Missouri Law Review

Volume 62
Issue 1 *Winter 1997*

Article 13

Winter 1997

Medical Malpractice Claim--Plaintiff's Privacy Is Protected

Morry S. Cole

Medical Malpractice Claim? Plaintiff's Privacy is Protected

State ex rel. Stecher v. Dowd[1]

I. INTRODUCTION

Under Missouri law, a plaintiff who asserts a personal injury, workers' compensation or other claim based on a medical condition waives the physician-patient testimony privilege[2] to the extent that past medical records are relevant to the asserted injury in time or scope.[3] This Note will examine the development of this exception to Missouri's statutory physician-patient testimonial privilege in the context of *State ex rel. Stecher v. Dowd*,[4] the recent Missouri Supreme Court case that reaffirmed the requirement that discovery of a plaintiff's past medical history may not be overly expansive.[5]

II. FACTS AND HOLDING

Relator James Stecher sought a writ of prohibition limiting discovery of his medical records by the defense in a medical malpractice action.[6] Stecher contended that his doctors administered an experimental drug without securing Stecher's informed consent.[7] As a result of receiving the experimental drug, Stecher alleged that he suffered a severe allergic reaction and that he will continue to suffer adverse side effects.[8]

---

1. 912 S.W.2d 462 (Mo. 1995).

2. Missouri's physician-patient testimonial privilege is codified in MO. REV. STAT. § 491.060(5) (1994). *Id.* at 464. Under the statute, all information which a doctor acquires while attending a patient that is necessary to provide treatment is privileged. *Id.*

3. *Id.*; Brandt v. Medical Defense Assocs., 856 S.W.2d 667, 671 (Mo. 1993); State *ex rel.* McNutt v. Keet, 432 S.W.2d 597, 601 (Mo. 1968).

4. 912 S.W.2d 462 (Mo. 1995).

5. The writ of prohibition issued by the Missouri Supreme Court in this case covered both medical and employment records. For purposes of this Note, analysis and discussion will be limited to the discoverability of medical records.

6. *Stecher*, 912 S.W.2d at 463.

7. *Id.*

8. Stecher alleged that he suffered severe side effects from the use of the experimental drug Chimeric 7E3 Fab (C7E3 Fab). The side effects alleged include:

> cardiogenic shock and vascular collapse, due to anaphylaxis (severe allergic reaction), and . . . will suffer severe pain of body and mind, including extensive bleeding. . . scars, an extensive amount of additional hospitalization, and a propensity to any future reaction of any medication

During discovery, defendants sought Stecher's signature on authorizations for the release of his medical records.[9] Stecher refused, claiming that they were too broad.[10] Defendants moved for an order compelling disclosure from Respondent, Honorable James R. Dowd.[11] The order was granted as to the medical records.[12] In addition, Dowd ordered Stecher to sign authorizations that would direct employers to appear with employment records for *in camera* inspection, in the presence of plaintiff's and defendant's counsel.[13]

---

or substance containing mouse antibodies. . . ."

Id. Further, Stecher alleged that he was at risk of:

> development of antibodies against C7E3 Fab, which antibodies may cause severe allergic reactions, including breathing difficulty, lowering of blood pressure, skin rash, temporary fever and chills, rapid heart rate, or a decrese [sic] in platelet counts and bleeding, "Flushing" and moderate increases inheart [sic] rate, or allergic reaction to any medication from mouse antibodies at anytime in the future, as well as the drug's cancer-causing potential or effects on fertility; in addition . . . an increased risk of hemorrhage in the event of surgery, which might require additional transfusions, and possible physical risks associated with blood transfusion which include an allergic reaction, fever, immune system reaction, or infection, including HIV . . . or hepatitis. . . .

Id.

9. *Id.* The authorizations were in the following format:

> Medical Records Release
> Doctor:
> Doctor:
> Doctor:
> Hospital:
> Hospital:
> Hospital:
>
> You are hereby authorized to permit the law firm of BROWN & JAMES, P.C., or their agent, to examine and/or copy all hospital, medical and dental records in your possession concerning my examination, treatment or confinement, said medical records to include, but not limited to, x-rays, CT scans, laboratory tests, nurses' notes, doctors' notes, consultations, admitting and discharge summaries, and bills. A copy of this authorization shall be sufficient to release medical records.

Id. at 463-64.

10. *Id.* at 464.

