

## Wisconsin Supreme Court Addresses Patient Confidentiality, Physician-Patient Privilege

Jan 23 1995

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Practice Area: Health Law

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The Wisconsin Supreme Court recently curtailed the scope of the physician-patient privilege, while emphasizing that a physician's ethical duty of confidentiality to patients remains unchanged.

In the medical malpractice case of *Steinberg v. Jensen* the Court has attempted to balance a patient's privacy interest in preserving confidential information against a physician's interest in presenting an effective defense. The decision explores the issues of patient confidentiality and the physician-patient privilege.

In the appeal that followed an unfavorable jury verdict, the plaintiff claimed that her right to prevent the disclosure of confidential medical information had been violated by two instances in which the defendant/physician and his attorney discussed the lawsuit and her treatment with other treating physicians.

The first instance was a meeting that included the defendant and two of the patient's other treating physicians. The second was a three-way telephone conversation that included the defendant, his attorney, and another treating physician. It was determined that no confidential information was exchanged in either communication.

The appellate court agreed with the plaintiff and ordered a new trial. The defendant then appealed to the Wisconsin Supreme Court, which reversed the decision. The court concluded that the physician-patient privilege does not regulate physician conduct outside of court proceedings and that the two communications were not improper.

Therefore, the physician-patient privilege was not violated when the defendant and his attorney discussed the lawsuit and the patient's treatment with the other treating physicians.

This ruling does not grant physicians and their attorneys carte blanche to discuss all aspects of a patient's medical treatment during any conversation outside of the courtroom. In order to safeguard confidentiality in the litigation setting, the Wisconsin Supreme Court identified the following public policy standards to govern attorney-physician communications. Attorneys should:

- Inform the physician at the beginning of the conversation that the physician has the right to decline to speak with the attorney;
- Warn the physician that the conversation must be limited to matters that are not confidential;
- Instruct the physician not to disclose or discuss anything that the physician believes might possibly be confidential; and
- Take all reasonable steps to ensure that the conversation does not stray into a discussion about confidential information.

The court noted that physicians are still bound by an ethical duty that prohibits the disclosure of confidential medical information without consent. Patients have a right to expect that physicians will not reveal patient confidences – inside or outside the courtroom.

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