

# Legally Speaking

## A new malpractice law brings big concerns for patient privacy

by **SCOTT McCULLOUGH, ESQ.**

Florida patients who expect a certain degree of confidentiality to be maintained by their doctors should be aware of key changes in the State's new medical malpractice law. Earlier this year, the Florida Senate passed a bill (SB 1792) setting new provisions for how patients and doctors solve cases of medical negligence. One troubling piece of the law allows doctors to disclose private health information about their patients to lawyers representing insurance companies—even without making those very patients aware or allowing them to be present during the discussion.

The new law alters the fine equilibrium of the traditional doctor/patient relationship. The legal and moral rights of patients

— who may feel that they have experienced an injury as result of an error made by their medical professional — exist in a balance with the rights of the doctors who are held to reasonable standards of care. Opponents of the law have argued that it violates privacy rights guaranteed under the federal Health Insurance Portability Accountability Act of 1996, commonly known as HIPAA.

Several lawsuits have been filed to challenge the new statute. These lawsuits argue that the loss of privacy will inhibit patients who have been wronged from coming forward and seeking fair and equitable compensation. Patients ought to be concerned that people who they do not know, in some cases lawyers who actually take positions that are adverse to their own, have complete access to their physicians' records.

Assume for one moment that your doctor makes a mistake, but you have no desire to pursue any claim against them. Do you think that should entitle the doctor to share your medical history with lawyers, claims handlers and other litigation specialists?

Pursuing medical negligence claims in Florida has always been very difficult. Florida's new law may make it even more complicated to encourage victims of medical negligence or their families to come forward in the first place. According

to statistics from the National Practitioner Data Bank, 31 percent of medical malpractice claims in the U.S. are filed as a result of death and another 49 percent in response to major permanent injuries that may even involve brain damage or lifelong care needs. Despite the severity of these medical errors, cases in Florida have been declining since 2003 as the legislature has been making it harder for patients to make it to court.

Challengers of the new law have claimed that it allows lawyers representing the insurance companies to privately and improperly discuss the health care information and records that relate to filed lawsuits. In reality, the new law will enable lawyers, insurance personnel and other competing experts to talk with your treating physicians without your permission. These discussions will specifically consider patients' personal health information, an act that most individuals would consider to be an injustice or violation.

Patients or family members having any questions about how to proceed when there is a medical issue that may have been mishandled are encouraged to speak with an attorney. Legal professionals that specialize in prosecuting medical malpractice claims are best able to prepare appropriately, make efforts to minimize long term medical suffering and ultimately make sure your legal rights are protected.

**Scott McCullough is an attorney at McCullough & Leboff, PA, a law firm based in Davie with 30 years of combined legal experience representing plaintiffs and defendants in personal injury cases. Visit [www.flafirm.com](http://www.flafirm.com) or call 954.989.3435 for legal consultation anywhere in the State of Florida.**

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