

MISSOURI LAWYERS WEEKLY

Plaintiff's Privacy Was Violated By Discovery

Interrogatories Sought Too Much Health Info



James Krispin

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Interrogatories that requested a plaintiff in a premises liability case to disclose all other accidents and serious illnesses she ever had were overbroad and invaded the plaintiff's right to privacy, the Missouri Court of Appeals' Western District has ruled in a case of first impression.

This was because the questions were not limited in time or tailored to the physical conditions at issue in the case.

"[O]verly invasive interrogatories erode the fundamental right to privacy in an individual's medical affairs and present an undue risk of requiring the disclosure of irrelevant information," wrote Judge Victor C. Howard for the court. "Plaintiff's allegations of injury did not automatically waive this important right regarding the entirety of her medical history from birth to present."

The case is *State ex rel. Brown v. Dickerson*, MLW No. 50301, issued on June 22.

Less Fighting

Referring to other cases limiting the scope of medical authorizations, the plaintiff's attorney, James Krispin of St. Louis, said, "If you can't do it by authorization, why should you be able to do it by interrogatory?"

Krispin also said it was significant that the underlying lawsuit is from the "middle of Missouri," where the circuit courts often "don't have standard interrogatories for various types of cases."

"There's a lot less fighting about this sort of thing in the eastern and western part of the state, because many of those circuits have court-approved standard interrogatories."

Discovery

In July 2001, Kimberly Brown fell in the parking lot of a Lake Ozark restaurant called Jeremiah's.

In a subsequent lawsuit she alleged numerous injuries, including a skull fracture, an intracranial hemorrhage and a neck injury. She claimed over \$52,000 in past medical expenses and said there would be additional expenses in the future.

The defendant filed interrogatories that included the following:

"7. During the past five (5) years immediately before the occurrence mentioned in the Petition, had Plaintiff purchased or used any medicine distributed by any pharmacy or entity selling pharmaceutical supplies, and for each list: (a) The name and address of each pharmacy or entity selling pharmaceutical supplies; (b) The drug or medicine prescribed."

"12. Have you ever been involved in any accidents either prior to or subsequent to the incident referred to in the Petition? If so, state: (a) The date, place, type of accident and names and addresses of other parties involved. (b) A detailed description of injuries you received. (c) Names and addresses of all physicians, osteopathic physicians, surgeons, chiropractors, or other medical practitioners rendering treatment. (d) Names and addresses of all hospitals rendering treatment. (e) The nature and extent of recovery and if any permanent disability was suffered, the nature and extent of permanent disability. (f) If any doctor or hospital submitted medical reports showing your injuries, treatment, condition or prognosis, either to you or your attorney or to any of your representatives, please attach copy of said reports to your Answers. (g) If you were compensated in any manner for such injuries, state the names and addresses of each and every person or organization paying such compensation and the amount thereof."

"13. Have you ever had any serious illness, sickness or disease, any surgical operations or been hospitalized either prior to or subsequent to the incident referred to in your Petition? If so, state: (a) The date and place. (b) A detailed description of your symptoms. (c) The names and addresses of any hospitals treating you. (d) The names and addresses of all physicians, osteopathic physicians, surgeons, chiropractors or medical practitioners rendering treatment. (e) The approximate date of your recovery. (f) If you did not fully recover, the date your condition became stationary, and a description of your condition at that time."

Brown objected that these interrogatories were overbroad, and sought a writ of prohibition after a Morgan County circuit judge ordered her to respond.

Scope

Judge Howard said, "The issue now before us requires our determination of the proper scope of interrogatories seeking health and medical information in discovery proceedings. It is analogous to the issue of the proper scope of medical authorizations in discovery proceedings" as determined in *State ex rel. Stecher v. Dowd*, 912 S.W.2d 462 (Mo. banc 1995).

