

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

Rule 218. Pretrial Procedure.

(a) Initial Case Management Conference. Except as provided by local circuit court rule, which on petition of the chief judge of the circuit has been approved by the Supreme Court, the court shall hold a case management conference within 35 days after the parties are at issue and in no event more than 182 days following the filing of the complaint. At the conference counsel familiar with the case and authorized to act shall appear and the following shall be considered:

- (1) the nature, issues, and complexity of the case;
- (2) the simplification of the issues;
- (3) amendments to the pleadings;
- (4) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (5) limitations on discovery including:
 - (i) the number and duration of depositions which may be taken;
 - (ii) the area of expertise and the number of expert witnesses who may be called; and
 - (iii) deadlines for the disclosure of witnesses and the completion of written discovery and depositions;
- (6) the possibility of settlement and scheduling of a settlement conference;
- (7) the advisability of alternative dispute resolution;
- (8) the date on which the case should be ready for trial;
- (9) the advisability of holding subsequent case management conferences; and
- (10) any other matters which may aid in the disposition of the action including but not limited to issues involving electronically stored information and preservation.

(b) Protective Order for the Release of Medical Information. In any case in which the plaintiff's medical condition is at issue, the plaintiff shall present at the initial case management conference an executed waiver of the plaintiff's right to privacy over the plaintiff's medical

information to be produced in discovery. The waiver shall be contained in the court order for the release of those records and shall be in the form provided.

~~(b)~~ **(c) Subsequent Case Management Conferences.** At the initial and any subsequent case management conference, the court shall set a date for a subsequent management conference or a trial date.

~~(e)~~ **(d) Order.** At the case management conference, the court shall make an order which recites any action taken by the court, the agreements made by the parties as to any of the matters considered, and which specifies as the issues for trial those not disposed of at the conference. The order controls the subsequent course of the action unless modified. All dates set for the disclosure of witnesses, including rebuttal witnesses, and the completion of discovery shall be chosen to ensure that discovery will be completed not later than 60 days before the date on which the trial court reasonably anticipates that trial will commence, unless otherwise agreed by the parties. This rule is to be liberally construed to do substantial justice between and among the parties.

~~(d)~~ **(e) Calendar.** The court shall establish a pretrial calendar on which actions shall be placed for consideration, as above provided, either by the court on its own motion or on the motion of any party.

SAMPLE PROPOSED UNIFORM ORDER

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

_____))
Plaintiff,))
))
v.) No. _____)
))
_____))
Defendant.))

HIPAA QUALIFIED PROTECTIVE ORDER

Findings

This court explicitly finds that this court order is necessary to:

1. Protect a party's right to privacy as guaranteed by article I, section 6 of the Illinois constitution for each party in this lawsuit;
2. Ensure the parties' compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying rules and regulations governing the disclosure, maintenance, use, and disposal of protected health information (PHI), *see generally* 45 C.F.R. §§ 160.103 & 164.501;
3. Require covered entities, *see* 45 C.F.R. § 160.103, to disclose a party's PHI for use in this litigation without a separate disclosure authorization; however, nothing in the attached order relieves any covered entity, party, business associate, or their attorneys, attorneys' agents, representatives, or consultants, or various other witnesses, or other personnel who request, receive, or review documents containing PHI, from complying with the requirements of the following statutes and regulations:

Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/1 – 17;

AIDS Confidentiality Act, 410 ILCS 305/1 – 16;

Alcoholism and Other Drug Abuse and Dependency Act, 20 ILCS 301/30-5 – 10;

Any federal statute or regulation protecting certain drug and alcohol records, *see, e.g.*, 42 U.S.C. §§ 290dd-3, 290ee-3; 42 C.F.R. Part 2;

Genetic Information Privacy Act, 410 ILCS 513/15 – 50; and

Any and all other applicable state and federal laws regulating or governing the disclosure, maintenance, use, and disposal of PHI.

