well, Your Honor --

17 THE COURT: For allowing plaintiff a little
18 time. I didn't appreciate it.

19 MR. WRIGHT: It's not a little time, Your
20 Honor. This has gone on and on and on.

21 THE COURT: Counsel?

22 MR. WRIGHT: Yes, Your Honor?

23 THE COURT: I didn't appreciate it.

24 MR. WRIGHT: I apologize, Your Honor.

25 THE COURT: Okay.

1 MR. WRIGHT: But at the same time --

2 THE COURT: Up until I read that sentence,
3 I thought your Response was very good.

4 MR. WRIGHT: Thank you, Your Honor.

5 THE COURT: These are useless. You didn't
6 sign them and they're drafts, so they don't even have
7 anything.

8 MS. FILAS: They're still out there and I
9 think they should be returned to me because I've
10 never seen them.

11 THE COURT: Can you return them to her?
12 Just give them back. Do you have them?

13 MR. WRIGHT: In electronic format, yeah,
14 I'll send them back.

15 THE COURT: Just send them back to her.

16 MR. WRIGHT: Via e-mail?

17 THE COURT: Do you have e-mail?

18 MS. FILAS: Yes, that's fine. He has my
19 e-mail.

20 THE COURT: Okay, send them back by e-mail.
21 They don't have any validity, Ms. Filas.

22 MS. FILAS: I understand. I just want to
23 know what they said.

24 THE COURT: This is useless.

25 MS. FILAS: I've never seen them. My

1 attorney gave them out without my permission.

2 THE COURT: All right, okay. I think that
3 takes care of everything. I'll see you Monday,
4 hopefully not. How come you didn't just bring
5 authorizations with you today knowing that --

6 MR. WRIGHT: Your Honor, I didn't know who
7 her treaters were until I got the interrogatories
8 this morning.

9 THE COURT: Okay.

10 MR. WRIGHT: So that's why I didn't.

11 THE COURT: All right. So you're going to
12 have -- and how many treaters are there?

13 MR. WRIGHT: About 27.

14 THE COURT: Okay, you're going to sign all
15 those authorizations, otherwise no case.

16 MS. FILAS: Can I fill out something that
17 says that the Protection Order's been vacated or that
18 it doesn't exist?

19 THE COURT: Fill out a blank order. It
20 doesn't exist. It wasn't even in this case.

21 MS. FILAS: I could never get a clear
22 answer from the other attorneys though whether it was
23 still in effect or not. I don't know, it would make
24 me feel better if I had it writing that it didn't
25 exist anymore just so there wasn't any further

1 argument and we don't have to go back looking at the
2 transcript.

3 THE COURT: Okay.

4 MS. McGRATH: Your Honor, for the record I
5 will add I have attached e-mails to our Responses and
6 all attorneys did reply back saying that we believe
7 there was no Protective Order in effect because that
8 was a different case. And we have filed the Response
9 asking for sanctions to attempt to stop frivolous
10 motions from being filed wasting judicial resources.

11 THE COURT: Well, however, I took care of
12 this motion today along with your motion.

13 MS. McGRATH: Yes, and we appreciate that.

14 THE COURT: So I'm not going to be awarding
15 any costs for frivolous motions at this point.

16 Okay, so fill out a blank order declaring
17 that this Protective Order is not in effect in this
18 case.

19 MS. McGRATH: Thank you, Your Honor.

20 THE COURT: Okay. And I will initial it
21 and somebody will E-File it, okay.

22 MR. WRIGHT: Thank you.

23 (Proceeding concluded - 11:20 a.m.)
24
25

Exhibit I

6477 Edgewood
Canton, MI 48187
June 6, 2013

Henry Ford West Bloomfield Hospital
Attn: Medical Records
6777 West Maple Rd.
West Bloomfield, MI 48322

RE: Request for records pertaining to Tamara Filas, DOB [REDACTED]

Dear Medical Records Custodian,

Attached is a signed Authorization for Release of Medical Information and Authentication Certificate, permitting the disclosure of records pertaining to Tamara Filas, DOB [REDACTED], as described in detail below, to Mr. Ahmed Hassouna, Law Offices of Mark E. Williams, 340 E. Big Beaver Suite 250, Troy, MI 48083.

It is necessary that the attached Certificate, to be completed by the Records Custodian, is notarized, and sent by U.S. Certified Mail with Return Receipt, in order to satisfy MCR 2.506(I)(1)(b).

Description of records requested:

Redacted: Below was DOB
Any and all PHI from [REDACTED] until present.

Redacted: Below was DOB
Any and all medical records from [REDACTED] to present pertaining to Tamara Filas DOB [REDACTED], including all medical reports, doctor notes/reports, nurse's notes/reports, consultation notes/reports, admission notes, treatment notes/history, radiographic study reports, medical orders, physical therapy notes/orders/regimen, performance appraisals, exam results, discharge summaries and the like, including, but not limited to the following practitioner visits:

Redacted: Additional letters of caregivers' names and type of report

- 4-7-10, K [REDACTED] S [REDACTED]
- 5-5-10, J [REDACTED] L [REDACTED] and C [REDACTED] E [REDACTED]
- 8-31-10, C [REDACTED] I [REDACTED]
- 9-16-10, V [REDACTED] S [REDACTED]
- 11-2-10, C [REDACTED] E [REDACTED]
- 4-14-11, N [REDACTED] C [REDACTED]
- 9-12-11, C [REDACTED] E [REDACTED] and J [REDACTED] M [REDACTED]
- 10-3-11, [REDACTED] testing reports
- 10-5-11, C [REDACTED] E [REDACTED]
- 12-13-11, C [REDACTED] L [REDACTED]
- 2-17-12, C [REDACTED] L [REDACTED]
- 3-8-12, J [REDACTED] N [REDACTED]
- 4-4-12, J [REDACTED] N [REDACTED]

4-9-12, J [redacted] N [redacted]
4-16-12, J [redacted] N [redacted]
4-19-12, J [redacted] N [redacted]
7-13-12, C [redacted] U [redacted]
10-5-12, C [redacted] U [redacted]

Thank you in advance for your assistance.

Yours truly,

signature redacted

Tamara Filas

This 2-page document and 2-page Medical Authorization form, requesting records pertaining to Tamara Filas, was received on June 6, 2013 by:

Debra K
Signature

Debra Kress
Printed name

12:25 pm
Time

Approved, SCAO

Original - Records custodian
1st copy - Requesting party
2nd copy - Patient

STATE OF MICHIGAN JUDICIAL DISTRICT 3rd JUDICIAL CIRCUIT COUNTY PROBATE	AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION	CASE NO. 13-000652-NI
---	--	---------------------------------

Court address: 2 Woodward Ave. Detroit, MI 48226
 Court telephone no. (313) 224-5261

Plaintiff Tamara Filas	v	Defendant Kevin Culpert and Efficient Design, Inc.
<input type="checkbox"/> Probate In the matter of _____		

1. Tamara Filas _____
 Patient's name Date of birth

2. I authorize Henry Ford West Bloomfield Hospital, Attn: Medical Records, 6777 W. Maple Rd., West Bloomfield, MI 48322
 Name and address of doctor, hospital, or other custodian of medical information

to release (see attached letter)
 Description of medical information to be released (include dates where appropriate)

Mr. Ahmed Hassouna, Law Offices of Mark E. Williams, 340 E. Big Beaver Suite 250, Troy, MI 48083
 to Name and address of party to whom the information is to be given

3. I understand that unless I expressly direct otherwise:

- a) the custodian will make the medical information reasonably available for inspection and copying, or
- b) the custodian will deliver to the requesting party the original information or a true and exact copy of the original information accompanied by the certificate on the reverse side of this authorization.

I understand that medical information may include records, if any, on alcohol and drug abuse, psychology, social work, and information about HIV, AIDS, ARC, and any other communicable disease.

4. This authorization is valid for 60 days and is signed to make medical information regarding me available to the other party(ies) to the lawsuit listed above for their use in any stage of the lawsuit. The medical information covered by this release is relevant because my mental or physical condition is in controversy in the lawsuit.

5. I understand that by signing this authorization there is potential for protected health information to be redisclosed by the recipient.

6. I understand that I may revoke this authorization, except to the extent action has already been taken in reliance upon this authorization, at any time by sending a written revocation to the doctor, hospital, or other custodian of medical information.

06/06/2013

Date

signature redacted

Signature

Tamara Filas

Name (type or print) (If signing as Personal Representative, please state under what authority you are acting)

6477 Edgewood

Address

Canton, MI 48187

City, state, zip

(734) 751-0103

Telephone no.

CERTIFICATE

1. I am the custodian of medical information for _____
Organization
2. I received the attached authorization for release of medical information on _____
Date
3. I have examined the original medical information regarding this patient and have attached a true and complete copy of the information that was described in the authorization.
4. This certificate is made in accordance with Michigan Court Rule.

I declare that the statements above are true to the best of my information, knowledge, and belief.

Date

Signature

Name (type or print)

Address

City, state, zip

Telephone no.

6477 Edgewood
Canton, MI 48187
June 19, 2013

Redacted: Name of business, to protect privacy

██████████ Chiropractic
Attn: Records Custodian
██████████
██████████, MI ██████████

RE: Request for records pertaining to Tamara Filas, DOB ██████████

Dear Health Information Management Representative,

Attached is a signed Authorization for Release of Medical Information and Authentication Certificate, permitting the disclosure of records pertaining to Tamara Filas, DOB ██████████, as described in detail below, to Mr. Ahmed Hassouna, Law Offices of Mark E. Williams, 340 E. Big Beaver Suite 250, Troy, MI 48083.

It is necessary that the attached Certificate, to be completed by the Records Custodian, is notarized, and sent by U.S. Certified Mail with Return Receipt, in order to satisfy MCR 2.506(l)(1)(b).

Description of records requested:

Redacted: Below was DOB

Any and all medical records from ██████████ to present pertaining to Tamara Filas, DOB ██████████, including all medical reports, history & physical, discharge summary, operative reports, consults, outpatient visit notes, test reports, ER clinician notes, flow sheets, medication administration records, physician orders, doctor notes/reports, nurse's notes/reports, consultation notes/reports, admission notes, treatment notes/history, radiographic study reports, medical orders, physical therapy notes/orders/regimen, performance appraisals, exam results, discharge summaries and the like, including, but not limited to the following visit dates:

4-29-11	2-16-12	3-10-12
5-3-11	2-18-12	3-13-12
2-1-12	2-21-12	3-15-12
2-3-12	2-23-12	3-17-12
2-4-12	2-25-12	3-21-12
2-7-12	2-28-12	3-24-12
2-9-12	3-1-12	3-31-12
2-10-12	3-3-12	4-3-12
2-11-12	3-6-12	4-16-12
2-14-12	3-8-12	4-20-12

4-25-12	8-13-12	1-30-13
4-28-12	8-29-12	2-4-13
5-1-12	9-17-12	2-11-13
5-5-12	9-24-12	2-18-13
5-8-12	10-1-12	2-25-13
5-11-12	10-8-12	3-4-13
5-15-12	10-15-12	3-11-13
5-18-12	10-22-12	3-25-13
5-22-12	11-5-12	4-8-13
6-7-12	11-12-12	4-15-13
6-13-12	11-19-12	4-22-13
6-19-12	11-26-12	5-6-13
6-26-13	12-3-12	5-13-13
7-9-12	12-10-12	5-20-13
7-16-12	12-19-12	6-3-13
7-23-12	1-7-13	6-10-13
7-30-12	1-14-13	
8-6-12	1-23-13	

Other records requested:

Any and all films, x-rays, CT's, MRI's, and EMG's from Redacted: Below was DOB to present pertaining to Tamara Filas (DOB Redacted: Below was DOB). Please provide films on CD, if possible.

Billing information from 1-15-2010 to present

Thank you in advance for your assistance.

Yours truly,

signature redacted

Tamara Filas

Original - Records custodian
1st copy - Requesting party
2nd copy - Patient

Approved, SCAO

STATE OF MICHIGAN JUDICIAL DISTRICT 3rd JUDICIAL CIRCUIT COUNTY PROBATE	AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION	CASE NO. 13-000652-NI
--	---	--------------------------

Court address: 2 Woodward Ave., Detroit, MI 48226
 Court telephone no.: (313) 224-5261

Plaintiff Tamara Filas	v	Defendant Kevin Culpert and Efficient Design, Inc.
Probate In the matter of _____		

1. Tamara Filas _____
 Patient's name Date of birth

2. I authorize _____ Attn: Records Custodian, _____ MI _____
 Name and address of doctor, hospital, or other custodian of medical information

to release (see attached letter)
 Description of medical information to be released (include dates where appropriate)

to Mr. Ahmed Hassouna, Law Offices of Mark E. Williams, 340 E. Big Beaver, Suite 250, Troy, MI 48083
 Name and address of party to whom the information is to be given

3. I understand that unless I expressly direct otherwise:
- a) the custodian will make the medical information reasonably available for inspection and copying, or
 - b) the custodian will deliver to the requesting party the original information or a true and exact copy of the original information accompanied by the certificate on the reverse side of this authorization.
- I understand that medical information may include records, if any, on alcohol and drug abuse, psychology, social work, and information about HIV, AIDS, ARC, and any other communicable disease.
4. This authorization is valid for 60 days and is signed to make medical information regarding me available to the other party(ies) to the lawsuit listed above for their use in any stage of the lawsuit. The medical information covered by this release is relevant because my mental or physical condition is in controversy in the lawsuit.
5. I understand that by signing this authorization there is potential for protected health information to be redisclosed by the recipient.
6. I understand that I may revoke this authorization, except to the extent action has already been taken in reliance upon this authorization, at any time by sending a written revocation to the doctor, hospital, or other custodian of medical information.