In that case, Howard said, Stecher filed a medical malpractice suit based on the alleged

failure of his doctors to obtain informed consent before using an experimental drug. He contended he suffered an allergic reaction to the drug that caused "cardiogenic shock and vascular collapse," and would make him susceptible to "extensive bleeding, a hematoma on the neck, severe bruising, scars, an extensive amount of additional hospitalization, and a propensity to any future reaction of any medication or substance containing mouse antibodies," and other conditions.

At issue was the medical authorization the defendants sent to Stecher, which covered records concerning any "examination, treatment or confinement, said medical records to include, but not limited to, x-rays, CT scans, laboratory tests, nurses' notes, doctors' notes, consultations, admitting and discharge summaries, and bills."

The Supreme Court ruled that Stecher's "broad allegations of injuries do not automatically entitle defendants to an essentially unlimited medical authorization. ... The [plaintiff's] waiver [of the physician-patient testimonial privilege codified under Sect. 491.060(5) once the plaintiff puts the matter of his or her physical condition in issue under the pleadings, inasmuch as information from doctors or medical and hospital records bears on that issue.] ... does not mean that it automatically extends to every doctor or hospital record a party has had from birth regardless of the bearing or lack of bearing, as may be, on the matters in issue."

According to Howard, the "medical authorizations at issue lacked anything 'that would tie the authorizations to [the] particular case and the injuries pleaded.' The authorizations did not include 'any time limits, designation of health care providers, or any other qualifications,' so they 'would entitle [the defendants] to any and all of Stecher's medical records, from any provider who has ever treated Stecher for any reason from his birth to the present day."

"The court concluded that '[d]espite Stecher's pleadings, the open-ended scope of defendants' authorizations [was] indefensibly broad'; the defendants' 'normal practice' of requesting medical authorizations with 'absolutely no limits at all' was 'a practice that create[d] too great a risk that non-relevant and privileged information may be released to the defendants.'"

Howard then examined the interrogatories at issue in Brown's case.

"We first turn our attention to Interrogatories No. 12 and 13," he said.

"There is no persuasive reason why the court's rationale in Stecher should not apply to Interrogatories No. 12 and 13. Although this case involves in-

terrogatories rather than medical authorizations, the information sought by both could ultimately be the same.

"An overly broad medical authorization requires a plaintiff to provide the net to be used to cast about in an unlimited sea of medical information, while an overly broad interrogatory requires the plaintiff himself or herself to bring the information ashore and hand it over.

"The production of medical records is subject to the physician-patient privilege codified under section 491.060(5), RSMo 2000. This privilege allows a patient to obtain complete and appropriate medical treatment 'by encouraging candid communication between the patient and the physician, free of fear of the possible embarrassment and invasion of privacy engendered by an unauthorized disclosure of information.'"

"It makes little sense to allow a party to dismantle this privilege with an overly broad interrogatory," Howard said. "More to the point, overly invasive interrogatories erode the fundamental right to privacy in an individual's medical affairs and present an undue risk of requiring the disclosure of irrelevant information."

"Plaintiff's allegations of injury did not automatically waive this important right regarding the entirety of her medical history from birth to present."

Case-By-Case

Howard said that the defendant "will not be permitted to discover, by interrogatory, medical information that it is prohibited from obtaining through an overly broad medical authorization."

"The same great risk regarding overly broad medical authorizations, as recognized in Stecher, exists with these open-ended interrogatories."

"In other words, just as a medical authorization permitted under Rule 56.01 must be limited in time and tailored to the physical conditions at issue under the pleadings on a case-by-case basis, so, too, must interrogatories."

"Defendant's virtually limitless requests in Interrogatories No. 12 and 13 fail in this regard," he said.

But he declined to grant the requested relief regarding Interrogatory No. 7.

"By doing so, we do not put a general 'stamp of approval' on its language," Howard said. "Every case is different, and, because of its superior knowledge of the case, the trial court's discretionary powers are generally decisive in discovery disputes."

"Only where the relator demonstrates an abuse of that discretion will the extraordinary remedy of prohibition apply. We find this heavy burden was not met with regard to Interrogatory No. 7."