4. Permit insurance companies to receive PHI or what would otherwise be considered PHI from covered entities, business associates, and parties in litigation and to disclose, maintain, use, and dispose of PHI or what would otherwise be considered PHI in conformity with all applicable federal laws and regulations and the Illinois Insurance Code and its accompanying rules and regulations; and

5. Further the interest of the State of Illinois in regulating the business of insurance.

Stipulations

A party disclosing PHI explicitly stipulates that she or he:

- 1. Read this court order before signing their name to be bound by it;**
- 2. Understands the contents of this court order;**
- 3. Stipulates to the entire contents of this court order;**

4. Understands that by refusing to consent to the contents of this court order, the court may impose sanctions up to and including the dismissal of the complaint.

Order

BASED ON THESE FINDINGS, STIPULATIONS, AND THE SIGNATURE OF ANY PARTY CONSENTING TO THE LIMITED DISCLOSURE OF PHI AS STATED IN THIS DOCUMENT, THIS COURT ORDERS THE FOLLOWING:

1. The PHI of any party in this lawsuit may not be disclosed for any reason without that party's prior written consent or an order of this court.

2. A party who has disclosed PHI and agreed to the entry of this court order explicitly waives the right to privacy over the disclosed materials but only to the extent provided in this court order. The only disclosures explicitly waived and expressly permitted by this order are these:

A. To insurance companies to disclose, maintain, use, and dispose of PHI or what would otherwise be considered PHI to comply and conform with current

and future applicable federal and state statutes, rules, and regulations for these purposes:

1. Reporting; investigating; evaluating, adjusting, negotiating, arbitrating, litigating, or settling claims;
2. Compliance reporting or filing;
3. Conduct described in 215 ILCS 5/1014;
4. Required inspections and audits;
5. Legally required reporting to private, federal, or state governmental organizations, including health or medical insurance organizations, and to the Centers for Medicare and Medicaid Services (CMS);
6. Rate setting and regulation;
7. Statistical information gathering;
8. Underwriting, reserve, loss, and actuarial calculation;
9. Drafting policy language;
10. Workers' compensation; and
11. Determining the need for and procuring excess or umbrella coverage or reinsurance.

B. As ordered by this or another court or arbitral body or by subpoena with reasonable notice to the parties and their attorneys for purposes of subrogation, reimbursement, or payment of liens arising out of or related to this lawsuit;

C. To the parties to this lawsuit and their agents; and

D. As necessary to comply with any other federal or state laws, rules, or regulations, but only with the party's express consent and entry of an appropriate court order.

3. Any covered entity over which this court has jurisdiction that fails or refuses to disclose PHI in accordance with this court order may be subject to all sanctions authorized by the Code of Civil Procedure and the Illinois Supreme Court rules.

4. A party to this lawsuit may provide PHI to an undisclosed consulting expert or controlled expert witness as defined in Illinois Supreme Court Rule 213(f)(3) but only after receiving written acknowledgement that each such expert or witness agrees to be bound by the terms of this order.

5. At the conclusion of this lawsuit, as indicated by a court entered order of dismissal, all parties and other persons or entities subject to this court order possessing PHI shall by agreement either return it to the party or non-party about whom it concerns or their attorney of record in this lawsuit or destroy it in compliance with 45 C.F.R. section § 164.512(e), such as by shredding, pulverizing, melting, incinerating, or degaussing. This provision does not apply to insurers that possess what would otherwise be considered PHI under HIPAA, but only to the extent as limited in paragraph 2, or to the party who disclosed PHI or her or his attorneys.

6. Other than the party who disclosed PHI or that party's attorneys, no other parties or their agents are permitted to request, obtain, or disclose PHI or any other type of medical bills, records, or related information other than through the formal discovery procedures authorized by the Code of Civil Procedure, Illinois Supreme Court rules, and orders of this court.

7. The parties are prohibited from including or attaching PHI to any document filed with the Clerk of the Circuit Court. PHI necessary for a court's consideration of any matter must be provided separately.

8. This court retains jurisdiction to enforce the terms of this order after the conclusion of this litigation.

Dated: _____
Plaintiff or Legally Designated Representative

Dated: _____
Plaintiff's Attorney

Dated: _____
Defendant's Attorney

Circuit Court Judge