DISPOSITION CHART
TEXAS RULES OF EVIDENCE AGENDA
AUGUST 13-14, 2004

RULE NO.	HISTORY	RECOMMENDATION OF EVIDENCE SUBCOMMITTEE	REASONS
705	Referred by SBOT Administration of Rules of Evidence Committee	Adopt amended rule that is attached. *Also attached is rule recommended by SBOT Administration of Rules of Evidence Committee, as well as copy of amended Federal Rule 703 and present Texas Rule 705.	Consistent with Federal Rule 703 and applicable language in Texas Rule 403. *Also attached is Texas Rule 403.
407(b)	Referred by SBOT Administration of Rules of Evidence Committee	Adopt the rule as recommended by SBOT Administration of Rules of Evidence Committee. Recommended rule attached. *Also attached is report of SBOT Administration of Rules of Evidence Committee.	To make clear the rights of "innocent sellers" within the meaning of House Bill 4 in light of amendment to Evidence Rule 407(a)
509 or 514(new) – Possible amendment to 510	Referred by Bill Edwards – concerning ex parte conversations with a doctor under Exception (e)(4) to 509	Majority of Evidence Subcommittee recommends John Martin version as amended and recommended by majority of the Evidence Subcommittee. Minority of Evidence Subcommittee saw merit in SBOT Administration of Rules of Evidence Committee recommendation with possible amendments.	Evidence Subcommittee felt that it is difficult to draw a rule that complies with all federal and state statutes pertaining to protected health care information and peer review statutes. SBOT Administration of Rules of Evidence Committee felt their version appropriately complies with all current law and gives a more definite guideline to attorneys.

			Attachments: (1) Evidence Subcommittee proposed rule; (2) SBOT Administration of Rules of Evidence Committee proposed rule; (3) Correspondence between myself, John Martin and Jeff Boyd concerning SBOT Administration of Rules of Evidence Committee rule and report; (4) Heretofore forwarded and posted on SCAC website is Summary of HIPPA Regulations and SBOT Administration of Rules of Evidence Committee report

PROPOSED CHANGE TO TEXAS RULE OF EVIDENCE 705.

RULE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

The only changes to Texas Rule of Evidence 705 are:

(a) Where we refer to subparagraph (d) and in paragraph (d) wherein we adopt the federal language verbatim. Also, there is a comment to this change.

PROPOSED CHANGE TO TEXAS RULE OF EVIDENCE 705.

RULE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

(a) Disclosure of Facts and Data. The expert may testify in terms of opinion or inference and give the expert's reasons therefore without prior disclosure of the underlying facts or data, unless the court requires otherwise. Subject to subparagraph (d) the expert may disclose on direct examination, or may be required to disclose on cross-examination, the underlying facts or data.

(b) Voir dire. Prior to the expert giving the expert's opinion or disclosing the underlying facts or data, a party against whom the opinion is offered upon request in a criminal case shall, or in a civil case may, be permitted to conduct a voir dire examination directed to the underlying facts or data upon which the opinion is bases. This examination shall be conducted out of the hearing of the jury.

(c) Admissibility of opinion. If the court determines that the underlying facts or data do no provide a sufficient basis for the expert's opinion under Rule 702 or 703, the opinion is inadmissible.

(d) Balancing test; limiting instructions. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect. If otherwise inadmissible facts or data are disclosed before the jury, a limiting instruction by the court shall be given upon request.

Notes and Comments

Comment to 1998 change: Paragraphs (b), (c) and (d) are based on the former Criminal Rule and are made applicable to civil cases. This rule does not preclude a party in any case from conducting a voir dire examination into the qualifications of an expert.

Proposed additional comment: The changes to subparagraph (d) are based on the recent changes to Federal Rule of Evidence 703.

III. PROPOSED CHANGES TO TEXAS RULE OF EVIDENCE 705, FROM AREC PROPOSAL OF JUNE 2002, RED-LINED AGAINST THE CURRENT RULE, WHICH IS IN REGULAR TYPE. ~~**PROPOSED DELETIONS LOOK LIKE THIS**~~, AND **PROPOSED ADDITIONS LOOK LIKE THIS**.