6-19-13
 Date

signature redacted
 Signature
 Tamara Filas

6477 Edgewood
 Address
 Canton, MI 48187

(734) 751-0103
 Telephone no.

Name (type or print) (If signing as Personal Representative, please state under what authority you are acting)
 City, state, zip



Certificate Of Mailing

From



Ms. Tamara Filas
6477 Edgewood Rd.
Canton, MI 48187-5264

To



Attn: Records Custodian



, MI

1000



00087954-03

\$1.20

U. S. POSTAGE
PAID
CANTON, MI
JUN 19, 13
HMOUNT

Exhibit J1

6477 Edgewood
Canton, MI 48187
October 27, 2014

St. Joseph Mercy Michigan Orthopedic Center
Attn: Records Custodian
5315 Elliot Dr., Suite 301
Ypsilanti, MI 48197

**RE: Medical Records Releases for Tamara Filas, DOB [redacted]
Disclosure Information Request**

Dear Health Information Management Representative,

In June 2013, your office should have received two separate completed copies of form MC315 signed and dated by me to release my medical records to Mr. James Wright (Item 1 below) and Mr. Ahmed Hassouna (Item 2 below). There was also a medical records request (Form MC 315) signed by me to have the same records that were released to Mr. Hassouna to be sent to me.

R E D A C T E D

I am requesting the disclosure of the following information regarding the release of my records to any of the entities listed above in items 1-3, or anyone else to whom my records may have been released (see item 4 below).

For your convenience, I have provided a simple form for you to fill out. Please answer all questions that are discloseable. If a question cannot be answered, give a brief explanation why.

Please answer the questions presented below in items #1-4, sign and date at the bottom, and return the completed copy to me at 6477 Edgewood, Canton, MI 48187.

Thank you,

[signature redacted]

Tamara Filas

*Forms Completed
& Returned to
patient
10/29/14.*

Item 1:

Mr. James Wright
Zausmer, Kaufman, August & Caldwell, P.C.
31700 Middlebelt Rd., Suite 150
Farmington Hills, MI 48334

- 1) Were all of the records that I, Tamara Filas, requested to be sent to Mr. Wright or anyone else at the address above, copied and sent out? yes no.
- 2) Were only some of the records that I, Tamara Filas, requested to be sent to Mr. Wright or anyone else at the above address copied and sent out?

yes no. If yes, explain why only some were sent.

All sent. Records, xray disk + Billing stmt
mailed on ~~7-24-14~~ 7-24-13
ERRATA
SMS

- 3) If yes to #1 or #2, was a fee paid to you for the copying and mailing of the records to Mr. Wright or anyone else at the address above? yes no.

If the answer is no, skip to number 5. If answer is yes, proceed to question 4.

- 4) Was the fee paid before or after the records were copied and sent out?

before after

- 5) On what date were the records sent: ~~7-24-14~~ 7-24-13

- 6) If no records requested were sent, what is the reason records were not sent?
ERRATA
SMS

Judge Manders, medical records Dept.
10129114 Suite 301

Item 2:

Mr. Ahmed Hassouna
Law Offices of Mark E. Williams
340 E. Big Beaver Suite 250
Troy, MI 48083

- 1) Were all of the records that I, Tamara Filas, requested to be sent to Mr. Hassouna or anyone else at the address above, copied and sent out?
 yes no.
- 2) Were only some of the records that I, Tamara Filas, requested to be sent to Mr. Hassouna or anyone else at the above address copied and sent out?
 yes no. If yes, explain why only some were sent.
All Records sent, xray disk + Billing stmt
mailed on 7-15-13.

- 3) Was I, Tamara Filas, sent the same exact copies of the records that were sent to Mr. Hassouna or anyone else at the above address? yes no.
- 4) If yes to #1 or #2, was a fee paid to you for the copying and mailing of the records to Mr. Hassouna or anyone else at the address above? yes no.

If the answer is no, skip to number 6. If answer is yes, proceed to question 5.

- 5) Was the fee paid before or after the records were copied and sent out?
 before after
- 6) On what date were the records sent: 7-15-13

- 7) If no records requested were sent, what is the reason records were not sent?

Judy Manders Medical Records Dept.
10-29-14 Suite 301

Item 4:

Any other person or entity to whom records were sent at any time with or without a signed request from Tamara Filas. This would include records released to insurance companies who requested billing codes, records exchanged between health care providers, records released via a court-ordered subpoena or records provided to an employer or governmental agency by statute or law:

Please give name of each person or entity to whom the records were released, the date they were released, and a brief description of the records released.

<u>Person/entity</u>	<u>Date released</u>	<u>Brief Description of records released</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Attach additional sheets as necessary.

Signature of medical records representative completing this form:

Judy Manders

Printed name:

Judy Manders

Andrew Moore M.D.
ORTHOPEDIC SURGERY ASSOCIATES, P.C.
5315 ELLIOTT DRIVE
SUITE 301
TUSCUMMAC, MICHIGAN 48197

Date:

10-29-14

Exhibit J2



**ST. MARY MERCY
LIVONIA**
SAINT JOSEPH MERCY HEALTH SYSTEM

36475 Five Mile Road
Livonia, MI 48154
Phone: 734-655-4800

stmarymercy.org

October 31, 2014

Ms. Tamara Filas
6477 Edgewood
Canton, MI 48187

Re: Accounting of disclosures

Ms. Filas,

Attached is the information that you requested regarding releases of your records. This is the standard information that is given with these types of requests as such I am under no obligation to fill out the forms that you requested.

Please contact me if you need further information.

Thank you.

Denise Blackburn, RHIA
Director, Medical Records
(734) 655-1409

5 Record(s) Found

Advanced Search Details

21080 - ST MARY MERCY HOSPITAL LIVONIA

Log ID	Req ID Requester Notification Num	Location	Patient Name	Requester Name	Scan Date	Request Received Date/Time	Comments	Date Entered
83013577	130251041	21080-St Mary Mercy Hospital Livonia	Tamara Filas	Tamara Filas	07/03/2013	06/24/2013	Any And All Med. Recs. From Dob-present. Billing And Imaging Requests Interofficd)-jm (waiting For Physical Therapy Recs.)-jm. 6/26/13, phy. therapy recs. rcvd-jm.	06/24/2013
83013822	130250651	21080-St Mary Mercy Hospital Livonia	Tamara Filas	Law Offices Of Mark E Williams Attn Mr Ahmed Hassouna	07/03/2013	06/24/2013	Any And All Med. Recs. From Dob-present. (billing And Imaging Requests Interofficd)-jm. (waiting For Physical Therapy Recs.)-jm. 6/26/13, phy. recs. rcvd-jm.	06/24/2013
83166521	130250250	21080-St Mary Mercy Hospital Livonia	Tamara Filas	Mr James Wright Zausmer Kaufman August And Caldwell P C	07/03/2013	06/24/2013	All Med Recs. From Dob-present. (billing And Imaging Requests Interofficd 6/24/13). (waiting For Physical Therapy Recs)-jm. 6/26/13, phy recs. rcvd-also, this is a revised request with a different address for the recipient, forwarded new copies to radiology and billing-jm.	06/26/2013
81058253	127460929	21080-St Mary Mercy Hospital Livonia	Tamara Filas	Tamara Filas	05/13/2013	05/13/2013	Physical Therapy Recs From 02/2013.	05/13/2013
74550412	119966524	21080-St Mary Mercy Hospital Livonia	Tamara Filas	Tamara Filas	12/19/2012	12/19/2012	All Physical Therapy Recs. From Aug-dec 2012.	12/19/2012

eSmartlog Request Details

21080 : St Mary Mercy Hospital Livonia

Log ID: 83013822 Associate#: 123032

Location: 21080: St Mary Mercy Hospital Livonia

Requester Information

Phone: 734-751-0103 Name: Law Offices Of Mark E Williams Attn Mr Ahmed Hassouna

Type: Patient

Address: 340 E Big Beaver Suite 250

City: Troy

State-Zip: MI -48083

Patient Information

Received Date: 06/24/2013

First Name: Tamara

Last Name: Filas

DOB: redacted

SSN:

Med Rec No: 953109

Claim #:

Chart Location: Perm File

Date of Service:

Patient Acct #:

Complete Date: 07/03/2013

Enter Date: 06/24/2013 @ 11:39:10:am

Page Count: 88

HIPAA reportable disclosure:

Delivery Method: Mail

Attention of :

Forms Sent: ANY AND ALL RECORDS

Comments:

Any And All Med. Recs. From Dob-present. (billing And Imaging Requests Interofficd)-jm. (waiting For Physical Therapy Recs.)-jm. 6/26/13, phy. recs. rvd-jm.

Entered by: 123032-Jeri Mckenzie-Associate

Pushed from AudaPro: N/A

Request Reason: Patient Transfer

Billable Type: Y

Pay On Site: N

Page Count Known: N

Paper Pages: 0

Micro Pages: 0

Electronic Pages: 0

Email:

Update Record

Close This Window

View Request Letter

Correspondence History

New Correspondence Letters

eSmartlog Request Details

21080 : St Mary Mercy Hospital Livonia

Log ID: 83166521 **Associate#:** 123032

Location: 21080: St Mary Mercy Hospital Livonia

Requester Information

Phone: 734-751-0103 **Name:** Mr James Wright Zausmer Kaufman August And Caldwell P C **Type:** Patient

Address: 31700 Middlebelt Rd Suite 150 **City:** Farmington Hills **State-Zip:** MI -48334

Patient Information

Received Date: 06/24/2013 **DOB:** redacted

First Name: Tamara **Last Name:** Filas **Claim #:**

SSN: **Med Rec No:** 953109 **Patient Acct #:**

Chart Location: Perm File **Date of Service:**

Complete Date: 07/03/2013 **Enter Date:** 06/26/2013 @ 02:31:42:pm

Page Count: 88 **HIPAA reportable disclosure:** **Delivery Method:** Mail

Attention of :

Forms Sent: ANY AND ALL RECORDS

Comments: All Med Recs. From Dob-present. (billing And Imaging Requests Interofficed 6/24/13). (waiting For Physical Therapy Recs)-jm. 6/26/13, phy recs. rcvd-also, this is a revised request with a different address for the recipient, forwarded new copies to radiology and billing-jm.

Entered by: 123032-Jeri Mckenzie-Associate

Pushed from AudaPro: N/A

Request Reason: Patient Transfer **Billable Type:** Y **Pay On Site:** N

Page Count Known: N **Paper Pages:** 0 **Micro Pages:** 0

Electronic Pages: 0 **Email:**

Update Record

Close This Window

Exhibit J3

6477 Edgewood
Canton, MI 48187
October 27, 2014

Dr. James Giordano, DDS
Attn: Records Custodian
6150 Greenfield Rd. #200
Dearborn, MI 48126

**RE: Medical Records Releases for Tamara Filas, DOB [redacted]
Disclosure Information Request**

Dear Health Information Management Representative,

In June 2013, your office should have received two separate completed copies of form MC315 signed and dated by me to release my medical records to Mr. James Wright (Item 1 below) and Mr. Ahmed Hassouna (Item 2 below). There was also a medical records request (Form MC 315) signed by me to have the same records that were released to Mr. Hassouna to be sent to me.

R E D A C T E D

I am requesting the disclosure of the following information regarding the release of my records to any of the entities listed above in items 1-3, or anyone else to whom my records may have been released (see item 4 below).

For your convenience, I have provided a simple form for you to fill out. Please answer all questions that are discloseable. If a question cannot be answered, give a brief explanation why.

Please answer the questions presented below in items #1-4, sign and date at the bottom, and return the completed copy to me at 6477 Edgewood, Canton, MI 48187.

Thank you,

[signature redacted]

Tamara Filas

Item 1:

Mr. James Wright
Zausmer, Kaufman, August & Caldwell, P.C.
31700 Middlebelt Rd., Suite 150
Farmington Hills, MI 48334

- 1) Were all of the records that I, Tamara Filas, requested to be sent to Mr. Wright or anyone else at the address above, copied and sent out? yes ___ no.
- 2) Were only some of the records that I, Tamara Filas, requested to be sent to Mr. Wright or anyone else at the above address copied and sent out?

yes ___ no. If yes, explain why only some were sent.

- 3) If yes to #1 or #2, was a fee paid to you for the copying and mailing of the records to Mr. Wright or anyone else at the address above? ___ yes ___ no.

If the answer is no, skip to number 5. If answer is yes, proceed to question 4.

