

When a Driver's Private Health Information May Not Be So Private

Amundsen Davis Transportation Alert
January 29, 2019

In a decision that the commercial transportation industry should be aware of the Illinois Supreme Court recently held that a defendant's physical and mental health records may be discoverable under certain circumstances. In *Palm v. Holocker*, the Court held that a plaintiff was entitled to a defendant's medical examination that was submitted to the Illinois Secretary of State for purposes of obtaining a driver's license because the physician-patient privilege did not apply.

In the underlying case the defendant driver hit the plaintiff, who was a pedestrian in a cross walk. The plaintiff wanted to obtain the defendant's medical records to explore whether the defendant's eyesight was the cause of the accident. None of the pleadings cited to his eyesight or any other potential medical condition of the defendant playing a role in the accident.

There are three takeaways from this decision:

How a defendant's physical or mental condition is placed at issue in a matter is still unresolved;

1. Confidential health information that is disclosed to a third-party, even when required by law, is not protected by the physician-patient privilege;
2. Medical and physical examinations conducted for purposes of obtaining a driver's license, and not for the purpose of medical treatment, are not protected by the physician-patient privilege.

The Illinois Supreme Court did not make a determination as to how a party places his or her health at issue. The appellate court held that only where a defendant affirmatively placed his or her health at issue and that a plaintiff cannot waive someone else's privilege. With the Illinois Supreme Court's decision, however, it remains unclear *how* a defendant's health becomes "an issue" in a case.

Under the Court's analysis, DOT medical exams are not protected by the physician-patient privilege because the examinations are conducted to comply with federal regulations and not for medical treatment. Opposing parties may now discover whether a driver has an underlying medical condition that requires clearance for driving. Though it remains unclear as to whether a plaintiff could

PROFESSIONALS

Anne M. Fishbeck
Partner

RELATED SERVICES

Transportation & Logistics

then use just that information to make a defendant's medical condition an issue given the Court's decision, the reality is that a driver with conditions will be able to be more closely scrutinized by opposing counsel allowing the driver's health condition to become an actual issue.

When a
Driver's
Private
Health
Information
May Not Be
So Private