RULE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

(a) Disclosure of Facts or Data. The expert may testify in terms of opinion or inference and give the expert's reasons therefore without prior disclosure of the underlying facts or data, unless the court requires otherwise. **Subject to paragraph (d),** ~~**T**~~the expert may ~~**in any event**~~ disclose on direct examination, or be required to disclose ~~,~~ on cross-examination, the underlying facts or data.

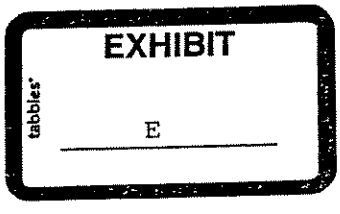
(b) Voir dire. Prior to the expert giving the expert's opinion or disclosing the underlying facts or data, a party against whom the opinion is offered upon request in a criminal case shall, or in a civil case may, be permitted to conduct a voir dire examination directed to the underlying facts or data upon which the opinion is based. This examination shall be conducted out of the hearing of the jury.

(c) Admissibility of opinion. If the court determines that the underlying facts or data do not provide a sufficient basis for the expert's opinion under Rule 702 or 703, the opinion is inadmissible.

(d) Balancing test; limiting instructions. When the underlying facts or data would be inadmissible in evidence, ~~**the court shall exclude the underlying facts or data if the danger that they will be used for a purpose other than as explanation or support for the expert's opinion outweighs their value as explanation or support or areunfairly prejudicial.**~~ **the underlying facts or data shall not be disclosed by the proponent unless the proponent establishes that their probative value in evaluating the expert's opinion outweighs their prejudicial effect.** If otherwise inadmissible facts or data are disclosed before the jury, a limiting instruction by the court shall be given upon request.

Notes and Comments

Comment to 1998 change: Paragraphs (b), (c), and (d) are based on the former Criminal Rule and are made applicable to civil cases. This rule does not preclude a party in any case from conducting a voir dire examination into the qualifications of an expert.



Tanner v. Westbrook, 174 F.3d 542, 546 (5th Cir. 1999). Defendant, "in its motion for an FRE 104 hearing, called the [P's] experts' opinions on causation 'sufficiently into question,' by providing conflicting medical literature and expert testimony."

FRE 703. BASES OF OPINION TESTIMONY BY EXPERTS

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

Cross references to FRE 703: ***Commentaries***, "Introducing Testimony," ch. 8-C, §4, p. 434; 2000 Notes to FRE 703, p. 1053.

Source of FRE 703: Pub. L. 93-595, §1, Jan. 2, 1975, 88 Stat. 1937; Mar. 2, 1987, eff. Oct. 1, 1987.

In re Paoli R.R. Yard PCB Litig., 35 F.3d 717, 747 (3d Cir.1994). "While [FRE] 702 focuses on an expert's methodology, [FRE] 703 focuses on the data underlying the expert's opinion. [¶] We have held that the district judge must make a factual finding as to what data experts find reliable ... and that if an expert avers that his testimony is based on a type of data on which experts reasonably rely, that is generally enough to survive the Rule 703 inquiry."

FRE 704. OPINION ON ULTIMATE ISSUE

(a) Except as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

Source of FRE 704: Pub. L. 93-595, §1, Jan. 2, 1975, 88 Stat. 1937; Pub. L. 98-473, title II, §406, Oct. 12, 1984, 98 Stat. 2067.

Burkhart v. Washington Metro. Area Transit Auth., 112 F.3d 1207, 1212-13 (D.C. Cir.1997). "[A]n expert may offer his opinion as to facts that, if found, would support a conclusion that the legal standard at issue was satisfied, but he may not testify as to whether the legal standard has been satisfied."

