

## Health Information Compliance Alert

### Health Information News: TEXAS MAN, ACCUSED OF DUI, LEARNS NOT TO MESS WITH HIPAA

**Clayton Harper Tapp** was involved in a motorcycle accident and was taken to **Memorial Hermann Hospital**. After smelling alcohol on Tapp's breath, a police officer obtained a grand jury subpoena to obtain his blood-alcohol test results - yet there was no criminal proceeding pending against him at the time the subpoena was issued.

Tapp pleaded guilty to a DUI misdemeanor offense after filing a motion in trial court to suppress his blood test results. Later, he appealed the conviction, arguing that the State improperly obtained his blood test results by failing to comply with the grand jury subpoena process, specifically arguing that the results were admitted in violation of his privacy rights under HIPAA, and that the use of a grand jury subpoena to obtain the results constituted an unreasonable search and seizure.

"In this case, compliance with [HIPAA's privacy rule] regulations was not yet required," ruled Judge **Paul Murphy** while referring to the April 14, 2003 privacy rule compliance deadline. Tapp was charged with the DUI Nov. 30, 2001.

"Consequently, appellant's preemption argument is without merit in that any compliance with the regulations was not even mandated," he added. Murphy said since HIPAA's privacy rule regulations were still in the "pre-enforcement stage" at the time of his conviction, the court was compelled to follow existing case law.

As for Tapp's claim of unreasonable search and seizure, Murphy ruled that the State's Bill of Rights holds that appellants lack standing to assert that using a grand jury subpoena to obtain his blood results constitutes unreasonable search and seizure. The appellant "does not have a Fourth Amendment reasonable expectation of privacy that protects blood-alcohol test results from tests taken by hospital personnel solely for medical purposes after a traffic accident," he noted in the court opinion.

Editor's Note: To read the court opinion, go to [www.14thcoa.courts.state.tx.us/opinions/HTMLOpinion.asp?OpinionID=78292](http://www.14thcoa.courts.state.tx.us/opinions/HTMLOpinion.asp?OpinionID=78292).