

Some of Your Privacy Rights Are Waived In Medical Malpractice Lawsuits, Court Rules

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A state appeals court Tuesday upheld the constitutionality of a controversial change in Florida's medical-malpractice laws, ruling in part that some privacy rights are "waived" when people pursue malpractice lawsuits.

The decision by a three-judge panel of the 1st District Court of Appeal stemmed from a 2013 law, which the Republican-controlled Legislature passed after a lobbying battle between groups such as doctors and plaintiffs' attorneys. A federal appeals court last year also upheld the change in a separate case.

The disputes have focused on part of the law that allows what are known in the legal world as "ex parte communications." The law requires patients to sign forms authorizing such communications before filing malpractice claims.

In ex parte communications, for example, defense attorneys representing a doctor accused of malpractice could get personal health information about the patient involved in the case. That information could come from other doctors who treated the patient, and disclosure could occur without the patient's attorney being present.

Tuesday's ruling came in a challenge to the law filed in 2013 in Escambia County. The plaintiff in the case, Emma Gayle Weaver, contemplated filing a medical-malpractice lawsuit against a physician but was concerned about the constitutionality of the ex-parte change, according to court documents. Weaver was the representative of the estate of the late Thomas E. Weaver, whose care was at issue in the malpractice allegations.

The challenge raised a number of constitutional issues, including arguing that the law violates a right to privacy in the Florida Constitution. An initial version of the challenge, posted on the website of the Florida Justice Association trial-lawyers group, said the law requires disclosure of private health and medical information "without a compelling need for that information, in overly broad fashion without adequate safeguards against unnecessary disclosure, and without notice or opportunity to limit those disclosures."

But Tuesday's ruling disagreed that the ex-parte change violates the right to privacy in medical-malpractice cases.

"It is well-established in Florida and across the country that any privacy rights that might attach to a claimant's medical information are waived once that information is placed at issue by filing a medical malpractice claim," said the ruling, written by Judge James Wolf and joined by judges Lori Rowe and Ross Bilbrey. "Thus, by filing the medical malpractice lawsuit, the decedent's medical condition is at issue."

Another issue in the case involved whether the ex-parte change violated the constitutional separation of powers. The contention dealt with whether the Legislature encroached on the role of the Florida Supreme Court, which sets procedures for the court system.

But the appeals court ruled that the change is not procedural but rather is "integral to the substantive pre-suit notice statute" involved in filing medical-malpractice cases.

The 11th U.S. Circuit Court of Appeals last year upheld the ex-parte change in a ruling that focused on whether the 2013 law violates the federal Health Insurance Portability and Accountability Act, or HIPAA, which seeks to prevent disclosure of personal medical information, except in certain circumstances. The federal appeals court said the law did not violate HIPAA — a finding that the state appeals court also cited Tuesday.

—Jim Saunders, News Service of Florida