Woods v. Lecureux, 110 F.3d 1215, 1220 (6th Cir. 1997). "[T]estimony offering nothing more than a legal conclusion—i.e., testimony that does little more than tell the jury what result to reach—is properly excludable under the [FREs]."

Lightfoot v. Union Carbide Corp., 110 F.3d 898, 911 (2d Cir.1997). The FREs "allow a lay witness to testify in the form of an opinion.... The fact that the lay opinion testimony bears on the ultimate issue in the case does not render the testimony inadmissible."

FRE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

Source of FRE 705: Pub. L. 93-595, §1, Jan. 2, 1975, 88 Stat. 1938; Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993.

B.F. Goodrich v. Betkoski, 99 F.3d 505, 525 (2d Cir. 1996). "An expert's testimony, in order to be admissible under [FRE] 705, need not detail all the facts and data underlying his opinion in order to present that opinion."

University of R.I. v. A.W. Chesterton Co., 2 F.3d 1200, 1218 (1st Cir.1993). FRE 703 & 705 "normally relieve the proponent of expert testimony from engaging in the awkward art of hypothetical questioning, which involves the ... process of laying a full factual foundation *prior* to asking the expert to state an opinion. In the interests of efficiency, the [FREs] deliberately shift the burden to the cross-examiner to ferret out whatever empirical deficiencies may lurk in the expert opinion. Nevertheless, Rules 703 and 705 do not afford automatic entitlements to proponents of expert testimony. [U]nder the broad exception to Rule 705 ... the trial court is given considerable latitude over the order in which evidence will be presented to the jury."

FRE 706. COURT APPOINTED EXPERTS

(a) Appointment. The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may

TRE 703. BASES OF OPINION TESTIMONY BY EXPERTS

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by, reviewed by, or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Comment to 1998 change: The former Civil Rule referred to facts or data "perceived by or reviewed by" the expert. The former Criminal Rule referred to facts or data "perceived by or made known to" the expert. The terminology is now conformed, but no change in meaning is intended.

See *Commentaries*, "Introducing Evidence," ch. 8-C; "Objecting to Evidence," ch. 8-D; Cochran, ***Texas Rules of Evidence Handbook***, p. 685 (2001).

History of TRE 703 (civil): Amended eff. Mar. 1, 1998, by order of Feb. 25, 1998 (960 S.W.2d [Tex.Cases] lx). Amended eff. Sept. 1, 1990, by order of Apr. 24, 1990 (785-86 S.W.2d [Tex.Cases] cvii): Changed the words "made known to him" to "reviewed by the expert."; this amendment conforms TRE 703 to the rules of discovery by using the term "reviewed by the expert." See former TRCP 166b. Adopted eff. Sept. 1, 1983, by order of Nov. 23, 1982 (641-42 S.W.2d [Tex.Cases] lv). Source: FRE 703.

Merrell Dow Pharms., Inc. v. Havner, 953 S.W.2d 706, 711 (Tex.1997). "The substance of the [expert's] testimony must be considered. *At 712:* [A]n expert's bald assurance of validity is not enough. *At 713:* The underlying data should be independently evaluated in determining if the opinion itself is reliable."

Stam v. Mack, 984 S.W.2d 747, 750 (Tex.App.—Texarkana 1999, no pet.). TRE 703 and 705 "now allow a testifying expert to relate on direct examination the reasonably reliable facts and data on which he relied in forming his opinion, subject to an objection under [TRE] 403 that the probative value of such facts and data is outweighed by the risk of undue prejudice. ... The details of those facts and data may be brought out on cross-examination pursuant to [TRE] 705(a), 705(b), and 705(d). Moreover, the opponent of such evidence may ask for a limiting instruction if he fears the evidence may be used for a purpose other than support for the testifying expert's opinion."

Sosa ex rel. Grant v. Koshy, 961 S.W.2d 420, 427 (Tex.App.—Houston [1st Dist.] 1997, pet. denied). "Under rule 703, Officer Null, as an expert on accident reconstruction, properly relied on hearsay evidence provided by eyewitnesses to the accident if experts in his field would reasonably rely on such evidence."

