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From the editors

Dear Readers,

We have devoted this issue of *Tort Trends* to House Bill 20. We have five articles written by members of our section council. The first article is entitled "Third-Party Actions Against Plaintiff's Employer" by James P. Ginzkey of Hayes, Hammer, Miles Cox & Ginzkey. The second article is entitled "House Bill 20—Changes Regarding Healing Art Malpractice" by Mary E. Doherty of Corboy & Demetrio, P.C. The third is entitled "Tort Legislation, House Bill 20—Changes to the Premises Liability Act" by Thomas D. Campe, Jr. of Decker and Linn, Ltd. The fourth article is entitled "House Bill 20 Turns the *Petrillo* Doctrine Upside Down" by Mark L. Karno of Mark L. Karno & Associates. The fifth article is entitled "New Legislation Abolishes *Petrillo* Doctrine" by Samantha Papagianis of The Law Office of James T. Ball.

The sixth and final article is entitled "The Civil Justice Reform Amendments of 1995" by James R. Covington, III, a Senate Republican Staff member.

As always, we invite our readership to submit written comments or rebuttal articles on anything that you feel is appropriate. If the materials meet with our editorial policy, they will be published for all to share. Please send written comments to Joseph R. Marconi, Suite 2200, 222 North LaSalle Street, Chicago, Illinois 60601.

Sincerely,
Joseph R. Marconi, co-editor

Third-party actions against plaintiff's employer

By James P. Ginzkey of Hayes, Hammer, Miles, Cox & Ginzkey

On March 9, 1995, Governor Edgar signed into law the Civil Justice Reform Amendments of 1995 (P.A. 89-7). With respect to third-party actions against a plaintiff's employer, the Act contains two pertinent provisions. These provisions apply to causes of action accruing (not filed) after March 9, 1995.

740 ILCS 100/3.5 is an entirely new provision and reads as follows:

(a) If a tortfeasor brings an action for contribution against the plaintiff's employer, the employer's liability for contribution shall not exceed the amount of the employer's liability to the plaintiff under the Workers' Compensation Act or the Workers' Occupational Diseases Act. The tortfeasor seeking contribution from the plaintiff's employer is not entitled to recover money from the employer. The tortfeasor shall receive a credit against his or her liability to the plaintiff in an amount equal to the amount of contribution, if any, for which the employer is found to be liable to that tortfeasor, even if the amount exceeds the employer's liability under the Workers' Compensation Act or the Workers' Occupational Diseases Act.

(b) This section does not apply in any action in which the plaintiff's employer has no right of reimbursement from the plaintiff under subsection (b) of Section 5 of the Workers' Compensation Act or subsection (b) of Section 5 of the Workers' Occupational Diseases Act.

(c) This amendatory act of 1995 applies only to causes of action accruing on or after its effective date.

Subsection (a) of 740 ILCS 100/3.5 codifies the supreme court's ruling in *Kotecki v. Cyclops Welding Corp.*, 146 Ill.2d 155, 585 N.E.2d 1023 (1991), by statutorily limiting an employer's liability to that provided for under the Workers' Compensation Act or the Workers'

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a duty to warn of defects or dangers unknown to the owner or occupier of the premises;

a duty to warn an entrant of any danger resulting from the entrant's own misuse of the property; or

a duty to protect an entrant from their own misuse of the property.

The amendment, among other things, overrules the Illinois Supreme Court's decision in *Ward v. K mart Corporation*, 136 Ill.2d 132, 554 N.E.2d 223, 143 Ill.Dec. 288 (1990). In *Ward*, the Illinois Supreme Court held that the fact that a condition was considered "open or obvious" or may be known to an entrant does not **necessarily** mean that the property owner owes no duty of care. The court held that the property owner's duty to exercise reasonable care extended to the risk that an entrant would fail to notice an open or obvious condition. Specifically, the court held that, under the facts of *Ward*, it was reasonably foreseeable that a customer exiting defendant's store might fail to notice the condition that caused the injury.

Generally, the *Ward* court held that the existence of an "open or obvious" condition was not a *per se* bar to recovery, but must be viewed within a defendant's general duty to exercise reasonable care. In assessing the "duty of reasonable care" the court must also consider whether the landowner should anticipate the harm to a plaintiff despite knowledge on the part of the entrant or the obviousness of the condition.