11. *Id.*

12. *Id.*

13. *Id.*

Stecher sought a writ of prohibition against Dowd's orders from the Eastern District Court of Appeals.[14] The petition was denied.[15] Upon appeal to the Missouri Supreme Court, a writ of prohibition was granted and made absolute.[16]

III. LEGAL BACKGROUND

At common law there was no physician-patient testimonial privilege.[17] At trial, physicians were required to testify to privileged information, despite their ethical obligation to respect a patient's privacy.[18] The physician-patient testimonial privilege is solely a statutory creation, arising first in New York in 1828,[19] and in Missouri in 1835.[20] Missouri's statute—which is nearly unchanged since it was first enacted—states in pertinent part:

> The following persons shall be incompetent to testify:
> . . .
> (5) A physician . . ., a licensed psychologist or a dentist . . ., concerning any information which he may have acquired from any patient while attending him in a professional character, and which information was necessary to enable him to prescribe and provide treatment for such patient as a physician, psychologist or dentist.[21]

The statute speaks of persons "incompetent" to testify, and in early interpretations of the statute this was read literally.[22] Under such a reading,

---

14. *Id.*

15. *Id.*

16. *Id.* at 465.

17. *See* Blankenbaker v. St. Louis & S.F.R. Co., 187 S.W. 840, 842 (Mo. 1916); Epstein v. Pennsylvania R. Co., 156 S.W. 699, 705 (Mo. 1913); Klinge v. Lutheran Med. Ctr. of St. Louis, 518 S.W.2d 157, 164 (Mo. Ct. App. 1975). *See also* Daniel W. Shuman, *The Origins of the Physician-Patient Privilege and Professional Secret*, 39 SW. L.J. 661, 676-77 (1985); 18 JOHN H. WIGMORE, EVIDENCE § 2380(a) (McNaughton rev. ed. 1961); JOHN W. STRONG, MCCORMICK ON EVIDENCE § 98 (4th ed. 1992).

18. Thomas E. Toney, *Waiver of the Physician-Patient Testimonial Privilege in Missouri*, 34 MO. L. REV. 397 (1969) (citing Duchess of Kingston's Trial, 20 Howell St. Tr. 355 (H.L. 1776)).

19. *Id.* (citing N.Y. REV. ST. 1828, II 406 (Part III c. VII, art. 9, § 73) (1828)).

20. 1835 Mo. Laws 623 § 17. Missouri was the second American jurisdiction to enact a statutory physician-patient privilege. Toney, *supra* note 18, at 407.

21. MO. REV. STAT. § 491.060 (1994).

22. *See, e.g.*, Harriman v. Stowe, 57 Mo. 93 (1874).

no attending physician could testify for a plaintiff that asserted personal injury because the physician was incompetent per se.[23]

In more recent opinions such a literal reading has been abandoned.[24] The Missouri Supreme Court realized that the statute was for the benefit of the patient and therefore the patient could waive his statutory right.[25] Several acts have been deemed to constitute waiver.[26]

Missouri's courts have found express waivers by explicit written authorization[27] or in a contract provision.[28] Courts have also enforced several waivers as waivers per se, which are statutory waivers codified to effectuate a policy goal.[29] And courts have recognized an implied waiver in cases where a patient testifies as to treatment or the patient calls a doctor as a witness and that doctor testifies as to treatment.[30] In addition, there is a recognized exception relevant to the facts of *Stecher*, which was first adopted by the Missouri Supreme Court in *State ex rel. McNutt v. Keet*.[31]

In *McNutt*, the court held "that once the matter of plaintiff's physical condition is in issue under the pleadings, plaintiff will be considered to have waived the privilege under [Mo. Rev. Stat.] § 491.060(5) so far as information from doctors or medical and hospital records bearing on that issue is concerned."[32] However, "[t]he waiver . . . does not mean that it automatically extends to every doctor or hospital record a party has had from

---

23. State *ex rel.* McNutt v. Keet, 432 S.W.2d 597, 600 (Mo. 1968).

24. *See* State *ex rel.* Stecher v. Dowd, 912 S.W.2d 462 (Mo. 1995); Brandt v. Pelican, 856 S.W.2d 658 (Mo. 1993); State *ex rel.* Woytus v. Ryan, 776 S.W.2d 389, 392-93 (Mo. 1989); State *ex rel.* McNutt v. Keet, 432 S.W.2d 597 (Mo. 1968); Epstein v. Pennsylvania R. Co., 156 S.W. 699 (Mo. 1913); Groll v. Tower, 85 Mo. 249, 253-56 (Mo. 1884); State *ex rel.* Degraffenreid v. Keet, 619 S.W.2d 873 (Mo. Ct. App. 1981).