TRE 704. OPINION ON ULTIMATE ISSUE

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

See *Commentaries*, "Objecting to Evidence," ch. 8-D; Cochran, ***Texas Rules of Evidence Handbook***, p. 697 (2001).

History of TRE 704 (civil): Amended eff. Mar. 1, 1998, by order of Feb. 25, 1998 (960 S.W.2d [Tex.Cases] lx). Adopted eff. Sept. 1, 1983, by order of Nov. 23, 1982 (641-42 S.W.2d [Tex.Cases] lv). Source: FRE 704.

Birchfield v. Texarkana Mem. Hosp., 747 S.W.2d 361, 365 (Tex.1987). "Fairness and efficiency dictate that an expert may state an opinion on a mixed question of law and fact as long as the opinion is confined to the relevant issues and is based on proper legal concepts." An expert may testify that conduct constituted "negligence" and "gross negligence," and that certain acts were "proximate causes" of the plaintiff's injuries.

Dickerson v. DeBarbieris, 964 S.W.2d 680, 690 (Tex.App.—Houston [14th Dist.] 1998, no pet.). "Although rule 704 allows an expert to state an opinion on a mixed question of law and fact, it does not permit an expert to state an opinion or conclusion on a pure question of law because such a question is exclusively for the court to decide and is not an ultimate issue to be decided by the trier of fact."

Isern v. Watson, 942 S.W.2d 186, 193 (Tex.App.—Beaumont 1997, pet. denied). "[B]efore a testifying expert's opinion can be rendered [on negligence, gross negligence, or proximate cause], a predicate must be laid showing that the expert is familiar with the proper legal definition in question."

TRE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

(a) Disclosure of Facts or Data. The expert may testify in terms of opinion or inference and give the expert's reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event disclose on direct examination, or be required to disclose on cross-examination, the underlying facts or data.

(b) Voir dire. Prior to the expert giving the expert's opinion or disclosing the underlying facts or data, a party against whom the opinion is offered upon request in a criminal case shall, or in a civil case may, be

permitted to conduct a *voir dire* examination directed to the underlying facts or data upon which the opinion is based. This examination shall be conducted out of the hearing of the jury.

(c) Admissibility of opinion. If the court determines that the underlying facts or data do not provide a sufficient basis for the expert's opinion under Rule 702 or 703, the opinion is inadmissible.

(d) Balancing test; limiting instructions. When the underlying facts or data would be inadmissible in evidence, the court shall exclude the underlying facts or data if the danger that they will be used for a purpose other than as explanation or support for the expert's opinion outweighs their value as explanation or support or are unfairly prejudicial. If otherwise inadmissible facts or data are disclosed before the jury, a limiting instruction by the court shall be given upon request.

Comment to 1998 change: Paragraphs (b), (c), and (d) are based on the former Criminal Rule and are made applicable to civil cases. This rule does not preclude a party in any case from conducting a *voir dire* examination into the qualifications of an expert.

See Cochran, ***Texas Rules of Evidence Handbook***, p. 704 (2001).

History of TRE 705 (civil): Amended eff. Mar. 1, 1998, by order of Feb. 25, 1998 (960 S.W.2d [Tex.Cases] lx). Amended eff. Nov. 1, 1984, by order of June 25, 1984 (669-70 S.W.2d [Tex.Cases] xxxviii): Added "disclose on direct examination, or" and "on cross-examination" to last sentence. Adopted eff. Sept. 1, 1983, by order of Nov. 23, 1982 (641-42 S.W.2d [Tex.Cases] lv). Source: FRE 705.

Weiss v. Mechanical Assoc. Servs., 989 S.W.2d 120, 124-25 (Tex.App.—San Antonio 1999, pet. denied). "The non-exclusive list of factors the court may consider in deciding admissibility [under TRE 705(c)] includes the extent to which the theory has been or can be tested, the extent to which the technique relies upon the subjective interpretation of the expert, whether the theory has been subjected to peer review and/or publication, the technique's potential rate of error, whether the underlying theory or technique has been generally accepted as valid by the relevant scientific community, and the non-judicial uses that have been made of the theory or technique."

