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Patient privacy Court Case

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This monthly column is written by Ellie F. Chapman of Morgan, Lewis & Bockius LLP in San Francisco. It is designed to provide RPP readers with a sampling of the types of patient privacy cases that courts are now hearing. It is not intended to be a comprehensive monthly survey of all patient privacy court actions. Contact Ellie at ellie.chapman@morganlewis.com.

◆ **Illinois Firm Must Face Privacy Claims over Deposition Disclosure.** On December 11, 2017, an Illinois appeals court partially reversed and remanded *Doe v. Williams McCarthy, LLP*, 2017 IL App (2d) 160860, a privacy lawsuit against Illinois-based firm Williams McCarthy, LLP. In the suit, “Jane Doe” alleged that Williams McCarthy attorney Treva Sarver improperly revealed Doe’s mental health status during a deposition in previous litigation involving claims that Sarver exerted undue influence to exclude Doe from a trust. Doe challenged this disclosure as a violation of the Illinois Mental Health and Development Disabilities Act (Act), among other claims. On April 19, 2016, a Lee County Circuit Court judge ruled in favor of Williams McCarthy, holding that Doe’s complaints of a privacy violation were barred by the absolute-litigation privilege, which immunizes certain statements and conduct by attorneys in the course of litigation in the name of vigorously acting on behalf of their clients. However, on December 11, 2017, the three-judge appellate panel disagreed, holding that the violation of the Illinois state statute trumped the absolute-litigation privilege. In so holding, the court relied on the Act’s plain language, which stated that the Act applied “in any civil, criminal, administrative, or legislative proceeding.” According to the panel, such language indicated that the legislature intended to control “all releases of the material [the Act] makes confidential in all types of proceedings.” The panel, however, did not reverse all of the lower court’s conclusions in Doe’s favor and declined to weigh in on the extent to which Doe’s privacy was violated: “In this case, almost all of the people upon whom plaintiff bases her claim bore a relationship to the litigation, whether it be courtroom personnel, participants in a deposition, or potential witnesses. To the extent that plaintiff seeks to rely on unidentified members of the general public who might have viewed the court proceedings or court file (and who might not have had some relationship to the litigation), her allegations are far too speculative to merit consideration.”

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