

HEALTHCARE
MICHIGAN COURT EXTENDS PHYSICIAN-PATIENT PRIVILEGE TO APPLY TO ANY ENTITY THAT OBTAINS PROTECTED MEDICAL INFORMATION FROM A DOCTOR

by *Scott F. Roberts*

On March 12, 2013, the Michigan Court of Appeals in *Meier v. Awaad*, No. 310808, held that the Michigan Department of Community Health ("MDCH") could utilize the state's physician-patient privilege to protect against disclosure of medical records in its possession. The court extended the privilege to the MDCH even though the language of the statute only purports to cover "a person duly authorized to practice medicine or surgery." In doing so, the decision appears to significantly expand the scope of Michigan's physician-patient privilege.

In *Meier*, former patients alleged that a physician intentionally misdiagnosed patients as having epilepsy or seizure disorder in order to increase the physician's reimbursement under public and private insurance plans. During the course of discovery, the plaintiffs subpoenaed the Michigan Department of Community Health ("MDCH"), requesting the names of all Medicaid beneficiaries that were diagnosed with epilepsy or seizure disorder by the doctor. The MDCH refused to disclose the information and sought the protection of the physician patient privilege.

Who Can Invoke Protection under Michigan's Physician-Patient Privilege?

The plaintiffs in *Meier* argued that the statutory language in MCL 600.2157 limited the privilege to "person[s] duly authorized to practice medicine or surgery." Finding that it was "bound" by previous state Supreme Court precedent extending the privilege to hospitals, the court established that the MDCH could nonetheless invoke protection under the privilege. The court found that the protection extends to any entity that obtains protected information from a doctor. Thus, the *Meier* ruling opens the door for hospitals, payors, and other entities that receive medical records from a provider to assert the privilege as if they were the treating physician.

The plaintiffs in *Meier* also argued that only a patient whose information is being sought could assert the physician-patient privilege and that the MDCH therefore lacked standing to assert the privilege. In rejecting this argument, the court looked to previous court rulings holding that the privilege was an absolute bar prohibiting unauthorized disclosure of patient records, even where the patients are not parties to the action. As a result, *Meier* court held that the privilege applied by operation of law, meaning patients did not need to affirmatively assert the privilege for it to be invoked. The court also noted that only the patient may waive the privilege.

What are the Implications for Patients?

While the court noted that the privilege existed to protect the patient, the court failed to address the issue of how the patients are supposed to waive the privilege without first being made aware of its

existence. The patients in *Meier* were harmed because the privilege prevented the plaintiffs from obtaining the patients' information in order to notify them of the case and the doctor's past malpractice. This seeming contradiction—that the privilege harmed the patients it was seemingly meant to protect—could potentially be used to attack parties looking to use the *Meier* case as a shield to protect against disclosure of medical records.

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