Stam v. Mack, 984 S.W.2d 747, 750 (Tex.App.—Texarkana 1999, no pet.). See Annotation in TRE 703.

TRE 706. AUDIT IN CIVIL CASES

Despite any other evidence rule to the contrary, verified reports of auditors prepared pursuant to Rule of Civil Procedure 172, whether in the form of summaries, opinions, or otherwise, shall be admitted in evidence when offered by any party whether or not the facts or data in the reports are otherwise admissible and whether or not the reports embrace the ultimate issues to be decided by the trier of fact. Where exceptions to the reports have been filed, a party may contradict the reports by evidence supporting the exceptions.

See Cochran, ***Texas Rules of Evidence Handbook***, p. 720 (2001).

History of TRE 706 (civil): Amended eff. Mar. 1, 1998, by order of Feb. 25, 1998 (960 S.W.2d [Tex.Cases] lxi). Adopted eff. Jan. 1, 1988, by order of July 15, 1987 (733-34 S.W.2d [Tex.Cases] xcvii): To conform to TRCP 172. Source: New rule.

Lovelace v. Sabine Consol., Inc., 733 S.W.2d 648, 656 (Tex.App.—Houston [14th Dist.] 1987, writ denied). "The audit report before this court contains no such affidavit as is required by [TRCP] 172. ... Further, 6 days before trial [P] filed an objection to the audit. Therefore, the trial court did not err in admitting evidence that contradicted and supplemented the auditor's report."

ARTICLE VIII. HEARSAY

TRE 801. DEFINITIONS

The following definitions apply under this article:

(a) Statement. A "statement" is (1) an oral or written verbal expression or (2) nonverbal conduct of a person, if it is intended by the person as a substitute for verbal expression.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Matter Asserted. "Matter asserted" includes any matter explicitly asserted, and any matter implied by a statement, if the probative value of the statement as offered flows from declarant's belief as to the matter.

(d) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(e) Statements Which Are Not Hearsay. A statement is not hearsay if:

(1) *Prior statement by witness.* The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

(A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding except a grand jury proceeding in a criminal case, or in a deposition;

this Court were to take judicial notice of the ordinance [Ps] proffered, there is no showing that this is the version of the ordinance on which the district court rendered its judgment. To enable an appellate court to review a municipal or county ordinance, parties must both comply with the provisions of [TRE] 204 and make the ordinance a part of the trial-court record."

ARTICLE III. PRESUMPTIONS

[No rules adopted at this time.]

ARTICLE IV. RELEVANCY & ITS LIMITS

TRE 401. DEFINITION OF "RELEVANT EVIDENCE"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

See Cochran, *Texas Rules of Evidence Handbook*, p. 193 (2001).

History of TRE 401 (civil): Amended eff. Mar. 1, 1998, by order of Feb. 25, 1998 (960 S.W.2d [Tex.Cases] xxxvii). Amended eff. Nov. 1, 1984, by order of June 25, 1984 (669-70 S.W.2d [Tex.Cases] xxxiii): Title and entire rule were changed. Adopted eff. Sept. 1, 1983, by order of Nov. 23, 1982 (641-42 S.W.2d [Tex.Cases] xxxix). Source: FRE 401.

E.I. du Pont de Nemours & Co. v. Robinson, 923 S.W.2d 549, 556 (Tex.1995). "[T]o constitute scientific knowledge which will assist the trier of fact, the proposed [scientific] testimony must be relevant and reliable. [¶] The requirement that the proposed testimony be relevant incorporates traditional relevancy analysis under [TRE] 401 and 402.... To be relevant, the proposed testimony must be 'sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute.'"

