

ITEM 11.03 | DISCOVERY OF NON-PARTY MEDICAL RECORDS

Privacy rights, statutory law,¹⁹ and common sense dictate that discovery of nonparty medical records and information is severely restricted.²⁰ The issue has arisen most often in association with experts who do a Compulsory Medical Examination and are asked to provide records or information from records of CME's for other patients. Simply redacting the names of patients does not necessarily resolve privacy and patient confidentiality issues, and the issues of undue burden and relevance are also associated with such requests. Section 456.057(7)(a)(3) Fla. Stat. (2015), as it has been interpreted and applied in Florida courts, creates "a broad and express privilege of confidentiality as to the medical records and the medical condition of a patient." The clear terms of the statute prohibit the production of a nonparty patient's medical records and they prohibit discussion about a nonparty patient's medical condition without prior notice to that nonparty.²¹ Likewise, an interrogatory to a party requesting that the party furnish a "general summary of the opinions and basis of the opinions" offered by his medical experts in other cases has been found to invade the privacy rights of non-parties, as protected by the referenced statute.²²

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Footnotes

¹⁹ Fla. Stat. § 456.057(7)(a)(3)(prohibits the disclosure of nonparty CME reports without prior notice to all of the affected nonparties); *Graham v. Dacheikh*, 991 So. 2d 932 (Fla. 2d DCA 2008)(disclosure is disclosure whether it is production of records or through deposition testimony).

²⁰ *Crowley v. Lamming*, 66 So. 3d 355 (Fla. 2d DCA 2011)(trial court departed from the essential requirements of the law when it ordered CME doctor to bring the CME reports of nonparties to his deposition and to testify to some of the information contained in those reports); *USAA Casualty Insurance Co. v. Callery*, 66 So. 3d 315 (Fla. 2d DCA 2011)(it was departure from essential requirements of the law to enter an order compelling an insurance company party to produce CME results from CME doctor's last 20 exams for the party with all patient-identifying information redacted and only including the physician's conclusions/impressions, the physician's signature, the date of report, and the name and address of the receiving attorney). See also *Coopersmith v. Perrine*, 91 So. 3d 246 (Fla. 4th DCA 2012)(similar denial of discovery where the nonparty CME patient information was requested from a party as opposed to the CME physician).

²¹ *Crowley*, supra at 358.

²² *Coopersmith v. Perrine*, 91 So. 3d 246 (Fla 4th DCA 2012).

