

## Health Information Compliance Alert

### State Courts FED REGS DON'T PROTECT ALCOHOL RECORDS

Think twice before signing a disability insurance application giving the insurer the right to all medical records. The Illinois Supreme Court [in the only reported case on the question nationwide](#) [has held that under federal law a signature on an insurance application form authorizing medical record releases includes alcohol and drug treatment information.](#)

The plaintiff, identified as M.A.K., applied for disability income insurance with Royal Maccabees Life Insurance Co. in Oct. 1994, and Royal issued the policy. Plaintiff was admitted on Jan. 13, 1995 to Rush-Presbyterian-St. Luke's Medical Center for alcohol dependence.

While a patient at Rush, plaintiff contacted his insurance agent about filing a claim for benefits under the policy and the company sent him a claim form. He never filed it.

In the meantime, Rush released plaintiff's records of alcohol-dependence to Royal and Royal cancelled the disability policy.

M.A.K. sued and the circuit court granted Rush's summary judgment motion.

In the appellate court, the issue was whether the authorization M.A.K. signed when he applied for insurance complied with the requirements of the federal Confidentiality of Alcohol and Drug Abuse Patient Records regulations found at 42 C.F.R. sec. 2.31(a)(1) (2000). Those regs require that a written consent for release of alcohol and drug treatment records must specify the name or general designation of the person or program authorized to disclose the records. The appellate court concluded the authorization violated federal law and reversed.

The Illinois Supreme Court, however, disagreed, concluding that the federal regulation, amended in 1987, permitted a general description of the required information.

The amendment's intent was, according to the court, to "broaden the permissible wording of a written consent to disclosure of alcohol and drug treatment records." The "relaxed requirement" thus relieved the patient of having to execute multiple consent forms or specifically name each and every program or person entitled to disclose his alcohol and drug treatment records.

The consent form M.A.K. signed when he applied for disability insurance met the federal regulation's requirements.

The court also rejected plaintiff's arguments that the consent form violated the regulations because it didn't specify how much and what kind of information could be disclosed and didn't meet requirements regarding the terms under which the consent would expire.

M.A.K.'s attorneys say they have no plans to appeal the supreme court's decision. *M.A.K. v. Rush-Presbyterian-St. Luke's Medical Center*, 2001 Ill. Lexis 1784 at \*14 (Ill. Dec. 20, 2001).