



## Alerts

### Missouri Supreme Court Prohibits Ex Parte Communications Between Treating Physicians and Defense Counsel

**September 8, 2010**

*Medical Litigation Alert*

On August 31, 2010, in a case of first impression, the Missouri Supreme Court unanimously held that *ex parte* communications between a treating physician and defense counsel cannot take place absent patient consent. In this medical negligence lawsuit, the trial court entered an order directing that treating physicians were authorized to speak with defense counsel concerning the plaintiff/patient. The Missouri Supreme Court held that the Health Insurance Portability and Accountability Act (HIPAA) does not preempt Missouri law on the subject. But it also held that neither HIPAA, the Missouri Rules of Civil Procedure, nor Missouri case law permit a trial court to disclose a patient's protected health care information during the course of informal meetings with defense counsel. The effect of this court ruling is to preclude defense counsel from informally contacting treating physicians to request information regarding a patient/plaintiff and what, if any, opinions the physicians may render. As long as plaintiffs do not consent to such communication, it cannot occur. Plaintiffs' attorneys will now include limiting language on their authorizations, and the result will be more depositions taken to learn what the health care providers will state.

*State ex rel Proctor v. Messina*, No. SC90610 (Mo. Aug. 31, 2010)

For further information, please contact [Terese A. Drew](#) or your regular [Hinshaw attorney](#).

*This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.*

#### Service Areas

Technology Errors & Omissions