25. *See supra* note 24.

26. *See infra* notes 27-31 and accompanying text. The four classifications of waivers are taken from Toney, *supra* note 18, at 399-404.

27. *See* Davenport v. City of Hannibal, 18 S.W. 1122, 1123 (Mo. 1892).

28. *See* Russell v. Missouri Ins. Co., 232 S.W.2d 812, 814 (Mo. Ct. App. 1950); Keller v. Home Life Ins. Co., 69 S.W. 612 (Mo. Ct. App. 1902).

29. *See, e.g.*, MO. REV. STAT. § 210.140 (1994). Under this statute a doctor may testify as to his beliefs about the cause of a child's injuries when abuse is suspected.

30. *See* Demonbrun v. McHaffie, 156 S.W.2d 923, 924 (Mo. 1941); Wells v. City of Jefferson, 132 S.W.2d 1006, 1010 (Mo. 1939); Epstein v. Pennsylvania R. Co., 156 S.W. 699 (Mo. 1913); Cramer v. Hurt, 55 S.W. 258, 260 (Mo. 1900).

31. 432 S.W.2d 597, 601 (Mo. 1968). Prior to the *McNutt* decision courts in Missouri held that mere filing of a personal injury suit was not synonymous with an implied waiver. *See* Smart v. Kansas City, 105 S.W. 709, 714-15 (Mo. 1907).

32. *McNutt*, 432 S.W.2d at 601.

birth regardless of the bearing or lack of bearing . . . on the matters in issue."[33] Despite the clarity of the court's holding in *McNutt*, the proper scope of medical authorizations in discovery proceedings came into issue many times, on an appellate level, over the next twenty-six years.[34] Even though the Missouri Supreme Court has followed the rule outlined in *McNutt*[35]—as have Missouri's Courts of Appeal[36]—when James Stecher sued St. Louis University and two doctors practicing at St. Louis University Medical Center the issue once again made its way to Missouri's high court in *State ex rel. Stecher v. Dowd.*

IV. THE INSTANT DECISION

In *Stecher v. Dowd*, the Missouri Supreme Court reaffirmed Missouri's rule that, in a personal injury action, defendants are "not entitled to any and all medical records, but only those medical records that relate to the physical conditions at issue under the pleadings."[37]

The opinion began by outlining the basic stance of the relator, James Stecher.[38] As Judge Limbaugh explained, Stecher maintained that defendant's requests for medical records were too broad, the requests would permit discovery of irrelevant information and that the Honorable James R. Dowd abused his discretion by ordering execution of the over-broad authorizations.[39] Next, the opinion gave a brief recitation of Stecher's

---

33. *Id.* at 602.

34. *See* Brandt v. Pelican, 856 S.W.2d 658, 662 (Mo. 1993); State *ex rel.* Woytus v. Ryan, 776 S.W.2d 389, 393 (Mo. 1989); State *ex rel.* Tally v. Grimm, 722 S.W.2d 604 (Mo. 1987); State *ex rel.* Curtis v. Crow, 580 S.W.2d 753, 757 (Mo. 1979); State *ex rel.* Dixon Oaks Health Ctr., Inc. v. Long, 929 S.W.2d 226, 229 (Mo. Ct. App. 1996); State *ex rel.* Griffin v. Weiberg, 838 S.W.2d 490, 491 (Mo. Ct. App. 1992); Delaporte v. Robey Bldg. Supply, Inc. 812 S.W.2d 526 (Mo. Ct. App. 1991); Baker v. State Farm Mut. Auto Ins. Co., 806 S.W.2d 742, 744 (Mo. Ct. App. 1991); McClelland v. Ozenberger, 805 S.W.2d 264, 267 (Mo. Ct. App. 1991); Hayter v. Griffen, 785 S.W.2d 590, 593 (Mo. Ct. App. 1990); Stuffelbaum v. Applequist, 694 S.W.2d 882, 884-85 (Mo. Ct. App 1985); Gozenbach v. Eberwein, 655 S.W.2d 794, 796 (Mo. Ct. App. 1983); State *ex rel.* Degraffenreid v. Keet, 619 S.W.2d 873, 877-78 (Mo. Ct. App. 1981); Husgen v. Stussie, 617 S.W.2d 414, 416 (Mo. Ct. App. 1981); L.S. v. L.M.S., 538 S.W.2d 753, 755 (Mo. Ct. App. 1976); Klinge v. Lutheran Med. Ctr. of St. Louis, 518 S.W.2d 157, 164 (Mo. Ct. App. 1975); Hammack v. White, 464 S.W.2d 520, 524 (Mo. Ct. App. 1971).

