

## **Illinois: Changes in the use of subpoenae in Workers' Compensation Cases**

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A recent decision by the Appellate Court of Illinois will force a change in the use of subpoenae in Workers Compensation cases. *Holtkamp Trucking Co. vs. David J. Fletcher, M.D., L.L.C., d/b/a Safeworks Illinois* arose out of a subpoena which, accompanied by a \$20 witness fee, was mailed by the employer to Dr. Fletcher instructing him to copy and mail his records on the employee to the employer's attorney. Dr. Fletcher's attorney asserted that the only obligation under the Act was for Dr. Fletcher to appear at the hearing of the workers' compensation case and permit inspection of the records by the arbitrator.

The Appellate Court held that the Commission has no power to confiscate the medical provider's property by commanding it to mail records to a party's attorney.

The Court identified two ways in which a party can compel the production of medical records. One is by use of a subpoena issued by the Workers' Compensation Commission. This will compel the provider to appear at the time of the hearing and permit inspection of its records. It does not compel the possessor of the records to permit them to be copied.

The other method is under section 735 ILCS 5/8-2001 (c) which provides that:

Every health care practitioner shall, upon the request of any patient who has been treated by the health care practitioner, or any person, entity, or organization presenting a valid authorization for the release of records signed by the patient or the patient's legally authorized representative, permit...(them) to examine and copy the patient's records.

In the wake of this case, parties should expect increasing noncompliance with subpoenae, both by refusal to send the records and by demanding a payment higher than the \$20 witness fee. In anticipation of this we recommend that parties not rely on subpoenae to obtain records and attempt to obtain HIPAA authorizations signed by the employee so that records can be obtained under section 5/8-2001 (c).