The amendment to section 130/2, however, goes much further than overruling *Ward*. The section goes on to exclude from the duty of reasonable care a duty to warn of latent defects or dangers or defects or dangers "unknown" to the landowner. These may prove to be especially broad limitations on the duty of reasonable care in a premises case because a landowner is unlikely to admit any knowledge of a defect or danger on the premises. Evidence of prior knowledge will be hard to uncover. Likewise, the landowner will likely attempt to characterize any defect on the property as "latent" and therefore now outside the duty of reasonable care.

The legislation also amends section 130/3. 740 ILCS 130/3. This amendment specifically limits the duty of care owed to an adult trespasser to include only the duty to refrain from willful and wanton conduct that would endanger the safety of a known trespasser.

Section 130/3 formerly provided that nothing within the Premises Liability Act affected the law of a trespassing adult or child. At common law, the general rule in Illinois is that a landowner owed a trespasser only the duty to refrain from willfully or wantonly injuring him. *Lee v. Chicago Transit Authority*, 152 Ill.2d 432, 605 N.E.2d 493, 178 Ill.Dec. 699 (1992). There were, however, exceptions to this rule, which included a requirement that a landowner exercise ordinary care where the trespasser had been discovered on a place of danger on the premises, or where the landowner knew of frequent trespasser intrusions in a known area.

In *Lee v. Chicago Transit Authority*, the Illinois Supreme Court added a narrow third exception to the general rule involving trespassers. In *Lee*, the supreme court held that if a landowner knows of, or reasonably anticipates, the presence of a trespasser in a place of danger, the landowner should be held to a duty of ordinary care to protect and/or warn the trespasser. This holding was based on section 337 of the Restatement (Second) of Torts and served as an exception to the general rule that a landowner only owes a trespasser the duty to refrain from willful and wanton conduct. In *Lee*, the court found that at trial the defendant had stipulated it could "reasonably anticipate" persons contacting the ground-level electric rail where the plaintiff's injury occurred. Finding that the defendant thereby owed the plaintiff a duty, the court also found the lack of warnings at this site constituted a breach of that duty and affirmed the jury verdict for plaintiff.

By the amendment to section 130/3, a landowner owed no duty to an adult trespasser other than to refrain from willful and wanton conduct that would endanger the safety of a known trespasser. The change appears to go much further than simply reversing the supreme court's decision in *Lee*. The amendment also would eliminate the other established exceptions to the general rule in regard to trespassers established by the common law.

The amendments to sections 130/2 and 130/3 apply to causes of action accruing on or after its effective date.

House Bill 20 turns the *Petrillo* doctrine upside down

By Mark L. Karno of Mark L. Karno & Associates

With the stroke of a pen, Governor Edgar has turned the *Petrillo* doctrine upside down. Prior to the passage of House Bill 20 into law, the *Petrillo v. Syntex Laboratories, Inc.*, 148 Ill.App.3d 581, 102 Ill.Dec. 172, 499 N.E.2d 952 (1st Dist., 4th Div., 1986) appeal denied 113 Ill.2d 584, 106. Ill.Dec. 55, 505 N.E.2d 361 (1987) cert. denied, 483 U.S. 1007, 107 S.Ct. 3232, 97 L.Ed.2d 738 (1987), court set forth the doctrine which held that:

> Because public policy strongly favors both the confidential and fiduciary nature of the physician-patient relationship it is thus axiomatic that conduct which threatens the sanctity of the relationship runs afoul of public policy. That being so, we believe, . . ., that ex parte conferences between defense counsel and a plaintiff's treating physician jeopardize the sanctity of the physician-patient relationship and, therefore, are prohibited as against public policy. *Petrillo*, at 177.

Subsequent cases have extended the *Petrillo* principle to: prohibiting ex parte communications between a defendant hospital and its own staff physician who treated the plaintiff. *Ritter v. Rush-Presbyterian-St. Luke's Medical Center*, 177 Ill.App.3d 313, 126 Ill.Dec. 642, 532 N.E.2d 327 (1st Dist., 3rd Div., 1988) [Cf. *Morgan v. County of Cook*, 252 Ill.App.3d 947, 192 Ill.Dec. 176, 625 N.E.2d 136 (1st Dist., 1st Div., 1993)]; a physician who consulted plaintiff's treating physician, *Mondelli v. Checker Taxi Co.*, 197 Ill.App. 2d 258, 143 Ill.Dec. 331, 554 N.E.2d 266 (1st Dist., 5th Div., 1990); a nurse who assisted the defendant physician in treating the plaintiff, *Roberson by Isaac v. Liu*, 198 Ill.App.3d 332, 144 Ill.Dec. 480, 555 N.E.2d 999 (5th Dist., 1990); ex parte communication between a doctor and his own attorney, prior to suit, where after suit is filed, the attorney represents another doctor who is sued in the same case and who has the same malpractice insurance carrier, *Bayleander v. Method*, 230 Ill.App.3d 610,