- 4) Was the fee paid before or after the records were copied and sent out?

___ before after *\$50.09 still remains owing, record copy was \$150.00, \$100.00 was paid only ck #5784*

- 5) On what date were the records sent: 6-27-13

- 6) If no records requested were sent, what is the reason records were not sent?

Item 2:

Mr. Ahmed Hassouna
Law Offices of Mark E. Williams
340 E. Big Beaver Suite 250
Troy, MI 48083

- 1) Were all of the records that I, Tamara Filas, requested to be sent to Mr. Hassouna or anyone else at the address above, copied and sent out?
 yes ___ no.
- 2) Were only some of the records that I, Tamara Filas, requested to be sent to Mr. Hassouna or anyone else at the above address copied and sent out?
___ yes no. If yes, explain why only some were sent.

- 3) Was I, Tamara Filas, sent the same exact copies of the records that were sent to Mr. Hassouna or anyone else at the above address? yes ___ no.
- 4) If yes to #1 or #2, was a fee paid to you for the copying and mailing of the records to Mr. Hassouna or anyone else at the address above? yes ___ no.

If the answer is no, skip to number 6. If answer is yes, proceed to question 5.

- 5) Was the fee paid before or after the records were copied and sent out?
___ before after

6) On what date were the records sent: 6.27.13

- 7) If no records requested were sent, what is the reason records were not sent?

Item 4:

Any other person or entity to whom records were sent at any time with or without a signed request from Tamara Filas. This would include records released to insurance companies who requested billing codes, records exchanged between health care providers, records released via a court-ordered subpoena or records provided to an employer or governmental agency by statute or law:

Please give name of each person or entity to whom the records were released, the date they were released, and a brief description of the records released.

Person/entity Date released Brief Description of records released

R E D A C T E D

Attach additional sheets as necessary.

Signature of medical records representative completing this form:

Carole Bartlett

Printed name:

CAROLE BARTLETT

Date:

10-28-14

Exhibit J4

6477 Edgewood
Canton, MI 48187
October 27, 2014

Manzo Eye Care
Attn: Records Custodian
621 W. 11 Mile Rd.
Royal Oak, MI 48067

**RE: Medical Records Releases for Tamara Filas, DOB [redacted]
Disclosure Information Request**

Dear Health Information Management Representative,

In June 2013, your office should have received two separate completed copies of form MC315 signed and dated by me to release my medical records to Mr. James Wright (Item 1 below) and Mr. Ahmed Hassouna (Item 2 below). There was also a medical records request (Form MC 315) signed by me to have the same records that were released to Mr. Hassouna to be sent to me.

R E D A C T E D

I am requesting the disclosure of the following information regarding the release of my records to any of the entities listed above in items 1-3, or anyone else to whom my records may have been released (see item 4 below).

For your convenience, I have provided a simple form for you to fill out. Please answer all questions that are discloseable. If a question cannot be answered, give a brief explanation why.

Please answer the questions presented below in items #1-4, sign and date at the bottom, and return the completed copy to me at 6477 Edgewood, Canton, MI 48187.

Thank you,

[signature redacted]

Tamara Filas

Item 1:

Mr. James Wright
Zausmer, Kaufman, August & Caldwell, P.C.
31700 Middlebelt Rd., Suite 150
Farmington Hills, MI 48334

- 1) Were all of the records that I, Tamara Filas, requested to be sent to Mr. Wright or anyone else at the address above, copied and sent out? yes ___ no.
- 2) Were only some of the records that I, Tamara Filas, requested to be sent to Mr. Wright or anyone else at the above address copied and sent out?
___ yes no. If yes, explain why only some were sent.

- 3) If yes to #1 or #2, was a fee paid to you for the copying and mailing of the records to Mr. Wright or anyone else at the address above? yes ___ no.

If the answer is no, skip to number 5. If answer is yes, proceed to question 4.

- 4) Was the fee paid before or after the records were copied and sent out?
 before ___ after

5) On what date were the records sent: 6/25/13

- 6) If no records requested were sent, what is the reason records were not sent?

Item 2:

Mr. Ahmed Hassouna
Law Offices of Mark E. Williams
340 E. Big Beaver Suite 250
Troy, MI 48083

- 1) Were all of the records that I, Tamara Filas, requested to be sent to Mr. Hassouna or anyone else at the address above, copied and sent out?
 yes no.
- 2) Were only some of the records that I, Tamara Filas, requested to be sent to Mr. Hassouna or anyone else at the above address copied and sent out?
 yes no. If yes, explain why only some were sent.

- 3) Was I, Tamara Filas, sent the same exact copies of the records that were sent to Mr. Hassouna or anyone else at the above address? yes no.
- 4) If yes to #1 or #2, was a fee paid to you for the copying and mailing of the records to Mr. Hassouna or anyone else at the address above? yes no.

If the answer is no, skip to number 6. If answer is yes, proceed to question 5.

- 5) Was the fee paid before or after the records were copied and sent out?
 before after

6) On what date were the records sent: 6/25/13

- 7) If no records requested were sent, what is the reason records were not sent?

N/A

Item 4:

Any other person or entity to whom records were sent at any time with or without a signed request from Tamara Filas. This would include records released to insurance companies who requested billing codes, records exchanged between health care providers, records released via a court-ordered subpoena or records provided to an employer or governmental agency by statute or law:

Please give name of each person or entity to whom the records were released, the date they were released, and a brief description of the records released.

<u>Person/entity</u>	<u>Date released</u>	<u>Brief Description of records released</u>
_____	_____	N/A
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Attach additional sheets as necessary.

Signature of medical records representative completing this form:

 _____

Printed name:

Natalie Kempert _____

Date:

11/3/14 _____

Exhibit J5

343120

6477 Edgewood
Canton, MI 48187
October 27, 2014

Associates in Physical Medicine & Rehabilitation
Attn: Records Custodian
Reichert Health Center
5333 McAuley Dr., Suite 2009
Ypsilanti, MI 48197

**RE: Medical Records Releases for Tamara Filas, DOB [redacted]
Disclosure Information Request**

Dear Health Information Management Representative,

In June 2013, your office should have received two separate completed copies of form MC315 signed and dated by me to release my medical records to Mr. James Wright (Item 1 below) and Mr. Ahmed Hassouna (Item 2 below). There was also a medical records request (Form MC 315) signed by me to have the same records that were released to Mr. Hassouna to be sent to me.

R E D A C T E D

I am requesting the disclosure of the following information regarding the release of my records to any of the entities listed above in items 1-3, or anyone else to whom my records may have been released (see item 4 below).

For your convenience, I have provided a simple form for you to fill out. Please answer all questions that are discloseable. If a question cannot be answered, give a brief explanation why.

Please answer the questions presented below in items #1-4, sign and date at the bottom, and return the completed copy to me at 6477 Edgewood, Canton, MI 48187.

Thank you,

[redacted]
signature redacted

Tamara Filas

*See attached package
that was sent to Mr.
James Wright.*

Item 1:

Mr. James Wright
Zausmer, Kaufman, August & Caldwell, P.C.
31700 Middlebelt Rd., Suite 150
Farmington Hills, MI 48334

- 1) Were all of the records that I, Tamara Filas, requested to be sent to Mr. Wright or anyone else at the address above, copied and sent out? yes no.
- 2) Were only some of the records that I, Tamara Filas, requested to be sent to Mr. Wright or anyone else at the above address copied and sent out?

yes no. If yes, explain why only some were sent.

- 3) If yes to #1 or #2, was a fee paid to you for the copying and mailing of the records to Mr. Wright or anyone else at the address above? yes no.

If the answer is no, skip to number 5. If answer is yes, proceed to question 4.

- 4) Was the fee paid before or after the records were copied and sent out?

before after

- 5) On what date were the records sent: 06/28/2013

- 6) If no records requested were sent, what is the reason records were not sent?

→ *Fee may have been paid to HealthPod who processed your record request HealthPod may be reached at 800-367-1500 to verify if they received payment.*

*See attached package
that was sent to
Mr. Ahmed Hassouna.*

Item 2:

Mr. Ahmed Hassouna
Law Offices of Mark E. Williams
340 E. Big Beaver Suite 250
Troy, MI 48083

- 1) Were all of the records that I, Tamara Filas, requested to be sent to Mr. Hassouna or anyone else at the address above, copied and sent out?
 yes ___ no.
- 2) Were only some of the records that I, Tamara Filas, requested to be sent to Mr. Hassouna or anyone else at the above address copied and sent out?
___ yes ___ no. If yes, explain why only some were sent.

- 3) Was I, Tamara Filas, sent the same exact copies of the records that were sent to Mr. Hassouna or anyone else at the above address? yes ___ no.
- 4) If yes to #1 or #2, was a fee paid to you for the copying and mailing of the records to Mr. Hassouna or anyone else at the address above? ___ yes no.

If the answer is no, skip to number 6. If answer is yes, proceed to question 5.

- 5) Was the fee paid before or after the records were copied and sent out?
___ before ___ after

6) On what date were the records sent: 06/28/2013

- 7) If no records requested were sent, what is the reason records were not sent?

Fee may have been paid to HealthPort who processed your record request. HealthPort may be reached at 877-367-1500 to verify if they received payment.

Item 4:

Any other person or entity to whom records were sent at any time with or without a signed request from Tamara Filas. This would include records released to insurance companies who requested billing codes, records exchanged between health care providers, records released via a court-ordered subpoena or records provided to an employer or governmental agency by statute or law:

Please give name of each person or entity to whom the records were released, the date they were released, and a brief description of the records released.

<u>Person/entity</u>	<u>Date released</u>	<u>Brief Description of records released</u>
<u>Mr. Ahmed Nassar</u>	<u>6/28/13</u>	<u>see enclosed package of information mailed</u>
<u>Ms. James Wright</u>	<u>6/28/13</u>	<u>see enclosed package of information mailed</u>
<u>Tamara Filas</u>	<u>6/28/13</u>	<u>see enclosed package of information mailed</u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>

Attach additional sheets as necessary.

Signature of medical records representative completing this form:

Carla Gzym, Medical Records Supervisor

Printed name:

Carla Gzym

Date:

10/30/2014

Exhibit K



Michigan Supreme Court

State Court Administrative Office
Michigan Hall of Justice
P.O. Box 30052
Lansing, Michigan 48909
Phone (517) 373-0128

Chad C. Schmucker
State Court Administrator

MEMORANDUM

DATE: June 23, 2011

TO: Chief Judges
cc: Court Administrators/Clerks
Probate Registers
County Clerks
SCAO Regional Administrators

FROM: Chad C. Schmucker

RE: SCAO Administrative Memorandum 2011-02
Acceptance of SCAO-Approved Court Forms

We have received some reports of courts refusing to accept SCAO-approved court forms. It has been difficult to determine specifically where this is occurring and whether it is a court policy, a practice of an individual judge, or simple misunderstanding by a court clerk. This memo is intended to clarify what is already the practice of almost all of the courts across the state.

The procedural rules regarding forms are contained in the Case File Management Standards and in MCR 1.109. Case File Management Standards Component 32 states: "Unless specifically required by statute or court rule, the court may not mandate the use of a specific form, whether SCAO-approved or locally developed." MCR 1.109 provides that the court clerk must reject nonconforming papers unless the judge directs otherwise. That same rule states that SCAO-approved forms are conforming papers. Courts may not impose additional procedures beyond those contained in the court rules.¹ Therefore, all courts must accept court forms approved by the Supreme Court or the state court administrator. To mandate the use of a particular local court form, a court must adopt a local court rule for that purpose. The Supreme Court must approve all local court rules.

If you have questions, contact Amy Garoushi at elgaroushia@courts.mi.gov or 517-373-4864, or Traci Gentilozzi at gentilozzi@courts.mi.gov or 517-373-2217.

¹ Credit Acceptance Corporation v 46th District Court, 481 Mich 883 (2008) affirming In Re: Credit Acceptance Corporation, 273 Mich App 594 (2007). MCR 8.112 requires that a court adopt a local court rule approved by the Supreme Court to authorize any practice that is not specifically authorized by the rules.

Exhibit L



**The Ins and Outs of Responding to Subpoenas and Warrants for
Protected Health Information in Michigan**
A Whitepaper on Federal and State Privacy Laws

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PLLC*

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Julie M. Markgraf, *North Ottawa Community Health System*

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PLLC

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Mercedes Varasteh Dordeski, *Foley & Mansfield, PLLP*

I. Introduction

Attorneys must frequently advise clients on the appropriate response to requests for medical records or testimony from health professionals. Requests may come in the form of subpoenas, discovery requests, warrants, law enforcement requests and other similar methods. Prosecuting attorneys and judicial officers who handle cases involving health care information also have a need to understand the relevant law.

Since most health care providers and businesses that support them are either covered entities or business associates subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the HIPAA Privacy Rule as well as Michigan law must be taken into consideration. This paper seeks to address the legal considerations of responding to requests for patient information by way of a subpoena, warrant or other legal process.

