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January 11, 2002

Justice Nathan L. Hecht
Supreme Court of Texas
P. O. Box 12248
Austin, Texas 78711

Re: Supreme Court Advisory Committee - Ex Parte Communications
and Physician-Patient Confidentiality

Dear Justice Hecht:

The recent case of Durst v. Hill County Memorial Hospital, San Antonio Court of Appeals No. 04-00-00540-CV, decided December 19, 2001, succinctly states what appears to be a serious problem with respect to confidential communications protected by the physician-patient relationship.

There is apparently no explicit procedure provided for parties to litigation to learn discoverable information from a party's treating physician. Accordingly, the San Antonio Court of Appeals has concluded that there is no bar to ex parte communications with a party's physician by attorneys for the opposing side.

Not all information in the hands of a treating physician is necessarily discoverable under exceptions to a physician-patient confidentiality. It would appear that the patient should be the first to determine if information in the hands of the patient's physician is discoverable, and, if the opposing party should disagree with the decision of the patient, then it should be the Court, not opposing party or opposing counsel, who makes the decision as to whether or not the information is discoverable.

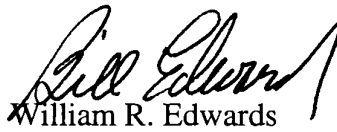
At any rate, it would appear that discovery of medical evidence from a treating physician should be no different than discovery of any information from an expert witness, that is, with the permission of the opposing party or with notice to the opposing party and an opportunity for the opposing party to protect whatever privileges may exist.

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It is requested that this matter be placed on the agenda of the Committee at the earliest possible time.

Thank you for your consideration of this matter.

Yours very truly,


William R. Edwards

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