Transportation Ins. Co. v. Moriel, 879 S.W.2d 10, 24-25 (Tex.1994). "Simply because a piece or pieces of evidence are *material* in the sense that they make a 'fact that is of consequence to the determination of the action more ... or less probable' does not render the evidence *legally sufficient*. As Professor McCormick succinctly put it, 'a brick is not a wall.'"

Castillo v. State, 939 S.W.2d 754, 758 (Tex.App.—Houston [14th Dist.] 1997, writ ref'd). "The evidence need not prove or disprove a particular fact; the evidence is sufficiently relevant if it provides 'a small nudge' towards proving or disproving any fact of consequence. Furthermore, '[t]he motives which operate upon the mind of a witness when he testifies are never regarded as immaterial or collateral matters.'"

TRE 402. RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE

All relevant evidence is admissible, except as otherwise provided by Constitution, by statute, by these rules, or by other rules prescribed pursuant to statutory authority. Evidence which is not relevant is inadmissible.

See *Commentaries*, "Objecting to Evidence," ch. 8-D; Cochran, *Texas Rules of Evidence Handbook*, p. 193 (2001).

History of TRE 402 (civil): Amended eff. Mar. 1, 1998, by order of Feb. 25, 1998 (960 S.W.2d [Tex.Cases] xxxvii). Adopted eff. Sept. 1, 1983, by order of Nov. 23, 1982 (641-42 S.W.2d [Tex.Cases] xxxix). Source: FRE 402.

E.I. du Pont de Nemours & Co. v. Robinson, 923 S.W.2d 549, 556 (Tex.1995). "Evidence that has no relationship to any of the issues in the case is irrelevant and does not satisfy [TRE] 702's requirement that the testimony be of assistance to the jury. It is thus inadmissible under [TRE] 702 as well as under [TRE] 401 and 402."

Lunsford v. Morris, 746 S.W.2d 471, 473 (Tex. 1988). The rules of evidence do not "contemplate exclusion of otherwise relevant proof unless the evidence proffered is unfairly prejudicial, privileged, incompetent, or otherwise *legally* inadmissible. We do not circumscribe, however, a trial judge's authority to consider on motion whether a party's discovery request involves unnecessary harassment or invasion of personal or property rights."

Jampole v. Touchy, 673 S.W.2d 569, 573 (Tex. 1984), *overruled on other grounds*, ***Walker v. Packer***, 827 S.W.2d 833 (Tex.1992). "To increase the likelihood that all relevant evidence will be disclosed and brought before the trier of fact, the law circumscribes a significantly larger class of discoverable evidence [than admissible evidence] to include anything reasonably calculated to lead to the discovery of material evidence."

TRE 403. EXCLUSION OF RELEVANT EVIDENCE ON SPECIAL GROUNDS

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence.

See *Commentaries*, "Objecting to Evidence," ch. 8-D; Cochran, *Texas Rules of Evidence Handbook*, p. 210 (2001).

407(b)

Proposed TRE 407 (b) Amendment

(b) Notification of Defect. Nothing in paragraph (a) shall require exclusion of an otherwise admissible written notification of a defect in a product, issued by the manufacturer of the product to any purchaser of the product, as "purchaser" is defined in Section 1.201, Tex. Bus. & Comm. Code.

Tex. Bus. & Comm Code §1.201

(29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) "Purchaser" means a person that takes by purchase.

3. Rule 407(b). In compliance with the mandate of the Legislature and the adoption of House Bill 4, the Supreme Court amended Rule 407(a) effective in all cases filed on and after July 1, 2003. In light of the amendments to Rule 407(a), the AREC appointed a subcommittee to evaluate whether Rule 407(b) should be amended and, if so, the form it should take. The report of the subcommittee is attached hereto. In addition to the report, the full committee perceived that 407(b) should be amended to assure that 'innocent sellers' within the meaning of HB 4 will be able to introduce recall letters and defect / flaw / problem application correspondence from upstream manufacturers and distributors as part of a complete defense for innocent sellers under new CPRC 82.003.