171 Ill.Dec. 797, 594 N.E.2d 1317 (1st Dist., 5th Div., 1992); and to written communications with the physician. *Lewis v. Illinois Central Railroad Co.*, 234 Ill.App. 3d 669, 175 Ill.Dec. 573, 600 N.E.2d 504 (5th Dist., 1992) and *Nastasi v. United Mine Workers of America Union Hospital*, 209 Ill.App.3d 830, 839, 153 Ill.Dec. 900, 567 N.E.2d 1358 (1991); but does not extend to an intern who took plaintiff's history and he testifies regarding that recorded admission, *Tomasovic v. American Honda Motor Company, Inc.*, 171 Ill.App.3d 979, 121 Ill.Dec. 804, 525 N.E.2d 1111 (1st Dist., 3d Div., 1988) cert. denied 122 Ill.2d 595 (1988). However, in *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 240 Ill.App.3d 585, 181 Ill.Dec. 19, 608 N.E.2d 92 (1st Dist., 2d Div., 1992), petition for leave to appeal allowed, 149 Ill.2d 647, 183 Ill.Dec. 858, 612 N.E.2d 510 (1993), appeal dismissed for lack of jurisdiction, 162 Ill.2d 205, 205 Ill.Dec. 147, 642 N.E.2d 1264 (1994), the trial court's order granting the defendant's attorney the right to conduct an ex parte conference with a psychiatric resident who treated the plaintiff at the defendant's hospital was reversed by the appellate court.

In the face of a *Petrillo* violation, the trial court could either find the violating attorney in contempt of court or enter any sanction permissible for the violation of a discovery rule in accordance with Supreme Court Rule 219(c). *Roberson by Isaac v. Liu*, 198 Ill.App.3d 332, 144 Ill.Dec. 480, 555 N.E.2d 999 (5th Dist., 1990).

In *Pourchot v. Commonwealth Edison Co.*, 224 Ill.App.3d 634, 167 Ill.Dec. 320, 587 N.E.2d 589 (3d Dist., 1992), the appellate court found the trial court's failure to bar a treating physician's testimony after an ex parte communication constituted reversible error and further held that whether the conduct was indeed harmless or conducted in good faith was irrelevant. The appellate court then gave guidance, on remand, as to the appropriate sanction. The appellate court approved the sanction of prohibiting examination by defendant's counsel of the treating physician with whom the improper conduct was had, or barring the testimony of the physician if the trial court felt that the testimony had become tainted by the improper communication.

Contained within the newly enacted House Bill 20 are revisions to Illinois Code of Civil Procedure section 2-1003(a) [735 ILCS 5/2-1003(a)] which totally change the *Petrillo* doctrine. This new code section provides in pertinent part that:

> Any party who by pleading alleges any claim for bodily injury or disease, including mental health injury or disease, shall be deemed to waive any privilege between the injured person and each health care provider who has furnished care at any time to the injured person. . .upon written request of any other party who has appeared in the action, [shall] sign and deliver within 28 days to the requesting party a separate Consent authorizing each person or entity who has provided health care at any time to the allegedly injured person to:
>
> (1) furnish [that party or their attorney] a complete copy of the chart or record of health care. . .;
>
> (2) permit [that party or their attorney] to inspect the original chart or record of health care. . .upon written request made not less than 7 days prior to the inspection;
>
> (3) accept and consider charts and other records of health care by others, radiographic films, and documents, including reports, deposition transcripts, and letters, furnished to the health care provider by the requesting party or [their attorney] before giving testimony in any deposition or trial or other hearing;
>
> (4) confer with the requesting party's attorney before giving testimony in any deposition or trial or other hearing and engage in discussion with the attorney on the subjects of the health care provider's observations related to the allegedly injured party's health, including the following: the patient history, whether charted or otherwise recorded or not; the health care provider's opinions related to the patient's state of health, prognosis, etiology, or cause of the patient's state of health at any time, and the nature and quality of care by other health care providers, including whether any standard of care was or was not breached; and the testimony the health care provider would give in response to any point of interrogation, and the education, experience, and qualifications of the health care provider.