This paper addresses the Michigan Court Rules and Michigan law as they relate to the discovery of protected health information or “PHI”, as well as the requirements

and limitations on disclosure imposed by the HIPAA Privacy Rule. The paper will further discuss the interplay between HIPAA and Michigan law by discussing the general concept of HIPAA Preemption, Michigan's physician-patient privilege¹ and recent court cases. It will end with a discussion about the practical implications of responding to a subpoena or warrant for medical information in civil and criminal actions, and the potential consequences for impermissibly disclosing medical information. This paper is intended to serve as a preliminary research tool for attorneys dealing with a subpoena or warrant for patient information in Michigan. The paper should be viewed as a first-tier resource to obtain a perspective on the release of patient information with respect to Michigan law and HIPAA; it is not intended to be a treatise, nor should it be used as the sole basis for making critical business or legal decisions regarding release of patient information. The paper does not constitute, and may not be relied upon, as legal advice.

II. HIPAA

a. "Covered Entities" and "Business Associates"

HIPAA's Privacy, Security and Breach Notification Rules apply to all "covered entities" and "business associates." A covered entity includes health care providers who transmit any health information electronically (directly or indirectly through the use of a clearinghouse or billing company).² Thus, any provider who bills insurance or other

¹ Other privileges may also apply; they are outside the scope of this whitepaper, but are important to consider.

² 45 CFR 160.103.

third party payors will generally be considered “covered entities.” Health plans and clearinghouses are also “covered entities.”

A business associate generally includes any person or entity who “creates, receives, maintains, or transmits protected health information” on behalf of a covered entity.³ Certain categories of services are specifically mentioned in the HIPAA Privacy Rule as creating a business associate relationship, such as claims processing or administration, billing, consulting, data aggregation, and management or administrative services.⁴ Further, any entity that provides data transmission services and requires access on a “routine basis” to protected health information is considered a business associate, as well as any entity that stores protected health information for a covered entity.⁵ Any subcontractor of a business associate is also considered a business associate of the covered entity. This is often referred to as a “downstream business associate.”⁶

b. “Protected Health Information (PHI)”

The HIPAA Privacy Rule took effect in 2003 and has specific requirements related to the permissible use and disclosure of protected health information (“PHI”).⁷ Subject to certain exceptions, the Privacy Rule requires a covered entity to have a valid authorization in order to disclose PHI. PHI is generally any information that can be used

³ *Id.*

⁴ *Id.* Other services and relationships specifically mentioned include claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities listed at 42 CFR 3.20, billing, benefit management, practice management, and repricing. Other specifically mentioned services include legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services. Health Information Organizations and e-prescribing Gateways are also specifically mentioned.

⁵ *Id.*

⁶ Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules, 78 Fed Reg 5573 (Jan. 25, 2013).

⁷ 45 CFR 164.500 *et seq.*

to identify an individual and relates to the “past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual; or the past, present or future payment for the provision of health care”⁸ The definition of “protected health information” is quite broad, and includes any “individually identifiable health information.”⁹ The result is that almost all patient information is considered “protected health information.”

The following is a list of all of the “identifiers” that are considered “protected health information” pursuant to the HIPAA regulations:

1. Names
2. All geographic subdivisions smaller than a State, including street address, city, county, precinct, zip code, and their equivalent geocodes. In certain densely populated geographic areas, the first three digits of the zip code will not be considered an identifier.
3. All elements of date, except year, including birth date, admission date, discharge date, date of death. For patients over 89, the year of birth is considered an identifier.
4. Telephone numbers
5. Fax numbers
6. Email addresses
7. Social Security Numbers
8. Medical Record Numbers
9. Health plan beneficiary numbers

⁸ 45 CFR 160.103.

⁹ 45 CFR 160.103

10. Account numbers
11. Certificate/license numbers
12. Vehicle identifiers and serial numbers, including license plates
13. Device identifiers and serial numbers
14. URLs
15. Internet Protocol (IP) address numbers
16. Biometric identifiers, including finger or voice prints
17. Full face photographic images and any comparable images and
18. Any other unique identifying number, characteristic or code.
19. Any information for which the covered entity has actual knowledge that it could be used alone or in combination with other information to identify an individual who is the subject of the information.¹⁰

Derivatives of identifiers, such as patient initials or the last four digits of social security numbers are also considered identifiers.¹¹ People often assume that innocuous items in this list such as a patient's first name, initials, or zip code on its own without any other health care information should not be protected, but each item is PHI, even if it is on its own.

c. HIPAA Preemption

¹⁰ 45 CFR 164.514(b)(2)(i).

¹¹ Guidance Regarding Methods for De-Identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) available at: <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/De-identification/guidance.html> (accessed 4/28/2014).

HIPAA is a unique federal law in that it allows for state law to supersede HIPAA if the state law provides greater privacy protection of PHI.¹² Wherever possible, both HIPAA and state law should be followed. However, if HIPAA standards or requirements are contrary to a provision of state law, meaning that compliance with both is impossible, HIPAA will generally preempt state law.¹³ But, a state law that is more stringent than the requirements or standards of HIPAA will not be preempted by HIPAA.¹⁴ “More stringent” is expressly defined to include a state law that offers “greater privacy protections for the individual who is the subject of the individually identifiable health information.”¹⁵ Thus, HIPAA preemption must be determined on a case-by-case basis after considering whether it is possible to comply with both HIPAA and state law and if not, whether state law provides greater privacy protection or a greater right of access or amendment to individuals.

d. HIPAA Authorizations for Disclosure of PHI

Uses and disclosures that are not necessary to carry out treatment, payment or healthcare operations or that do not meet one of the exceptions set forth in the HIPAA regulations require a HIPAA-compliant authorization. In order to be HIPAA-compliant, the authorization must contain all of the following elements:¹⁶

1. A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;

¹² 45 CFR 160.203.

¹³ 45 CFR 160.203.

¹⁴ *Id.*

¹⁵ 45 CFR 160.202.

¹⁶ 45 CFR 164.508.

2. The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure;
3. The name or other specific identification of the person(s) or class of persons, to whom the covered entity may make the requested use or disclosure;
4. A description of each purpose of the requested use or disclosure, which can be “at the request of the individual” if applicable¹⁷; and
5. An expiration date or expiration event that relates to the individual or the purpose of the use or disclosure.

The authorization must also be dated and signed by the patient, or the patient’s “personal representative”.¹⁸ If the authorization is signed by the patient’s “personal representative”, a description of the personal representative’s authority must be included.¹⁹ For example, if a parent signs on behalf of a minor, the authorization must include the word “parent” beside the signature. (For further discussion of personal representatives, see Section VI.d.)

In addition, the authorization must include a statement letting the patient know that he or she has the right to revoke the authorization in writing, including the exceptions to the right to revoke and a description of how to revoke the authorization.

¹⁷ Note that the Michigan Medical Records Access Act, MCL 333.26267, prohibits a health care provider from inquiring into the purpose of the request when the request is made by the patient himself or his authorized representative. Because the HIPAA Privacy Rule at 45 CFR 164.508(c)(1)(iv) allows for the purpose to be stated as “at the request of the individual”, compliance with both laws can be met by health care providers ensuring that their standard authorization forms used for requests by or on behalf of the patient do not inquire into the purpose of the request.

¹⁸ *Id.*

¹⁹ *Id.*

To the extent that this information is included in the covered entity's Notice of Privacy Practices, a reference back to the Notice of Privacy Practices is permissible.²⁰

The authorization must also include a statement that treatment will not be conditioned on the patient signing the authorization or the consequences of refusing to sign.²¹ Additionally, the authorization must include a statement that once the information is disclosed as authorized it is no longer protected by HIPAA and may be re-disclosed by the recipient.²² The authorization must be written in plain language and a signed copy must be provided to the patient.²³

e. HIPAA Disclosures Without Patient Authorization

The HIPAA Privacy Rule allows for the use and disclosure of PHI without a written authorization from the individual in certain circumstances.²⁴ While HIPAA has many exceptions, this paper will focus on those exceptions that relate to discovery requests, warrants, and subpoenas.

(i) Required by Law

The HIPAA Privacy Rule at 45 CFR 164.512(a) permits disclosures that are "required by law." A use or disclosure is "required by law" when there is a mandate contained in the law that compels the entity to make the use or disclosure of protected

²⁰ *Id.*

²¹ *Id.*

²² *Id.* The regulations require the statement to clearly put the individual providing the authorization on notice that the information may lose HIPAA privacy protections; for most circumstances involving subpoenas, the information is disclosed to a third party who is not required to follow the HIPAA privacy requirements.

²³ *Id.* Note that if the authorization is being executed at the request of a patient, the patient does not have to be provided with a copy. In addition, the Michigan Medical Records Access Act requires that a request for records be signed and dated not more than 60 days prior to being submitted to the health care provider. MCL 333.26265(2).

²⁴ See Section IV - Physician-Patient Privilege. As discussed in greater detail below, the requirements of the Michigan physician-patient privilege may be deemed more stringent than HIPAA and prevent disclosure.

health information that is enforceable in a court of law.²⁵ The definition of “required by law” includes, without limitation, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, governmental or tribal inspector general or administrative body authorized to require the production of information.²⁶ Required by law can also include a civil or authorized investigative demand.²⁷

(ii) Disclosures for Judicial or Administrative Proceedings

45 CFR 164.512 (e) sets forth the circumstances under which a covered entity can also disclose protected health information in the context of a judicial or administrative proceeding.²⁸

Contrary to the Michigan Court rules, as discussed in more detail below, a subpoena signed by an attorney does not function as a court order for purposes of HIPAA. The Office of Civil Rights, the federal agency responsible for enforcement of HIPAA Privacy and Security Rules, has issued guidance which specifically provides that, “[a] subpoena issued by someone other than a judge, such as a court clerk or an attorney in a case, is different from a court order. A covered provider or plan may disclose information to a party issuing a subpoena only if the notification requirements of the Privacy Rule are met.”²⁹

If a subpoena is not accompanied by a court order, the HIPAA regulations allow a covered entity to make the disclosure if it receives “satisfactory assurance” from the

²⁵ 45 CFR 164.103

²⁶ *Id.*

²⁷ *Id.*

²⁸ *See* 45 CFR 164.512(e).

²⁹ Office of Civil Rights, Health Information Privacy, Understanding HIPAA Privacy for Consumers, <http://www.hhs.gov/ocr/privacy/hipaa/understanding/consumers/courtorders.html> (last accessed April 16, 2014).

requesting individual that reasonable efforts have been made to give the subject of the PHI notice of the request.³⁰ “Satisfactory assurance” is defined as a written statement and documentation of a good-faith attempt to provide written notice to the individual.³¹ The written notice to the subject of the PHI must include sufficient information about the litigation or administrative proceeding to permit the subject of the PHI to raise objections.³² It is considered to be “satisfactory assurance” if the timeframe for the individual to raise objections has lapsed, and: (1) no objections were filed, or (2) any objections that were filed have been resolved.³³

Alternatively, the party requesting the PHI may provide satisfactory assurance by providing a written statement and documentation demonstrating that the parties have mutually agreed to a qualified protective order and have presented it to the court, or documentation showing that the party requesting the PHI has requested a qualified protective order from the court.³⁴ A qualified protective order is expressly defined by the regulations to include a court (or administrative tribunal) order or stipulation of the parties to the dispute that prohibits the parties from disclosing the PHI for any purpose other than that for which it was requested in the litigation or legal proceeding and requires that the information be returned to the covered entity or destroyed at the end of the proceeding.³⁵

Despite the detailed requirements for providing sufficient notice or obtaining a qualified protective order, HIPAA permits a covered entity to disclose PHI in response to

³⁰ 45 CFR 164.512(e)(1)(ii)(A).

³¹ 45 CFR 164.512(e)(1)(iii).

³² 45 CFR 164.512(e)(1)(iii).

³³ 45 CFR 164.512(e)(1)(iii)(C).

³⁴ 45 CFR 164.512(e)(1)(ii)(B).

³⁵ 45 CFR 164.512(e)(1)(v).

a subpoena or discovery request without receiving satisfactory assurance from the requesting party if the *covered entity* itself makes reasonable efforts to provide notice to the individual or seeks a qualified protective order.³⁶ The regulations, therefore, give the covered entity *the option* of directly providing notice to the subject of the PHI or seeking a qualified protective order, but the covered entity is not required to do so.

iii. Disclosures For Law Enforcement Purposes

The HIPAA Privacy Rule also permits disclosures of PHI for law enforcement purposes in compliance with a court order, court-ordered warrant, subpoena or summons issued by a judicial officer (e.g. a judge or magistrate), or a grand jury subpoena.³⁷ The Privacy Rule provides that such disclosures may be made to a law enforcement official (e.g., police officer or prosecuting attorney)³⁸ if the information authorized by the judicial officer is relevant and material to a legitimate law enforcement inquiry, the request is specific and limited in scope, and de-identified information cannot reasonably be used. The disclosure must be limited to the relevant requirements of the order or subpoena.³⁹

III. Michigan Court Rules and Related Michigan Laws

The Michigan Court Rules provide for relatively broad discovery; generally parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in a pending action.⁴⁰ Significantly, the protection of

³⁶ 45 CFR 164.512(e)(1)(vi). (Emphasis added).