The Committee adopted proposed Rule 407(b) in the form attached to this report and recommends it to the Supreme Court Advisory Committee and to the Supreme Court for adoption in the Texas Rules of Evidence. The Committee notes that draft Rule 407(b) addresses recall letters addressed by the manufacturer to the broad category of users known as *purchasers* as defined by the Business and Commerce Code. The Committee notes that it is foreseeable that some recall notices or notifications of defects in products may be issued by the manufacturer to persons others than such *purchasers*, such as, for example; *learned intermediaries*. This may happen, e.g. in a hypothetical case where a drug manufacturer notifies physicians instead of patients that it has determined that certain patients may have reactions to a drug under certain circumstances and that such physicians should act accordingly, thereby qualifying as a notification of a defect but not as a written notice sent to the purchaser. The Committee did not intend that such written notifications not be admissible in evidence, but the Committee was also uncertain whether in the real world a learned intermediary would not also be within the broad view of persons in the TBCC who qualify as "purchasers". Accordingly, the Committee did not further modify proposed Rule 407(b) by inserting additional notified parties, such as learned intermediaries, but does recommend to the SCAC and to the Supreme Court further evaluation of that contingency.

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November 12, 2003

Jack W. London
Attorney at Law
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re: Subcommittee on TRE 407

Dear Jack:

With regard to the above referenced Subcommittee of the Texas Administration of Rules of Evidence Committee, please consider this my formal report which, I assume, will be forwarded to members of the entire committee before or at our next committee meeting. Members of this committee included Mike Prince, Professor Powell, Professor Goode, Judge Garza, Mark Sales, and Peter Haskel. We met on two different occasions and discussed in length Rule 407 and the recommended changes thereto.

Background

The legislature in House Bill 4 charged the Texas Supreme Court with amending TRE 407(a) to substantially reflect Rule 407 of the Federal Rules of Evidence. The legislature specifically directed the Court to 407(a) and was silent as to TRE 407(b). In accordance with the legislative mandate the Supreme Court has proposed that Rule 407(a) read exactly as FRE 407 currently reads. Attached as Exhibit "A" you will find:

1. TRE 407 prior to House Bill 4;

2. FRE 407;

3. TRE 407, amended to reflect the language in FRE 407;

4. The subcommittee's proposed change to the language of 407(b).

5. The definition of "purchaser" and "purchase" under Texas Business and Commerce Code § 1.201.

When Rule 407 of the Texas Rules of Evidence were originally drafted, instead of following the language of FRE 407, the Texas Committee decided to adopt a version of Rule 407 as existed in the State of Maine. Accordingly, TRE 407(b) was born.

Discussion and reasoning of the subcommittee

The subcommittee did discuss possible additions and changes to TRE 407(a), but the subcommittee members quickly agreed that no further changes to TRE 407(a) would be recommended to the full body of the Administration of Rules of Evidence Committee.

Addressing TRE 407(b) there were several issues of concern in light of the language changes made in 407(a). The subcommittee felt that with the changes to TRE 407(a) that TRE 407(b) might take on additional importance. The current language of TRE 407(b) caused the subcommittee concern in two areas:

1. The current version allows only a recall notice to be entered as evidence of defect against a manufacturer. As drafted it would allow the admission of such evidence against down stream suppliers and retailers even under the theory of strict liability. The theory of strict liability contemplates liability of down stream suppliers and retailers not withstanding such suppliers and retailers committed no culpable act or omission other than merely being in the stream of commerce for the product. Accordingly, it seemed inconsistent for a manufacturer to make an admission of defect, and yet, for such not to be admissible as evidence of a defect in cases where another party in the stream of commerce is involved.

2. TRE 407(b) as written only applies to written notification by a manufacturer to ***purchasers.*** Again the subcommittee felt that the term purchaser without definition might be defined in an unduly restrictive way that would not include those parties broadly defined as purchasers under Texas Business and Commerce Code § 1.201. Looking at Exhibit "A" you will notice the definition of a purchaser is, "a person that takes by purchase" and that the definition of "purchase" means "the taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or re-issue, gift, or any other voluntary transaction creating an interest in property."