The failure of a plaintiff to comply with the signing of any consent under this section can result in the defense counsel seeking a court order compelling the disclosure or seeking a dismissal of the action in accordance with 735 ILCS 5/2-619(a)(9). This section is effective to all actions filed on and after its enactment, March 9, 1995. The fact that this represents a 180 degree departure from the *Petrillo, infra*, doctrine is readily apparent.

This writer believes that a separation of powers issue exists concerning this legislative attempt to intervene in the discovery rules promulgated by our supreme court. Article 2, sec. 1 of the state Constitution provides in pertinent part that, "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." Article 6, sec. 1 of the state Constitution provides in pertinent part that, "The judicial power is vested in a Supreme Court, an Appellate Court and Circuit Courts."

The case of *People v. Cox*, 82 Ill.2d 268, 45 Ill.Dec. 190, 412 N.E.2d 541 (1980), stands as authority for the rules that the supreme court possesses rule-making authority to regulate trial of cases and authority to regulate appeals; and although the legislature has the power to enact laws governing judicial practice where it does not unduly infringe upon inherent powers of judiciary, where rule of supreme court on matter within court's authority and statute on same subject conflict, the rule will prevail.

However, in *In Re Air Crash Disaster at Sioux City, Iowa on July 19, 1989*, 259 Ill.App.3d 231, 197 Ill. Dec. 843, 631 N.E.2d 1302 (1st Dist., 2d Div., 1994), where some of the plaintiffs were granted leave to take a voluntary dismissal in accordance with Illinois Code of Civil Procedure section 2-1009, 735 ILCS 5/2-1009, in the face of dispositive motions directed at some but not all of the plaintiffs in the consolidated cases, by reason of their noncompliance with certain outstanding discovery, the defendants argued that section 2-1009 as interpreted by the circuit court violated the separation of powers provisions of the Illinois Constitution (Ill. Const. 1970, Art. VI, sec. 1, Art. II, sec. 1) by allowing the legislature to enact rules that interfere with the court's authority to supervise discovery and control its docket. In response to this argument, the

appellate court stated:

> The separation-of-powers clause of our constitution provides: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." (Ill. Const. 1980, Art. II, Sec. 1.) This provision does not contemplate rigidly separated compartments, however. (*People v. Joseph* (1986), 113 Ill.2d 36, 41, 99 Ill.Dec. 120, 495 N.E.2d 501.) The general assembly has the power to enact laws governing judicial practice which do not unduly infringe upon the inherent powers of the judiciary, set forth in Article VI, Section 1. (*Strukoff v. Strukoff* (1979), 76 Ill. 2d 53, 59, 27 Ill. Dec. 762, 389 N.E.2d 1170). The mere presence of concurrent jurisdiction and authority to promulgate procedural rules does not necessitate a tug-of-war between the legislature and the court to determine whose views should predominate. (*Gibellina*, 127 Ill.2d at 133, 129 Ill. Dec. 93, 535 N.E.2d 858.) In addition, a strong presumption of constitutionality attaches to any legislative enactment. *Sanelli v. Glenview State Bank* (1985), 108 Ill.2d 1, 20, 90 Ill.Dec. 908, 483 N.E.2d 226. *In Re Sioux City, Iowa Air Crash Litigation*, at 1307.

There, the court found that there was no conflict between the cited section of the Code of Civil Procedure and a specific Supreme Court Rule because the ability of the trial court to grant sanctions was optional rather than mandatory.

In *Gibellina v. Handley*, 127 Ill.2d 122, 129 Ill.Dec. 93, 535 N.E.2d 858 (1989), the supreme court citing its prior decision in *O'Connell v. St. Francis Hospital*, 112 Ill.2d 273, 97 Ill.Dec. 449, 492 N.E.2d 1322 (1986), where it held that it was possible for the legislature and judiciary to have concurrent jurisdiction and authority to promulgate procedural rules, the court held that:

> The mere presence of concurrent jurisdiction and authority to promulgate procedural rules, however, does not necessitate our engagement in a tug-of-war with the legislature to determine whose views should predominate. Reasonable persons may differ; a difference of perspective is not enough, however, to warrant this court's involvement in the legislative process. *Gibellina*, at 864.