³⁷ 45 CFR 164.512(f)(1). This section also includes disclosures in compliance with an administrative request, including an administrative subpoena or summons, a civil or authorized investigative demand, or similar process.

³⁸ 45 CFR 164.103.

³⁹ 45 CFR 164.512(f)(1).

⁴⁰ MCR 2.302(B).

privileged information supersedes even Michigan's liberal discovery principles⁴¹ and, as discussed below, is primarily more stringent than HIPAA.

a. Michigan Court Rules for Civil Procedure

With regard to requests for medical records and other documents containing PHI, the methods and limits on discovery differ for parties and non-parties. When the mental or physical condition of a party is in controversy, the medical condition is subject to discovery under the Michigan Court Rules if it is otherwise discoverable and a *valid privilege* is not asserted.⁴² This includes medical records in the possession or control of a physician, hospital, or other custodian.⁴³

For example, upon receiving a discovery request for production of medical information from the defendant in a personal injury or medical malpractice action, the plaintiff's attorney typically provides authorizations signed by the plaintiff that will allow the defendant to obtain the requested medical information from physicians, hospitals or other providers in possession of the information.⁴⁴ The Court Rules specify that authorizations provided by a party in response to a discovery request should be in "the form approved by the state court administrator."⁴⁵ SCAO form MC315 is the authorization form approved by the state court administrator and is also HIPAA-compliant.

The requesting party (or in many cases a copy service employed on its behalf) would then issue a subpoena together with the authorization provided by the plaintiff to

⁴¹ *Meier v Awaad*, 299 Mich App 655, 666; 832 NW2d 251 (2013).

⁴² MCR 2.314(A)(1).

⁴³ MCR 2.314(A)(2).

⁴⁴ MCR 2.314(C)(1)(d).

⁴⁵ MCR 2.314(c)(1)(d).

request the medical record information directly from the healthcare provider. To the extent that an authorization form other than SCAO form MC315 is provided, health care providers should review the authorization to confirm that it complies with HIPAA and the Michigan Medical Records Access Act.

A subpoena may also direct a party or a witness to appear to testify.⁴⁶ The Michigan Court Rules further state that a subpoena that is signed by an attorney of record in an action has the force and effect of an order signed by the judge of that court.⁴⁷ This directly contradicts the guidance noted above from OCR that a subpoena signed by an attorney or clerk is not the same as an order signed by a judge, which is a more stringent protection of privacy. Accordingly, federal law controls.

b. Michigan Laws and Rules for Criminal Procedure

Michigan law provides for the issuance of an investigative subpoena in connection with an investigation into the commission of a felony. Pursuant to MCL 767A.2, a prosecuting attorney may petition the court for authorization to use an investigative subpoena. Once authorized by the court, the prosecuting attorney may issue an investigative subpoena directing an individual to produce records or documents.⁴⁸ The investigative subpoena is required to describe the records and documents requested with sufficient definiteness so the records can be fairly identified by the recipient.⁴⁹ The subpoena is also required to provide notice that the individual

⁴⁶ MCR 2.506(A)(1).

⁴⁷ MCR 2.506(B)(1).

⁴⁸ MCL 767A.3.

⁴⁹ MCL 767A.4(1)(e).

may object to the subpoena or file reasons for non-compliance with the prosecuting attorney in advance of the time in which the disclosure was to be made.⁵⁰

MCL 767A.6 allows for the filing of a motion to compel if a person refuses to answer or files objections to an investigative subpoena. Significantly, however, subsection 5 of this section provides that the court “shall not compel” a person to answer or produce documents if doing so would violate a statutory privilege or constitutional right. This includes the Michigan physician-patient privilege, which is discussed at length in Section IV below.⁵¹

In addition, the Michigan Court Rules for criminal procedure provide that there is no right to discover information or evidence that is protected from disclosure by statute or privilege, including information or evidence protected by a defendant’s right against self-incrimination. However, an exception exists if a defendant demonstrates a good-faith belief, grounded in articulable fact, that there is a reasonable probability that records protected by privilege are likely to contain material information necessary to the defense. In this case, the trial court shall conduct an *in camera* inspection of the records. Records disclosed shall remain in the exclusive custody of counsel for the parties, shall be used only for the limited purpose approved by the court, and shall be subject to such other terms and conditions as the court may provide.⁵²

⁵⁰ MCL 767A.4(1)(f).

⁵¹ The *Investigative Subpoena Manual* published by the Michigan Attorney General discusses MCL 767A.6(5) and, in citing to *People v White* 256 Mich App 39; 662 NW 2d 69 (2003) advises that, “This provision ...extends to statutory privileges such as the attorney-client, physician-client, accountant client, and investigator-client privileges.”

⁵² MCR 6.201(C).

Again, the law and rules covering investigative subpoenas require a close look at both HIPAA and Michigan physician-patient privilege law, which is discussed below in detail in Section VI.

IV. Michigan's Statutory Physician-Patient Privilege

The HIPAA Privacy Rule's process for disclosures of PHI in response to subpoenas or warrants must be read in light of the limitations imposed by the Michigan Court Rules and Michigan law. In particular, Michigan's statutory physician-patient privilege will significantly impact the analysis. The Michigan physician-patient privilege, MCL 600.2157, prohibits a physician from disclosing medical information acquired in the treatment of a patient.⁵³ The statute expressly provides in part:

Except as otherwise provided by law, a person duly authorized to practice medicine or surgery shall not disclose any information that the person has acquired in attending a patient in a professional character, if the information was necessary to enable the person to prescribe for the patient as a physician, or to do any act for the patient as a surgeon.⁵⁴

In contrast to HIPAA, the physician-patient privilege does not include an exception for disclosures for law enforcement purposes and judicial proceedings. The privilege is deemed to belong to the patient and the patient must waive the privilege either through action or written authorization in order for the disclosure of information to be made.⁵⁵ The privilege does not need to be invoked expressly or implicitly by the patient, but instead arises by operation of law.⁵⁶

⁵³ MCL 600.2157.

⁵⁴ MCL 600.2157.

⁵⁵ *Steiner v Bonanni*, 292 Mich App 265, 271-273; 807 NW2d 902 (2011). The purpose of the privilege is to protect the confidential nature of the physician-patient relationship and encourage patients' complete disclosure of their medical history and present medical concerns. *See also Popp v Crittenton Hospital*, 181

a. *Caselaw related to the physician-patient privilege*

Michigan courts have strictly applied the physician-patient privilege in an effort to protect patient confidentiality. This is exemplified in the *Meier* case discussed in Section VI.c below and echoed in the criminal case of *People v. Doers*.⁵⁷ In *People v Doers*, the Defendant, Doers, was appealing a conviction for criminal sexual conduct against someone 13 years old or younger.⁵⁸ The victim was his adopted daughter. At trial the prosecution introduced evidence of the Defendant's vasectomy because it was relevant to the semen found on sheets as well as statements the Defendant allegedly made to the victim regarding his inability to impregnate her. Importantly, the Court held that because of the physician-patient privilege, the testimony of the doctor who performed the Defendant's vasectomy should not have been allowed. The Court reasoned that the physician's testimony was not the only way to provide evidence of the vasectomy, and therefore it was an abuse of the privilege to allow the testimony. This highlights the Michigan courts' protection of the privilege, even when heinous crimes are involved.

b. *Waiver of Privilege by Operation of Law*

Under the Michigan physician-patient privilege statute, privilege is determined to be waived:

If the patient brings an action against any defendant to recover for any personal injuries, or for any malpractice, and the patient produces a physician as a witness in the patient's own behalf who has treated the

Mich App 662; 449 NW2d 678 (1989), and *Dorris v Detroit Osteopathic Hospital Corporation*, 220 Mich App 248, 559 NW2d 76 (1996).

⁵⁶ *Meier v Awaad*, 299 Mich App 655, 668; 832 NW2d 251 (2013).

⁵⁷ *People v Doers*, unpublished opinion per curiam of the Michigan Court of Appeals, issued June 29, 2010 (Docket No. 288514).

⁵⁸ *Id.*

patient for the injury or for any disease or condition for which the malpractice is alleged, the patient shall be considered to have waived the privilege provided in this section as to another physician who has treated the patient for the injuries, disease, or condition.

The statute provides for waiver of the privilege by the patient when the patient brings an action to recover for personal injuries or medical malpractice, and calls a treating physician on his or her behalf.⁵⁹ Once the plaintiff calls a treating physician as a witness, the privilege is considered waived as to other physicians who have treated the patient for the injuries or conditions at issue in the personal injury or malpractice suit.⁶⁰ But waiver of the privilege does not apply in other situations, including other types of actions and where the subject of the requested information is not a party to the litigation. Absent a waiver or exception provided by law, the physician-patient privilege functions as an absolute bar to disclosure.

V. Other Michigan Laws

a. Release of Information in Licensure Actions without Authorization

It is significant to note that the Michigan physician-patient privilege provides for other laws to allow for disclosure of information that would otherwise fall within the physician-patient privilege, with its introductory phrase “Except as otherwise provided by law”. However, it must be clear in the law that the privilege is being waived. One such example is related to licensure and found at MCL 333.16244 (2). This law explicitly provides that:

The physician-patient privilege . . . does not apply in an investigation or proceeding by a board or task force, a disciplinary subcommittee, a hearings examiner, the committee, or the

⁵⁹ MCL 600.2157.

⁶⁰ MCL 600.2157.

department acting within the scope of its authorization. Unless expressly waived by the individual to whom the information pertains, the information obtained is confidential and shall not be disclosed except to the extent necessary for the proper functioning of a board or task force, a disciplinary subcommittee, the committee, or the department. Except as otherwise provided in this subsection, a person shall not use or disseminate the information except pursuant to a valid court order.

Similarly, HIPAA allows for the release of PHI to a health oversight agency for activities authorized by law, including licensure or other disciplinary actions without authorization or the opportunity to object.⁶¹ Health oversight committee is defined at 45 CFR 164.501 and includes an agency of the state “that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.”

Based on both Michigan and HIPAA law, a provider facing a licensure investigation would not be required to obtain an authorization or even notify the patient prior to releasing PHI as part of a licensure investigation.

b. Criminal Law Providing for Release of Information Without Authorization

The Michigan Vehicle Code, MCL 257.625a, which addresses the admission of results of chemical breath analysis tests (such as Breathalyzer) and chemical tests, also allows for the disclosure of information that would otherwise fall within the physician-

⁶¹ 45 C.F.R 164.512(d). Note that this exception does not extend to health oversight activities where the individual is the subject of the investigation unless the investigation is directly related to the receipt of health care, a claim for public health benefits or qualification for public benefits where the individual’s health is integral to the claim for public benefits or services. For example, this exception would not allow a physician’s health records to be released where the physician was being investigated for impairment.

patient privilege. This section provides that when a peace officer requests such a test, the results of those tests are admissible into evidence. Furthermore, if after an accident, the driver of a vehicle is taken to a medical facility and a sample of the driver's blood is withdrawn at that time for medical treatment, not only are the results admissible but the statute specifically provides that:

The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subdivision. A medical facility or person disclosing information in compliance with this subsection is not civilly or criminally liable for making the disclosure.⁶²

c. Workers' Compensation

i. HIPAA Exception

The HIPAA Privacy Rule allows a covered entity to “disclose protected health information as authorized by and to the extent necessary to comply with laws relating to workers’ compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.”⁶³ The HIPAA regulations do not provide a blanket exception for all workers’ compensation uses and disclosures, but rather defer to state law for permissible disclosures as necessary to comply with worker’s compensation laws.

ii. Michigan Workers Compensation Laws

In Michigan, §418.853 of the Workers’ Disability Compensation Act of 1969 provides that:

a subpoena signed by an attorney of record in the action has the force and effect of an order signed by the worker’s compensation

⁶² MCL 257.625a(6)(e).

⁶³ 45 CFR 164.512 (l).

magistrate or arbitrator associated with the hearing. Any witness who refuses to obey a subpoena, who refuses to be sworn or testify, or who fails to produce any papers, books, or documents touching any matter under investigation or any witness, party, or attorney who is guilty of any contempt while in attendance at any hearing held under this act may be punished as for contempt of court.

The Workers Compensation Board of Magistrates General Rules, Rule 6 requires that the subpoena must be on an agency-approved form and include, among other requirements, a certification by the requesting party that the matter about which the subpoena is requested is pending before the Workers Compensation agency.⁶⁴ Rule 6 further provides that “any dispute arising under this rule shall be brought by signed motion before the assigned magistrate and shall have a copy of the subpoena attached.”⁶⁵ The Board of Magistrates for the Workers’ Compensation Agency in Michigan has taken the following position with regard to subpoenas issued pursuant to Rule 6:

If you encounter a problem with a medical provider regarding the release of records due to HIPAA concerns, you may advise the provider that cases in workers' compensation litigation are not subject to HIPAA. This is specifically indicated on their website as part of the HIPAA Privacy Rule regarding disclosures for workers' compensation purposes. Thus, unless there are other state law considerations, such as privilege issues, HIPAA would allow the disclosure of medical record pursuant to a signed subpoena.⁶⁶

Based on this interpretation, where the physician-patient privilege has been waived, PHI can be disclosed pursuant to a subpoena signed by an attorney of record in a

⁶⁴ Mich. Admin. Code, R 418.56.