35. *See supra* note 34.

36. *See supra* note 34.

37. *Stecher*, 912 S.W.2d at 464.

38. *Id.* at 463-64.

39. *Id.* Relator also took issue with Judge Dowd's order allowing defendants'

pleadings,[40] and published the format of the defense medical authorization form.[41] The court then explained that since Stecher claimed to have "lost wages in his answers to defendant's interrogatories, defendants requested that he sign authorizations regarding his employment records."[42]

The opinion recounted that Stecher, objecting to Judge Dowd's rulings, filed a petition for a writ of prohibition in the Eastern District Court of Appeals.[43] The petition was denied.[44] Next, the opinion provided analysis of the crux of the case: the "determination of the proper scope of medical authorizations in discovery proceedings."[45]

It was observed that the general rule of discovery, Missouri Supreme Court Rule 56.01(b)(1), is that "parties may obtain information regarding any matter relevant to the subject matter involved in the pending action so long as the matter is not privileged."[46] Further, relevance is broadly interpreted to cover "material 'reasonably calculated to lead to the discovery of admissible evidence.'"[47] Since medical records are protected by the physician-patient testimonial privilege codified in Missouri Revised Statute § 491.060(5) (1994)—absent a waiver—the Court applied Missouri's "waiver by the plaintiff bringing suit" exception.[48] By so doing, the court reaffirmed the rule first stated in *State ex rel. McNutt v. Keet*, "that once plaintiffs put the matter of their physical condition in issue under the pleadings, they waive the physician-patient privilege insofar as information from doctors or medical and hospital records bears on that issue."[49]

The Court then emphasized that "defendants are not entitled to any and all medical records, but only those medical records that relate to the physical conditions at issue under the pleadings."[50] The Court also observed that this can only be done by following a case-by-case standard.[51]

---

counsel to be present during an *in camera* inspection of Stecher's employment records. However, discussion of this issue is beyond the scope of this Note.

40. *See supra* note 8 for relevant text of Stecher's pleadings.

41. *See supra* note 9 for format of the defense authorization.

42. *Stecher*, 912 S.W.2d at 464. The issue of discoverability of employment records is beyond the scope of this Note.

43. *Stecher*, 912 S.W.2d at 464.

44. *Id.*

45. *Id.*

46. *Id.* (citing MO. SUP. CT. R. 56.01(b)(1)).

47. *Id.*

48. *Id.* (citing State *ex rel.* McNutt v. Keet, 432 S.W.2d 597, 601 (Mo. 1968)).

49. *Id.*

50. *Id.*

51. *Id.*

Although Stecher maintained that the only injury alleged was to his heart, the Court found that his allegations set no "precise limits on his physical complaints."[52] However, despite the encompassing nature of Stecher's complaint, the defense medical authorizations had "absolutely no limits at all."[53] Therefore, citing *McNutt*, the Court explained, "the waiver . . . does not mean that it automatically extends to every doctor or hospital record a party has had from birth regardless of the bearing or lack of bearing, as may be, on the matters in issue."[54] Since there was no limiting language in the defense's medical authorizations—and the limiting language contained in the defense's interrogatories did not limit the scope of the medical authorizations—the Court held that such authorizations "creates too great a risk that non-relevant and privileged information may be released to the defendants."[55]

The Court further observed, "[p]rohibition is the proper remedy when a trial court issues an order in discovery proceedings that is an abuse of discretion."[56] Because the defense's medical authorizations were "overly broad and unlimited in scope,"[57] the Court held that Judge Dowd abused his discretion in ordering Stecher to sign them and the preliminary writ of prohibition was made absolute.[58]

The remainder of the opinion held that defense counsel could not be present during an *in camera* inspection of Stecher's employment records.[59] All concurred.[60]

V. COMMENT

In *Stecher*, the Missouri Supreme Court reasserted the exception to the physician-patient testimonial privilege first adopted in Missouri in *State ex rel. McNutt v. Keet*.[61] The well-established exception that a plaintiff asserting a personal injury claim waives the physician-patient privilege only to the extent that past medical records "reasonably relate to the injuries and