Thus, although there is a separation of powers issue, it is not clear whether the supreme court will take the initiative and hold 735 ILCS 5/2-1003(a) to be an unconstitutional encroachment upon the ability of the court to promulgate procedural rules, because there is no specific rule on point.

However, as the challenges to this law wind their way through the courts, the supreme court may take the initiative to act and enact a specific rule such as the proposed Supreme Court Rule 221, which had been circulated among the various bar associations and was the subject of a public hearing last year. If this rule were promulgated, then it would certainly represent a specific Supreme Court Rule on point. [See, *Petrillo Update-Proposed Rule 221*, 28 ISBA *Tort Trends*, No. 5 (May 1993) page 6, for an article authored by H. Case Ellis which included the language of the Proposed Supreme Court Rule as it existed at that time.] It would also be reminiscent of the court's taking the Illinois Code of Civil Procedure section 2-611 mandatory sanctions bull by the horns when it promulgated the less harsh Supreme Court Rule 137, in 1989.

As this article is being written there is a challenge to the entire contents of House Bill 20. A lawsuit was filed on March 9, 1995, hours after Governor Edgar signed House Bill 20 into law, challenging the constitutionality of the entire Act. [See, *Nancy Cowles, et al. v. Loleta Didrickson, et al.*, Circuit Court of Cook County, Illinois, Case No. 95 CH 2154.] How that lawsuit will ultimately be resolved is anyone's guess. In light of the numerous challenges that will undoubtedly be presented to this new provision, and until the issues are fully formulated and ultimately resolved, there is one approach that the plaintiff tort law practitioner should consider utilizing which should help in partially levelling out the playing field. The plaintiff's attorney should write a letter to all of his or her client's treating physicians and attempt to elicit their cooperation by requesting that they refrain from complying with any ex parte request of defense counsel without first contacting the plaintiff's counsel, and if possible, to enable the plaintiff's attorney to be present at, or monitor any communications with the physician by the adversary. This would help to minimize the dreaded situation of the defense lawyer in an ex parte manner, in advance of crucial deposition where the treating physician will be expressing his opinions as to the key issue of permanency of the plaintiff's injuries, reminding the doctor that his law firm does defense work for ISMIS. In reading the language of the bill, as enacted, I do not see where the plaintiff's counsel insisting on being present during, or monitoring any such communication, would violate the rule as long as the health care provider agreed to it. [Note that HB 20 as enacted is a much more drastic departure from the *Petrillo* doctrine than the debated provisions of proposed Supreme Court Rule 221 referred to earlier, which only permitted a party to communicate in person with a health care provider other than the party's own during a deposition and allowed other communications and transmittals of materials in writing to the health care provider, only if all other parties were copied with the letter and its enclosures and the letter only discussed the scope of a deposition and its scheduling. The proposed rule further provided that the letter also would have to inform the recipient that he shall not respond to the letter in any fashion other than for the purposes of scheduling the deposition.]

Additionally, I believe that most defense practitioners seeking to contact a physician or other health care provider would want the plaintiff's attorney present, along with a court reporter, at any conference to avoid a situation wherein the defense lawyer would have to be called to the witness stand to controvert a statement made by the health care provider at the ex parte conference. That situation could result in the possible disqualification of the defense attorney and his law firm from the case. Further, most health care providers will undoubtedly feel more comfortable speaking to a defense attorney in the presence of his or her patient's attorney, even in the face of a signed authorization.

Thus, as tort law practitioners, we are facing turbulent times until the dust settles on the constitutionality of HB 20. This article has suggested one approach to dealing with 735 ILCS 5/2-1003(a) which should be examined by the plaintiff's attorney now that we must all confront the anti-plaintiff sentiments of our General Assembly as exhibited by its enactment of HB 20 which contains 735 ILCS

5/2-1003(a) or until such time as we know how the supreme court will interpret this new code section or craft its own rule to supersede it.

New legislation abolishes *Petrillo* doctrine

By Samatha Papagianis of The Law Office of James T. Ball

Under House Bill 20, signed into law by Governor Edgar on March 9, 1995, provisions were added to the Illinois Compiled Statutes allowing any party, in a claim for bodily or mental health injury, to 1) obtain any and all medical records of that injured person from any period of time, and 2) to communicate outside the physician/patient privilege with any health care provider of the injured person. In a nutshell, the new legislation abolishes the common law *Petrillo* doctrine which prohibited any ex parte communications between defense counsel and an injured person's health care provider, in order to preserve the physician/patient privilege.