⁶⁵ Mich. Admin Code, R 418.56.

⁶⁶ Michigan LARA Workers’ Compensation Agency, Revised Subpoena Rule for Board of Magistrates memo available at: <http://www.michigan.gov/wca/0,4682,7-191-26930-165385--,00.html> (accessed on April 29, 2014).

workers' compensation action without the "satisfactory assurances" normally required by the HIPAA regulations with regard to a subpoena.

iii. Applicability of Waiver to Workers' Compensation Proceedings

A. Physician Furnished and Paid for by Employer

MCL 418.385 provides that an employer may request an employee who has given notice of injury to submit to an examination to a physician furnished and paid for by the employer. Michigan Attorney General Opinion 6593 states that an employee will be deemed to have waived the physician-patient privilege when he or she is examined and treated at the employer's medical clinic for an injury sustained during employment. However, the Attorney General Opinion also notes that a waiver of the physician-patient privilege for purposes of workers' compensation in this context is only recognized to the extent that the information is obtained by the physician retained by the employer, and is relevant to the workers' compensation claim.⁶⁷

B. Physician Chosen and Paid for by Employee

For medical treatment by a provider chosen by the employee, the workers' compensation law requires the employee to furnish to the employer or its insurance carrier a complete and correct copy of the report of each physical examination relative to the alleged workers' compensation injury, if so requested, within 15 days of the request. If the employee fails to provide a medical report regarding an examination or medical treatment, the employer may elect to take the deposition of that physician.⁶⁸ The statute does not give the employer a right to obtain records from a treating physician chosen by the employee without an authorization. However, if the employer's

⁶⁷ OAG 1989, No 6593 (July 12, 1989).

⁶⁸ MCL 418.385

counsel provides evidence of the employee producing a treating physician as a witness (i.e. the privilege is waived), the records may be disclosed.

VI. HIPAA's Relationship with State Law

a. Preemption

The most common intersection of HIPAA and Michigan law is the interplay between HIPAA and the Michigan physician-patient privilege. As discussed above in Section II.c, HIPAA preempts state law unless the state law provides greater privacy protection. Thus, the most stringent of all the applicable laws should be followed.

As explained above in Section IV.b, if the physician-patient privilege is not waived, it is an absolute bar to disclosure of PHI. If the physician-patient privilege is waived by operation of law, HIPAA's provisions must then be applied. Both the Michigan Supreme Court⁶⁹ and the District Court for the Eastern District of Michigan⁷⁰ have found in judicial proceedings regarding personal injury or medical malpractice that HIPAA's "satisfactory assurances" provisions discussed above, involving specific notice to the patient or agreement or entry of a qualified protective order, provide more stringent privacy protections and must be applied after waiver of the privilege.

Similarly, the HIPAA regulations addressing disclosures for law enforcement purposes would apply in the context of an investigative subpoena issued under MCL 767A.2 requesting PHI where the physician-patient privilege is determined to have been waived. Where 45 CFR 164.512(e) requires satisfactory assurances or a qualified protective order for a judicial or administrative proceeding, 45 CFR 164.512(f) requires that information sought for law enforcement purposes be relevant and material to a

⁶⁹ *Holman v Rasak*, 486 Mich 429; 785 NW2d 98 (Mich.S.Ct. 2010).

⁷⁰ *Thomas v 1156729 Ontario Inc. et al* --- F.Supp.2d ----, 2013 WL 5785853 (E.D.Mich. 2013)

legitimate law enforcement inquiry, the request be specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought, and that de-identified information could not reasonably be used.⁷¹

In *Steiner v Bonanni*⁷², the Michigan Court of Appeals analyzed the “more stringent” requirement under HIPAA as relating to preemption and found that the question centered on the ability of the patient to withhold permission and stop the sharing of PHI. *Steiner* involved a defendant attempting to procure a non-party’s PHI. The Court reasoned that the Michigan physician-patient privilege law at MCL 600.2157 allows a patient to block disclosure simply by not “engaging in acts that waive the privilege.”⁷³ HIPAA, however, allows for disclosure without the patient’s consent in response to subpoenas or even if a protective order is procured. Thus, the Court reasoned, Michigan law and its automatic waiver is not less stringent than HIPAA. Note that this case differs from the *Holman* and *Thomas* cases discussed above, because those cases addressed the protections applicable after the privilege had been waived, rather than the situation where the patient privilege was not waived.

iv. PHI of a Party

If PHI of a party to a legal proceeding is requested, Michigan’s physician-patient privilege, Vehicle Code, Mental Health Code, and the Michigan court rules all provide for waiver of the privilege in certain circumstances. Where a determination is made that the privilege has been waived in a judicial or administrative proceeding, the information

⁷¹ 45 CFR 164.512(f)(1)(ii)(C).

⁷² *Steiner v Bonanni*, at 5

⁷³ *Steiner v Bonanni*, at 5

cannot be released without also analyzing the more stringent HIPAA provisions related to satisfactory assurances discussed in Section VI.a.

Since HIPAA specifically defers to state workers' compensation laws, and the Michigan physician-patient privilege applies with regard to medical records of an employee's chosen treating physician until the testimony of such treating physician is provided, counsel requesting medical records without an authorization should provide evidence of the provision of the testimony of the treating physician with the request. A party requesting a deposition of an employee's chosen treating physician without an authorization should provide evidence of their request to the employee for the report of the relevant examination, as the request is a prerequisite to the deposition. Requests for records of treating physicians furnished by and paid for by an employer should be analyzed to ensure that the records requested are relevant to the workers compensation claim only.

The Michigan Vehicle Code permits test results related to operating a vehicle while intoxicated to be provided to law enforcement. HIPAA allows for disclosure without an authorization for law enforcement purposes as required by law, so the Michigan Vehicle Code provisions are not contrary to HIPAA; both allow for the disclosure as provided in the Michigan statute.⁷⁴

v. Non-parties' PHI

The Michigan Court of Appeals in *Steiner v Bonanni*⁷⁵ addressed the question of HIPAA preemption in the context of the Michigan physician-patient privilege for non-parties and concluded that Michigan law was more protective of patients' privacy rights

⁷⁴ 45 CFR 164.512(f)(1)(i).

⁷⁵ *Steiner* at 271.

and therefore, HIPAA did not preempt the physician-patient privilege.⁷⁶ The case involved a claim for breach of an employment contract between the plaintiff physician employer and a former physician employee.⁷⁷ The plaintiff maintained that the defendant violated his employment contract by continuing to treat patients of the practice after his departure.⁷⁸ During discovery, the plaintiff requested disclosure of defendant physician's patient list in order to prove his claim that the physician stole patients after leaving the practice.⁷⁹ The defendant objected to the disclosure of the information regarding the nonparty patients citing HIPAA and the Michigan physician-patient privilege.⁸⁰

The Court of Appeals concluded that Michigan law was more protective of patients' privacy rights and, therefore, HIPAA did not preempt Michigan's physician-patient privilege.⁸¹ Moreover, the physician-patient privilege prohibited the disclosure requested in this case. In reaching its finding, the court pointed to the fact that Michigan law uses obligatory language, "shall not" disclose, whereas HIPAA uses permissive language, providing that a physician "may" disclose when adequate assurances are given.⁸² Further, the court noted that, unlike HIPAA, Michigan law provides no exception for disclosure of random patient information related to a lawsuit and it does not authorize disclosure under a qualified protective order.⁸³

⁷⁶ *Id.* at 267.

⁷⁷ *Steiner* at 267.

⁷⁸ *Id.* at 268.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 267.

⁸² *Id.* at 271-272.

⁸³ *Id.* at 272-274.

Of particular note, the patient information at issue in *Steiner* involved non-parties and the individuals had not waived their privilege by putting their medical condition in controversy. Quite the opposite, there was no indication that the patients were even made aware of the lawsuit. The Court, citing *Schechet v Kesten*, 372 Mich 346, 350-351, 126 NW2d 718 (1964), held that where the patient is not involved in the case and does not consent, even the names of the nonparty patients are within the ‘veil of privilege’.⁸⁴ Accordingly, disclosure of the requested information would violate the nonparty patients’ privacy rights.

Recent case law suggests that the reach of the Michigan physician-patient privilege is expanding in some situations. In *Meier v Awaad*, 299 Mich App 655, 832 NW2d 251 (2013), the Michigan Court of Appeals extended application of the physician-patient privilege to include PHI subpoenaed from the Michigan Department of Community Health (MDCH). In *Meier*, several patients alleged that Dr. Awaad intentionally misdiagnosed them with epilepsy or seizure disorder in an effort to increase his billings.⁸⁵ During discovery, the plaintiffs served a subpoena on MDCH seeking the names and addresses of all Medicaid beneficiaries who were treated by Dr. Awaad and were coded as having epilepsy or seizure disorder.⁸⁶ MDCH refused to make the disclosure without a court order. The trial court issued an order enforcing the subpoena, as well as a separate protective order restricting access to the patient list and limiting the permissible uses of the information.⁸⁷

⁸⁴ *Id.* at 275.

⁸⁵ *Meier* at 658-659.

⁸⁶ *Id.* at 659.

⁸⁷ *Id.* at 661-662.

On appeal, the Court of Appeals concluded that the trial court's enforcement of the subpoena violated the statutory physician-patient privilege. Similar to *Steiner*, the disclosure by MDCH involved nonparty patients. Applying the holding of *Steiner*, the Court of Appeals found Michigan law applied as it was more protective of patients' rights than HIPAA.⁸⁸

The plaintiffs in *Meier* argued that the requested disclosure would not violate the statutory physician-patient privilege because it was directed at MDCH, an outside third party Medicaid payor and not a "person duly authorized to practice medicine or surgery" as outlined by the statute.⁸⁹ The Court of Appeals recognized that MDCH did not fit into the physician category defined by the statute, but concluded that the privilege continued to protect against disclosures by parties other than physicians after the physician conveys privileged communications obtained in the physician-patient relationship to a third party.⁹⁰ The court relied on Michigan Supreme Court precedent in *Dorris v Detroit Osteopathic Hosp. Corp.*, 460 Mich 26, 594 NW2d 455 (1999) and *Massachusetts Mut. Life Ins. Co. v. Bd. of Trustees of Mich. Asylum for the Insane*, 178 Mich 193, 144 NW 538 (1913), concluding that the statutory physician-patient privilege operates to bar disclosure even when disclosure is not sought directly from a physician but rather from a third party who obtained the protected information from a physician.⁹¹

The impact of *Meier* appears to be far-reaching in the context of requests for medical records of nonparty patients. Applying *Steiner*, *Meier* and its progeny, the physician-patient privilege belongs to the patient, arises by operation of law and does

⁸⁸ *Id.* at 665.

⁸⁹ *Id.* at 669.

⁹⁰ *Id.* at 671.

⁹¹ *Id.* at 672.

not need to be affirmatively invoked by the patient. Furthermore, based on *Meier*, the privilege applies not only to physicians, but entities that receive privileged information that originated from a physician.

The *Meier* case creates a number of questions and challenges for providers. While *Meier* specifically dealt with the physician-patient privilege, in Michigan many other health care professionals have certain legal requirements to maintain a client's confidentiality. This includes, but is not limited to dentists,⁹² physician's assistants⁹³ and psychologists.⁹⁴

The *Meier* case also potentially expands the physician-patient privilege beyond those who are designated by statute. One of the key issues in the case was whether the defendant, Dr. Awaad, could challenge the subpoena directed at MDCH, a nonparty to the litigation, and assert the physician-patient privilege as a bar to the disclosure by MDCH when MDCH was not a physician who provided care. The Court of Appeals concluded that the defendants, as parties to the suit, had the right to raise discovery and evidentiary objections to the information sought, regardless of whether it was sought from the defendants directly or the MDCH.⁹⁵ Furthermore, relying on previous Michigan Supreme Court cases, the Court noted that "the privilege continues to protect against disclosure by parties other than a physician after the physician copies privileged communications obtained in the physician-patient relationship to those third parties."⁹⁶

Based on this, the Court held :

⁹² MCL 333.16648.

⁹³ MCL 333.17078.

⁹⁴ MCL 333.18237.

⁹⁵ *Meier* at 669.

⁹⁶ *Id.* at 671.

the principle that emanates from *Massachusetts Mut Life and Dorris* is that the statutory physician-patient privilege operates to bar disclosure even when the disclosure is not sought directly from a physician or surgeon but rather from a third party who obtained protected information from a doctor.⁹⁷

This language, coupled with the fact that the physician-patient privilege law has been held by Michigan courts to be more stringent than HIPAA in many circumstances, should give all recipients of requests for protected health information cause to carefully assess whether the disclosure would be appropriate in the situation. Furthermore, because of *Meier's* broad interpretation of the privilege, an entity that receives a subpoena will want to do an analysis of whether the entity falls under the privilege law. Based on *Meier* it is no longer true that it only applies to physicians.