52. *Id.*
53. *Id.* at 465.
54. *Id.* at 464 (citing State *ex rel.* McNutt v. Keet, 432 S.W.2d 597, 602 (Mo. 1968)).
55. *Id.*
56. *Id.* (citing State *ex rel.* Plank v. Koehr, 831 S.W.2d 926, 927-28 (Mo. 1992)).
57. *Id.* at 465.
58. *Id.*
59. *Id.*
60. *Id.*
61. 432 S.W.2d 597 (Mo. 1968).

aggravations claimed by the plaintiffs in the present suit"[62] was adopted to promote fairness, efficiency, and to protect a patient's (plaintiff's) privacy.[63]

The fairness and efficiency arguments for the exception to physician-patient privilege are clear for courts, plaintiffs and defendants. If properly administered, the exception focuses medical malpractice litigation on the relevant facts. For courts, this means easier identification of frivolous suits and shorter trials. For plaintiffs, the exception promotes easier prosecution of valid malpractice claims by reducing the effort and expense required to develop the case. For defendants, the exception reduces the time and expense required to present an effective defense.

The argument for a statutory physician-patient privilege to protect a patient's (plaintiff's) privacy has been asserted since the rule's adoption.[64] It has long been believed that enactment of a physician-patient privilege—one that effectively protected the privacy of any disclosures between doctor and patient—would encourage patients to more fully disclose any ailments from which they are suffering, thereby facilitating better treatment.[65] As this was largely the reason underlying the enactment of the privilege,[66] any judicial abrogation of the rule would, theoretically, reduce the quality of health care. The privilege ensures that any information not pertinent to issues at bar will remain undisclosed to the public, thereby protecting a plaintiff from the chance of embarrassment, or harassment by the defense.[67] While some commentators question the effectiveness of physician-patient privilege statutes,[68] it is easy to see that a statute which allows recovery in tort for breach is more imposing to physicians than an ethical obligation alone.

Arguably, on the facts in *Stecher*, Judge Dowd was within his discretion in compelling disclosure. As respondent briefed, the defendants should not be barred from discovery which may lead to admissible evidence, particularly when alleged injuries are systemic in nature.[69] Given the complexity of Stecher's claimed injuries—and the complexity of the tests performed throughout Stecher's treatment—it may well be that nearly all of Stecher's

---

62. *Stecher*, 912 S.W.2d at 464 (quoting *McNutt*, 432 S.W.2d at 602). *See also* Brandt v. Medical Defense Assocs., 856 S.W.2d 667, 671 (Mo. 1993); State *ex rel.* McNutt v. Keet, 432 S.W.2d 597, 601 (Mo. 1968).

63. *See* Hartley v. Calbreath, 106 S.W. 570, 572 (Mo. Ct. App. 1907).

64. *Id.*

65. *See generally* Toney, *supra* note 18, at 407.

66. *Id.* For the counterargument see also Toney, *supra* note 18, at 407.

67. *See Hartley*, 106 S.W. at 573 (Mo. Ct. App. 1907).

68. *See* Toney, *supra* note 18, at 407.

69. Brief for Respondent at 18, State *ex rel.* Stecher v. Dowd, 912 S.W.2d 462 (Mo. 1995).

past medical history is relevant, if not in time at least in scope.[70] Additionally, respondent argued that the Stecher was using the physician-patient privilege as a shield and a sword, using the "privilege strategically to exclude unfavorable evidence while at the same time admitting favorable evidence."[71] However, these points pale in the light of the law as stated in *McNutt* and *Stecher*.

McNutt v. Keet explicitly stated that "[t]he waiver . . . does not . . . automatically [extend] to every doctor or hospital record a party has had from birth . . . ."[72] The court in *Stecher* did not say that Stecher's past medical records were not discoverable, it merely said that the form of the authorizations was unacceptable. Simply interpreted, the court said that *some* type of limiting language must exist in medical record authorizations.

Despite the clarity of the *Stecher* opinion, one vagary exists. The court stated, "[i]t must be emphasized that under this rule, defendants are not entitled to any and all medical records, but only those medical records that relate to the physical conditions at issue under the *pleadings*" (emphasis added).[73] This statement of the rule begs the question: What effect does an expansive response to an interrogatory have on a narrow pleading? Will a plaintiff's expansive response to interrogatories open the gate to broad discoverability of past medical records?