Specifically, the following language was added to 735 ILCS 5/2-1003 "Discovery and Depositions";

> (a) Any party who by pleading alleges any claim for bodily injury or disease, including mental health injury or disease, *shall be deemed to waive any privileges* between the injured person and each health care provider who furnished care *at any time* to the injured person. 735 ILCS 5/2-1003(a) (emphasis added).

Under the new legislation, a "health care provider" is defined as:

> any person or entity who delivers or has delivered health care services, including diagnostic services, and includes, but is not limited to, physicians, psychologists, chiropractors, nurses, mental health workers, therapists, and other healing art practitioners. *Id.*

The new legislation provides that any party making a claim for bodily injury or mental health injury, "*shall* upon written request of any other party who has appeared in the action, *sign and deliver within 28 days* to the requesting party a separate Consent. . . " *Id.* (emphasis added). The new legislation enumerates in detail what the "Consent" authorizes a health care provided to do. In general, the "Consent" will authorize each health care provider to:

> (1) provide the requesting party copies of any and all medical records in his/her/its possession,
>
> (2) permit the requesting party to inspect the originals of any and all of the medical records in his/her/its possession,
>
> (3) review other health care providers' records, reports, deposition transcripts and documents, prior to giving deposition or trial testimony,
>
> (4) confer with the requesting party's attorney before deposition or trial testimony, on the subjects of the health care provider's observations related to the allegedly injured party's health. *Id.*

Under the new legislation, "*All documents and information obtained pursuant to Consent shall be considered confidential.* Disclosure may be made only to the parties to the action, their attorneys, their insurers' representatives, and witnesses and consultants whose testimony concerns medical treatment prognosis or rehabilitation, including expert witnesses." *Id.* (Emphasis added.)

The added language to section 2-1003 also states that should a plaintiff refuse to timely comply with a request for signature and delivery of a consent, the court, on motion, *shall* issue an order authorizing disclosure of all records and information as provided above or order the cause dismissed pursuant to section 2-619(a)(9).

Other sections were also amended to effect the changes to section 2-1003. Sections 5/8-2001 and 8-2003 were amended to provide that every health care provider or hospital that receives a "Consent" as described under section 2-1003, must satisfy a request to copy or examine records within 60 days of receipt of the request. 735 ILCS 5/8-2001 and 5/8-2003.

Section 5/8-802 of the Illinois Compiled Statutes which prohibited any physician or surgeon from disclosing any information obtained while attending a patient in a professional manner, was amended to allow health care provides to disclose information as described in section 2-1003. 735 ILCS 5/8-802.

Section 5/8-802 was also amended to allow a health care provider to communicate at any time and in any fashion with his or her own counsel and professional liability insurer concerning any care and treatment he or she provided to any patient. *Id.* The amendment also allows any health care provider to:

> communicate at any time and in any fashion with his or her present or former employer, principal, partner or professional corporation, professional liability insurer, or counsel for the same, concerning any care and treatment he or she provided, or assisted in providing, to any patient during the pendency and within the scope of his or her employment or affiliation with the employer, principal, partner, or professional corporation. *Id.*

The same amendments to health care providers under section 5/8-802, as described above, were also made with regard to therapists under 740 ILCS 110/9 and 110/10 of the Mental Health and Developmental Disabilities Confidentiality Act.

Moreover, these new provisions are procedural as opposed to substantive, such that they apply to cases *filed* on or after the effective date of the new legislation, which was March 9, 1995, unlike other provisions of the new legislation, which only apply to causes of action accruing on and after the effective date.

There is no express purpose for these provisions. Some attorneys may view the new legislation as a fair way to investigate a case without procedural delays, such as subpoenaing medical records, time-consuming court appearances where plaintiff's attorneys seek *in camera* inspections of medical records, and scheduling and taking depositions of health care providers.

These provisions however, may cause more harm than good. For example, a person who needs psychiatric counseling because of an alcohol addiction may not seek counseling or openly communicate his feelings to a therapist out of fear that in 10 years he may break a leg in an automobile accident involving a negligent driver and have his therapist's notes circulated among attorneys, paramedics, or the defendant driver's insurers.

From a plaintiff's personal injury lawyer's perspective, by doing away with the *Petrillo* doctrine and allowing access to any and all medical records of injured people who