The practical implication of the Michigan statutory physician-patient privilege and the *Steiner v. Bonanni* line of cases is that several HIPAA provisions allowing for disclosure without an authorization may be inapplicable in Michigan. For example, even though HIPAA permits law enforcement disclosures of nonparty PHI, such as that of material witnesses, missing persons, and victims of a crime, the physician-patient privilege and associated case law may prohibit such disclosure.

Some of the most common situations involving requests for PHI of a non-party are in domestic violence and child abuse or neglect cases. Many practitioners assume that the alleged victim's injury and medical information is highly relevant to a criminal trial or probate proceeding involving abuse or neglect, and public policy may seem to call for the disclosure. However, the Michigan Court of Appeals held in *People v. Doer* that even the defendant's own medical information cannot be accessed without

⁹⁷ *Id.* at 672.

authorization. Likewise, a victim's medical information cannot be provided without the victim's authorization. If the victim is the child of the defendant, a guardian may be necessary to obtain authorization for the child's medical information. Both Michigan law and HIPAA allow for disclosures during the child abuse or neglect investigative process, as explained in Section VI.f. below.

d. Personal Representatives

Since litigation or investigations involving subpoenas, discovery requests, warrants, law enforcement requests and other similar processes can include significant consequences even for nonparties, it is important to ensure that even requests received with an authorization meet all the requirements for a valid authorization under Michigan law and HIPAA. HIPAA defers to state law on who can serve as a "personal representative" for purposes of authorizing a disclosure of another individual's PHI. A person who under state law has authority to act on behalf of the patient in making decisions related to health care must be treated as the personal representative of the patient by the covered entity.⁹⁸

i. Unemancipated Minors and Court-Appointed Guardians

Parents of unemancipated minors and court-appointed guardians with health care decision-making authority qualify as personal representatives.

ii. Emancipated Minors and Adults

For adults and emancipated minors, Michigan's patient advocate designation provision in the Estates and Protected Individuals Code ("EPIC") specifies when another individual can make health care-related decisions for a patient, and that only occurs

⁹⁸ 45 CFR 164.502(g)(2).

when two physicians or one physician and one psychologist have made a determination that the patient is unable to participate in medical treatment decisions.⁹⁹ Until the patient advocate's powers are thus activated, the patient advocate does not have authority to act on behalf of the patient in making decisions related to health care, and does not meet the HIPAA requirement to be a personal representative.

Michigan's Medical Records Access Act allows for a patient to name an "authorized representative" by explicit written authorization to act on the patient's behalf to access, disclose, or consent to the disclosure of the patient's medical record, in accordance with the act.¹⁰⁰ The act does not address the more global issue of a person having authority to make health care decisions for another. The EPIC provision for a patient advocate is the only way for an adult or emancipated minor to designate another person to make health care decisions on behalf of the patient, so HIPAA preempts the authorized representative provision of the Michigan Medical Records Access Act.

Occasionally patients have a clause in a general durable power of attorney indicating that their attorney-in-fact has the power to obtain medical records of the patient, or they insert a clause in a durable power of attorney for health care (that designates a patient advocate) indicating they want their patient advocate to have authority to obtain medical records prior to the patient advocate powers being activated in accordance with the statute. While these clauses often meet the requirements of the Michigan Medical Records Access Act for naming an authorized representative, HIPAA is more stringent in requiring that a personal representative has to have authority under state law to make health care decisions for the patient. Therefore, a HIPAA-compliant

⁹⁹ MCL 700.5508.

¹⁰⁰ MCL 333.26263

authorization signed by the patient is required unless the individual named by the patient is a patient advocate with activated powers to obtain records.

e. Subpoenas Issued Pursuant to State Law v. Federal Law

i. Subpoenas Issued Pursuant to State Law

The dilemma faced by providers who receive subpoenas for patient information is best illustrated by the plight of the Cleveland Clinic in Ohio. The Cleveland Clinic was sued by a patient whose medical records were provided by the Clinic pursuant to a grand jury subpoena issued by Cuyahoga County Court of Common Pleas.¹⁰¹ The subpoena requested the medical records to include, but not be limited to, drug and alcohol counseling and mental health issues regarding the plaintiff James Turk. The Cleveland Clinic provided the records in response to the subpoena. The plaintiff alleged in part that the Cleveland Clinic released his confidential medical information in response to the grand jury subpoena in violation of its duties under Ohio's privilege law¹⁰² and plaintiffs' common law rights of privacy.

The Court in *Turk* rejected the Cleveland Clinic's motion for judgment on the pleadings, finding that contrary to HIPAA provisions, Ohio's privilege law does not contain an exception for the provision of medical records to law enforcement.¹⁰³ The Court also rejected public policy arguments made by the Cleveland Clinic to overcome the right of privacy.

ii. Subpoenas Issued Pursuant to Federal law

¹⁰¹ *Turk v Oiler et al*, 732 F Supp 2d 758 (N.D. Ohio, Aug. 11, 2010).

¹⁰² O.R.C. 2317.02

¹⁰³ Note that the Ohio physician patient privilege law is similar to Michigan's physician-patient privilege law.

Notably, however, federal courts and rules of evidence make a distinction between subpoenas issued based on state law versus subpoenas issued pursuant to federal law. FRE 501 states:

The common law—as interpreted by United States courts in the light of reason and experience—governs a claim of privilege unless any of the following provides otherwise:

- the United States Constitution;
- a federal statute; or
- rules prescribed by the Supreme Court.

But in a civil case, state law governs privilege regarding a claim or defense for which state

law supplies the rule of decision.

Following *Turk*, the Cleveland Clinic (in a different matter) asked the U.S. District Court for the Northern District of Ohio to set aside Civil Investigative Demands served under the federal False Claims Act based on the *Turk* case and the idea the Cleveland Clinic would be violating the physician-patient privilege law and be exposed to liability similar to that in *Turk*.¹⁰⁴ The Court, however, ordered the Clinic to provide the information, finding that the subpoenas in the present case were issued pursuant to federal law and not state law, and the standards related to federal subpoenas, grand jury investigations and the Federal Rules of Civil Procedure do not provide for application of state privilege law to federal questions. Rather, federal law applies and federal law does not have a physician-patient privilege law. Specifically, the Court noted that “[t]he Petitioners would violate no patients’ rights in complying with properly-

¹⁰⁴ *Cleveland Clinic Foundation v. U.S.*, 2011 WL 862027 (N.D. Ohio, March 9, 2011).

issued CIDs, subpoenas or subpoenas duces tecum issued by a court of the United States in aid of a grand jury investigation.”¹⁰⁵ If a subpoena is issued in a federal civil matter that involves state law questions, FRE 501 requires state privilege law to apply to the state law questions.

This is echoed in a recent Michigan case regarding medical marijuana.¹⁰⁶ While the argument regarding physician-patient privilege was not raised, the Michigan Department of Community Health did object to responding to federal Drug Enforcement Administration subpoenas seeking the names and information of seven medical marijuana users. The MDCH argued that the Michigan medical marijuana law provided for the confidentiality of certain information and therefore could not release the requested information without violating the Michigan Medical Marijuana Act. The District Court held that, “[a]s a state law authorizing the use of medical marijuana, the MMMA cannot negate, nullify or supersede the federal Controlled Substances Act, which criminalized the possession and distribution of marijuana throughout the entire country long before Michigan passed its law.”¹⁰⁷

f. Reports and Disclosures permitted by both HIPAA and State Law

It is also important to note there are circumstances in which State law and HIPAA allow for the release of PHI without application of the physician-patient privilege or any special notice or right to object. For example, in Michigan "if there is a compelling need for records or information to determine whether child abuse or child neglect has occurred or to take action to protect a child where there may be a substantial risk of

¹⁰⁵ *Id.* at 2.

¹⁰⁶ *U.S. v Mich Dept of Community Health*, 2011 WL 2412602 (W.D. Michigan, June 3, 2011).

¹⁰⁷ *U.S. v Mich Dept of Community Health*, at 12.

harm...” the physician patient privilege does not apply to the release of medical records to a family independence agency caseworker or administrator directly involved in the child abuse or neglect investigation.¹⁰⁸ The statute is specific to the mandatory reporting and initial investigation process after a report of suspected abuse or neglect; it does not apply to legal or administrative proceedings. 45 C.F.R. 164.512 (b)(1)(ii) mirrors this in allowing the disclosure of PHI to the appropriate government authority authorized to receive reports of child abuse or neglect. This is consistent with other mandatory disclosure laws, which are supported by both the physician-patient privilege and HIPAA.

For subpoenas or other discovery requests related to child abuse or neglect for legal or administrative proceedings MCL 722.631 provides for the physician-patient privilege to be abrogated in a civil child protective proceeding resulting from a report of child abuse or neglect made pursuant to the Child Protection Law. The Michigan Supreme Court in *Department of Social Services v Brock*, 442 Mich 101, 499 NW2d 752 (1993), held that MCL 722.631 applies to the PHI of a parent involved in the civil proceeding as well as the PHI of the child. Once the privilege is abrogated by MCL 722.631, HIPAA’s satisfactory assurances provisions must be followed as discussed in section VI.a. above.

VII. Special Considerations for Certain Types of Protected Health Information

Certain subsets of PHI, including medical records dealing with mental health, substance abuse and HIV/AIDS receive special treatment pursuant to state and federal

¹⁰⁸ MCL 333.16281(1). *See also* MCL 330.1748a (regarding mental health records).

law. The interplay between these state and federal laws with HIPAA must be evaluated when considering requests for this type of information.

a. Mental Health Records and Psychotherapy Notes

The Michigan Mental Health Code¹⁰⁹ protects “recipients” of mental health services. In order to meet the definition of “recipient” rendering the Michigan Mental Health Code applicable, an individual must be a recipient of mental health care from the Department of Community Health, a community mental health services program, a residential facility or from a provider that is under contract with the Department of Community Health or with a community mental health services program.¹¹⁰ The Michigan Mental Health Code would not, for example, apply to a provider of mental health services who is paid in cash or by third party payors other than the Department of Community Health or a community mental health services program.

If an individual is a “recipient” of mental health services for purposes of the Mental Health Code, he or she is entitled to certain “recipient rights” including the right to confidentiality which is codified at MCL 330.1748. MCL 330.1748 prohibits the disclosure of information in the record of a “recipient” subject to certain exceptions. Two relevant exceptions include: “pursuant to an order or a subpoena of a court of record or a subpoena of the legislature, **unless the information is privileged by law**” and “if necessary in order to comply with another provision of law.”¹¹¹ Consistent with the disclosure of other types of PHI, the subpoena exception expressly acknowledges a

¹⁰⁹ MCL 330.1100 et al.

¹¹⁰ MCL 330.1100c.

¹¹¹ MCL 330.1748(5)(a) & (d). Emphasis added.

limitation on disclosure of mental health records where the information is privileged by law.

For purposes of the Mental Health Code, a “privileged communication” is defined as “a communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a patient, or to another person while the other person is participating in the examination, diagnosis, or treatment or a communication made privilege under other applicable state or federal law.” MCL 330.1750 addresses the situations in which such privileged communications may be disclosed. Because MCL 330.1750 provides for privileged communications to be disclosed for a proceeding governed by the Mental Health Code, in a proceeding to determine the legal competence of the patient or the patient’s need for a guardian (if the patient was informed), or if the communication was made during treatment that the patient was ordered to undergo to render the patient competent to stand trial on a criminal charge, the state law is not more stringent than HIPAA and would be preempted by HIPAA. Therefore, an authorization, court order, or satisfactory assurances pursuant to HIPAA would be required for disclosure in those distinct circumstances.

While the Michigan Mental Health Code applies to all the information in the mental health records of a “recipient”, HIPAA provides special protections for a very narrow subset of mental health records that meet the definition of “psychotherapy notes.” “Psychotherapy notes” are generally defined as notes that are recorded by a mental health professional to document or analyze the contents of a conversation during a counseling session. They are often handwritten, but can be in any medium. In order to qualify as psychotherapy notes, the documents must be kept separate from

the rest of the medical chart. Importantly, the definition of “psychotherapy notes” specifically excludes “medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis and progress to date.”¹¹² Thus, a general medical record that contains information related to the diagnosis and treatment of a mental health condition will not be treated as a psychotherapy note for HIPAA purposes.

The use or disclosure of psychotherapy notes almost always requires a signed HIPAA-compliant authorization unless they are being used by the originator of the psychotherapy notes for the covered entity’s own training programs. If an authorization for the use or disclosure of psychotherapy notes is obtained, it is important to note that the authorization cannot be combined with any other document or authorization, except for another authorization for use or disclosure of psychotherapy notes.¹¹³

HIPAA would also allow a covered entity to use psychotherapy notes to defend itself in a legal action brought by the subject of the notes,¹¹⁴ to demonstrate compliance to the Secretary of HHS for HIPAA compliance, for health oversight activities related to the provider who originated the note, to a coroner or medical examiner about a deceased individual for permitted purposes, or to avert a serious threat to health or safety.¹¹⁵ However, these disclosures would be subject to analysis under Michigan’s potentially more stringent physician-patient privilege law as discussed above.

b. Substance Use/Abuse Laws

¹¹² 45 CFR 164.501.