If so, allowing discovery of past medical records based on answers to interrogatories will be, essentially, treating answers to interrogatories as quasi-amendments to the formal pleadings. Thus, courts will not be following a literal reading of the rule quoted from *Stecher*. Common sense dictates that when a plaintiff answers an interrogatory with facts that could be relevant to

---

70. The Missouri Association of Defense Lawyers and Medical Defense Associates, in an *amicus* brief filed in *Stecher*, observed that it would be ridiculous to expect a judge or medical records custodian to understand the pertinence of:

> "CRRR . . . Dopamine Echo(D/Echo) . . . ventriculogram . . . PTCA . . . emphysema . . . diabetes . . . embolus . . . MAP . . . Thallium stress test . . . RA . . . LV . . . angiogram . . . congenital injuries . . . ASHD . . . methoxamine hydrochloride . . . trauma . . . shock . . . PCWP . . . kidney problems . . . pnea . . . hypovolemia . . . ventricular septal defect . . . severe mitral regurgitation . . . discrete aneurysm . . . phenylephrine hydrochloride . . . mental obtundation . . . peripheral vasoconstriction . . . pulmonary congestion . . . urinary output . . .

Amicus brief at 13, State *ex rel.* Stecher v. Dowd, 912 S.W.2d 462 (Mo. 1995).

71. Respondent's brief at 22, State *ex rel.* Stecher v. Dowd, 912 S.W.2d 462 (Mo. 1995).

72. State *ex rel.* McNutt v. Keet, 432 S.W.2d 597, 602 (Mo. 1968).

73. *Stecher*, 912 S.W.2d at 464.

the proceedings those facts will no longer be protected by the physician-patient privilege. Once waiver is found, it will be broadly interpreted.[74]

If not, then discovery will be limited to the facts in the pleadings. This must certainly not be the result intended by the court.

In light of *Stecher*, there are measures that advocates for both plaintiffs and defendants can take to strengthen their cases during pretrial preparation. Plaintiffs can plead injury carefully and narrowly to avoid over-broad discovery. Unfortunately, this may lead to abuse by plaintiffs—what the Missouri Organization of Defense Lawyers and Medical Defense Associates points out is using the rule "to simultaneously serve as a 'shield' and a 'dagger'."[75] After carefully pleading, a plaintiff must be certain to carefully answer interrogatories to avoid unintentionally waiving the privilege further.

Defense attorneys can continue to draft extremely broad interrogatories and medical record release authorizations—with only loose language limiting time and scope—in the hope of uncovering past records which weaken or eliminate the plaintiff's case. Perhaps such broad documents are, as respondent briefed,[76] commonplace. Regardless, if such releases are signed, the defense has access to potentially relevant history, particularly in cases involving systemic injuries.

Relator suggested that the Court should adopt their authorization form as a standard form for use in medical malpractice actions.[77] However, as Judge Limbaugh explained, "medical authorizations must be tailored to the pleadings, and this can only be achieved on a case-by-case basis."[78] When considering the myriad of potential medical malpractice claims, one realizes that a standard authorization form would be nearly impossible to draft. When the law is clearly stated, as in *McNutt* and *Stecher*, a case-by-case standard should yield little abuse by trial judges.

---

74. Toney, *supra* note 18, at 406 (citing William R. Peterson, *The Patient-Physician Privilege in Missouri*, 20 UMKC L. REV. 122, 133 (1952)).

75. Amicus brief at 19, State *ex rel.* Stecher v. Dowd, 912 S.W.2d 462 (Mo. 1995) (citing Brandt v. Medical Defense Assocs., 856 S.W.2d 667, 672 (Mo. 1993)); State *ex rel.* McNutt v. Keet, 432 S.W.2d 597, 601 (1968); Thomas N. Sterchi & Edward H. Sheppard, *Defendant's Right to Secure Medical Information and Records Concerning Plaintiff*, 53 UMKC L. REV. 46, 47-48 (1984)).

76. Brief for Respondent at 16, State *ex rel.* Stecher v. Dowd, 912 S.W.2d 462 (Mo. 1995).

77. *Id.* at 19-21.

78. *Stecher*, 912 S.W.2d at 464.

VI. CONCLUSION

State ex rel. Stecher v. Dowd stands for stability in medical malpractice discovery. The Missouri Supreme Court strongly restated the exception to the physician-patient testimonial privilege first adopted in *State ex rel. McNutt v. Keet*. By so doing, the Court ensured that discovery of past medical records will not become an unbridled area of discretion for trial judges and furthered the worthy goals of avoiding undue delay, providing certainty to the scope of discovery and protecting a patient's privacy, while facilitating prosecution of valid medical malpractice actions.

MORRY S. COLE