¹¹³ 45 CFR 164.508(b)(3)(ii).

¹¹⁴ 45 CFR 164.508(a)(2)(i).

¹¹⁵ 45 CFR 164.508(a)(2)(ii).

In Chapter 2A, Substance Use Disorder Services, of the Mental Health Code, MCL 330.1263(c) provides:

Upon application, a court of competent jurisdiction may order disclosure of whether a specific individual is under treatment by a program. In all other respects, the confidentiality shall be the same as the physician-patient relationship provided by law.¹¹⁶

Since HIPAA also provides for disclosure pursuant to a court order, both Michigan law and HIPAA provide equivalent protections.

Certain providers who receive federal assistance and hold themselves out as providing alcohol or drug abuse diagnosis, treatment or referral for treatment may be subject to federal substance abuse confidentiality requirements as set forth in 42 CFR Part 2, in addition to HIPAA and state law.¹¹⁷ Records subject to 42 CFR Part 2 cannot be released pursuant to a subpoena, but may be released pursuant to a compulsory process such as a subpoena and an authorizing court order.¹¹⁸

c. HIV/AIDS Information Under the Public Health Code

MCL 333.5131(3) provides:

The disclosure of information pertaining to HIV infection or acquired immunodeficiency syndrome in response to a court order and subpoena is limited to only the following cases and is subject to all of the following restrictions:

(a) A court that is petitioned for an order to disclose the information shall determine both of the following:

(i) That other ways of obtaining the information are not available or would not be effective.

(ii) That the public interest and need for the disclosure outweigh the potential for injury to the patient.

(b) If a court issues an order for the disclosure of the information, the order shall do all of the following:

(i) Limit disclosure to those parts of the patient's record that are determined by the court to be essential to fulfill the objective of the order.

¹¹⁶ Emphasis added.

¹¹⁷ 42 CFR 2.11.

¹¹⁸ 42 CFR 2.61.

(ii) Limit disclosure to those persons whose need for the information is the basis for the order.

(iii) Include such other measures as considered necessary by the court to limit disclosure for the protection of the patient.

Since these provisions are more restrictive than HIPAA, which does not contain any requirements specific to HIV/AIDS, these provisions must apply. A court order that does not specify the elements of MCL 333.5131(3) is insufficient to effectuate disclosure of HIV/AIDS information.

VIII. Practical Implications for Responding to Subpoenas or Warrants for PHI

a. Policies

Having policies in place to deal with subpoenas or warrants for PHI is essential. Health care providers should establish a process for validating and responding to subpoenas and warrants that ensure they have satisfied their responsibilities under both HIPAA and Michigan law, including accounting for disclosures in subsection e below.

b. Steps to Take When Responding to a Subpoena

As a first step, it is essential to ensure that a subpoena for health care information meets all the requirements of the Michigan Court Rules, including identification of a date for presentation of the witness or documents being requested. A subpoena requiring production of documents must be served at least 14 days in advance of the time set for production.¹¹⁹ In the case of an investigative subpoena, MCL 767A.4 provides that it must be served as least seven days before the date set for examination of the records or documents unless the judge authorizing the investigative subpoena has shortened the timeframe for good cause shown. It is imperative that the court or administrative tribunal has jurisdiction over the entity. It must also be signed by

¹¹⁹ MCR 2.305(B)(1).

the appropriate authority, be appropriately specific, and properly served. If not, there may exist procedural grounds for challenging the subpoena.¹²⁰

If the subpoena is valid, since HIPAA requires that if both HIPAA and state law cannot be followed, the more stringent of either HIPAA or state law be applied, the recipient must determine which is applicable. It is helpful to determine first whether the physician-patient statutory privilege exists. Then identify whether the privilege has been waived. The third step is to determine if any other laws provide for the disclosure requested. If the privilege has been waived or another law provides for the disclosure, then look to HIPAA to determine if HIPAA's provisions are more stringent. In circumstances where the privilege is not waived and other Michigan laws do not provide for disclosure, the Michigan physician-patient privilege law is deemed to be more stringent in protecting patient privacy and therefore HIPAA does not apply. Unlike HIPAA, the privilege law does not allow for the provision of PHI when notice is provided to the individual or a protective order is obtained. The attached flowchart can assist in this process. [Insert flowchart – Publications Committee can assist with this].

If there is reason to object or assert a privilege for a subpoena in a civil matter, MCR 2.305(A)(4) allows for the filing of a motion for the subpoena to be quashed or modified; or a motion for a protective order, provided that the motion is timely made, “before the time specified in the subpoena for compliance.” The recipient of the subpoena may also serve written objections to the inspection or copying of some or all of the documents on the requesting party, but must do so in advance of time set for

¹²⁰ Note that there may be other procedural requirements, such as Workers' Compensation subpoenas, requiring specific certification as discussed in Section V above.

compliance.¹²¹ If the recipient of the subpoena does not timely respond or timely object, or if the recipient does object, then the party that issued the subpoena may file a motion with the court ordering that production of the documents be compelled.¹²² If granted, the court “shall” require payment of the reasonable expenses incurred in filing the motion unless the court finds the objection was “substantially justified.”¹²³

If there is reason to object or assert a privilege for a subpoena or order to provide testimony in a civil matter, MCR 2.506(H) provides the recipient with a process to explain to the court why the person should not be compelled to comply. The court may direct that a special hearing be held, and may excuse the witness.

Many people assume they should appear in response to a subpoena to testify, and then assert the privilege or HIPAA to the judge. However, a covered entity should be careful not to provide information in response to such a subpoena, but rather object or assert the privilege **prior** to the time set forth in the subpoena for appearing. MCR 2.506(H) provides a process to notify the court and the parties of the objection or privilege in advance, and advance notice by written request or motion should occur whenever possible.

c. Responding to a warrant

How to appropriately respond to a warrant, grand jury subpoena, or summons issued by a judicial officer can be a difficult question. If a warrant is ignored or not complied with, the recipient can face fines and imprisonment.¹²⁴ However, with the *Meier* case extending the physician-patient privilege beyond physicians and making

¹²¹ MCR 2.305(B)(1).

¹²² MCR 2.305(B)(3).

¹²³ MCR 2.313(A)(5)(a).

¹²⁴ MCL 600.1701(g).

clear that the privilege law can trump HIPAA, providers should not assume that a warrant or grand jury subpoena supersedes the privilege.

If HIPAA applies, the HIPAA regulations clearly allow for the entity to disclose PHI, provided (1) the information sought by the warrant, grand jury subpoena, subpoena issued by a judicial officer, or applicable administrative request is “relevant and material to a legitimate law enforcement inquiry; (2) the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and (3) de-identified information could not reasonably be used.”¹²⁵

When an entity receives a warrant, grand jury subpoena, or administrative investigative demand, the entity will want to analyze whether the physician-patient privilege is applicable. Providers may face penalties for non-compliance with a warrant, but they may also face administrative and civil legal consequences for violating the privilege.

d. Dealing with Follow-Up Requests

If, in any circumstance, a covered entity receives follow-up requests or questions from the requesting party, it is necessary to evaluate if responding to those requests will still meet the HIPAA exceptions for providing PHI without a patient authorization, and will not run afoul of the physician-patient privilege or another privilege or state law. For a warrant, because the request must be specific and a response should be limited to what is requested, it may not be appropriate to provide the information requested in a follow-up. In the case of a warrant or subpoena, questions arise whether the patient has waived any privilege that may exist and if proper notice and opportunity to object to

¹²⁵ 45 CFR 164.512(f)(1).

the information requests was provided, or whether the requests are covered by any protective order that has been entered.

e. Accounting for Disclosures of PHI

Subject to certain exceptions, information disclosed without a patient's authorization and not for purposes of treatment, payment or health care operations, must be tracked and included in an accounting of disclosures. This would include disclosures of information subject to a subpoena, warrant, court order or other lawful process where patient authorization is not obtained. Pursuant to 42 C.F.R. 164.528(a)(1), "an individual has a right to receive an accounting of disclosures of protected health information made by a covered entity". Generally, a covered entity is required to respond to a request for an accounting within sixty days, and for each disclosure specify: (1) date of the disclosure; (2) name and, if known, address of person or entity who received the PHI; (3) brief description of the PHI disclosed; and (4) a statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure.¹²⁶ However, if the information was provided for reasons specified in 45 CFR 164.502(a)(2)(ii) or 45 CFR 164.512, such as a court order or subpoena, then a copy of the order or subpoena can be provided in lieu of the statement.¹²⁷

Importantly, 42 CFR 164.528 also provides that the covered entity *must* temporarily suspend the individual's right to receive an accounting if a health oversight agency or law enforcement agency provides in writing that, "such an accounting to the

¹²⁶ 45 CFR 164.528(b)(2).

¹²⁷ 45 CFR 164.528(b)(2).

individual would be reasonably likely to impede the agency's activities and specifying the time for which such a suspension is required.”¹²⁸

IX. Consequences of Wrongfully Disclosing PHI

a. Consequences Pursuant to HIPAA

The penalties for violating HIPAA can be severe and can be imposed on covered entities as well as business associates.¹²⁹ A covered entity can be found liable for violations by one of its business associates if the business associate is acting as an agent of the covered entity. To determine whether a business associate is an “agent” of the covered entity for the purposes of assessing HIPAA liability, the OCR will look at the federal common law of agency which generally considers the extent to which the covered entity has the right to control the manner in which the business associate provides services.¹³⁰

For violations where the covered entity or business associate did not know or could not reasonably have been expected to know that the conduct would lead to a HIPAA violation, the OCR will impose a penalty between \$100 and \$50,000 per violation.¹³¹ For violations that are due to “reasonable cause” and not “willful neglect”, the OCR will impose penalties of at least \$1,000 and not more than \$50,000 for each violation.¹³² Violations that are due to “willful neglect” but are corrected within thirty days will be penalized in an amount of at least \$10,000 but not more than \$50,000 per

¹²⁸ 45 CFR§ 164.528(a)(2)(i).

¹²⁹ 45 CFR 160.402. *See also* discussion at 78 Fed Reg 5581 (January 25, 2013).

¹³⁰ *Id.*

¹³¹ 45 CFR 160.404(b)(2)(i).

¹³² 45 CFR 160.404(b)(2)(ii).

violation.¹³³ If violations are due to “willful neglect” and are not remedied within thirty days of the covered entity’s or business associate’s knowledge of the breach, the penalty will be at least \$50,000 per violation.¹³⁴ For all categories of violations, the penalties may not exceed \$1,500,000 in a calendar year for identical violations.¹³⁵

b. Potential Consequences Pursuant to State Law

Violation of the Michigan physician-patient privilege law can open a health care provider up to a number of consequences. In addition to the HIPAA penalties detailed above, an entity and/or an individual can face both legal action by the patient and action against their license. In Michigan, MCL 333.16221(e)(ii) provides for the investigation and recommendation to disciplinary boards for licensed health professions when a professional confidence is betrayed. Sanctions to be imposed in such a case can include a reprimand, suspension, and/or a fine.¹³⁶

There is also a growing trend of private rights of action based on invasion of privacy and related laws. As far back as 1881, the Michigan Supreme Court found a right of privacy as related to medical matters.¹³⁷ In *DeMay*, the treating physician brought a friend to the home of a woman in labor, and never advised the patient that the friend was not a physician’s assistant. This person observed the birth. The Court found that, “The plaintiff had a legal right to the privacy of her apartment at such a time, and the law secures to her this right by requiring others to observe it, and to abstain from its

¹³³ 45 CFR 160.404(b)(2)(iii).

¹³⁴ 45 CFR 160.404(b)(2)(iv).

¹³⁵ 45 CFR 160.404(b).

¹³⁶ MCL 333.16226.

¹³⁷ *DeMay and Scattergood v Roberts*, 46 Mich 160; 9 NW 146; (1881).

violation.”¹³⁸ This case lays a foundation for claims by a patient when her privacy is invaded and medical information shared.

Furthermore, as discussed above in Section VI.e.i, the Cleveland Clinic faced a private right of action when it released medical records in response to a grand jury subpoena from the Cuyahoga County Court of Common Pleas because it violated its state physician-patient privilege law.

X. Conclusion

At first glance, the HIPAA Privacy Rule seems straightforward as to when an entity can provide PHI absent a patient authorization in response to subpoenas, court orders, or warrants. The regulations at 45 C.F.R. 164.512 set out specific processes based on the type of request. However, because HIPAA requires that state law be followed rather than HIPAA if the state better protects patient privacy, knowing how to respond to requests for PHI is not as simple as providers would like. In Michigan, the physician-patient privilege law has been found by state courts to preempt HIPAA and therefore an analysis of application of the privilege law must necessarily factor into responses to requests for PHI.

Obtaining patient authorization prior to disclosure is always the ideal. However, since that is not always possible, practitioners need to be wary about whether HIPAA and all applicable Michigan laws have been properly addressed prior to provision of PHI.

¹³⁸ *Id.* at 165-166.

Request/Subpoena for PHI