With those considerations referenced above being primary to the subcommittee, the subcommittee proposed changes in the wording of TRE 407(b) as reflected on Exhibit "A" attached hereto.

Conclusion

The subcommittee therefore proposes the attached changes to TRE 407(b) and that such proposal be brought before the full membership of the Administration of Rules of Evidence Committee. Attached as Exhibit "B" you will find excerpts from the Texas Rules of Evidence Handbook, 5th Edition Update, which reading will facilitate the discussion of the full committee.

Very truly yours,

W. Bruce Williams

WBW:ljj

attachments

EXHIBIT "A"

TRE 407 PRIOR TO CHANGE

SUBSEQUENT TO REMEDIAL MEASURES; NOTIFICATION OF DEFECT

(a) Subsequent Remedial Measures. When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent remedial measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent remedial measures when offered for another purpose, such as proving ownership, control or feasibility of precautionary measures, if controverted, or impeachment. Nothing in this rule shall preclude admissibility in products liability cases based on strict liability.

(b) Notification of Defect. A written notification by a manufacturer of any defect in a product produced by such manufacturer to purchasers thereof is admissible against the manufacturer on the issue of existence of the defect to the extent that it is relevant.

FRE 407 (Currently)

SUBSEQUENT REMEDIAL MEASURES

When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

TRE 407 (with HB 4 changes)

SUBSEQUENT TO REMEDIAL MEASURES; NOTIFICATION OF DEFECT

(a) Subsequent Remedial Measures. When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control or feasibility of precautionary measures, if controverted, or impeachment.

(b) Notification of Defect. A written notification by a manufacturer of any defect in a product produced by such manufacturer to purchasers thereof is admissible against the manufacturer on the issue of existence of the defect to the extent that it is relevant.

509
514

SUPREME COURT ADVISORY COMMITTEE

DRAFT PROPOSAL FOR CHANGE TO TRE 509

I. Exact wording existing Rule:

Rule 509. Physician–Patient Privilege

. . . . .

(e) Exceptions in a Civil Proceeding. Exceptions to confidentiality or privilege in administrative proceedings or in civil proceedings in court exist:

(1) when the proceedings are brought by the patient against a physician, including but not limited to malpractice proceedings, and in any license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claims or defense of a physician;

(2) when the patient or someone authorized to act on the patient's behalf submits a written consent to the release of any privileged information, as provided in paragraph (f);

(3) when the purpose of the proceedings is to substantiate and collect on a claim for medical services rendered to the patient;

(4) as to a communication or record relevant to an issue of the physical, mental or emotional condition of a patient in any proceeding in which any party relies upon the condition as a part of the party's claim or defense;

(5) in any disciplinary investigation or proceeding of a physician conducted under or pursuant to the Medical Practice Act, TEX.REV.CIV.STAT. art. 4495b, or of a registered nurse under or pursuant to TEX.REV.CIV.STAT. arts. 4525, 4527a, 4527b, and 4527c, provided that the board shall protect the identity of any patient whose medical records are examined, except for those patients covered under subparagraph (e)(1) or those patients who have submitted written consent to the release of their medical records as provided by paragraph (f);

(6) in an involuntary civil commitment proceeding, proceeding for court- ordered treatment, or probable cause hearing under TEX.HEALTH & SAFETY CODE ch. 462; tit. 7, subtit. C; and tit. 7, subtit. D;

(7) in any proceeding regarding the abuse or neglect, or the cause of any abuse or neglect, of the resident of an "institution" as defined in TEX.HEALTH & SAFETY CODE § 242.002.

. . . . .

II. Proposed Rule:

Rule 509. Physician–Patient Privilege

. . . . .

(e) Exceptions in a Civil Proceeding. Subject to federal laws and the laws of this state relating to the confidentiality of a person's health care information, exceptions to confidentiality or privilege in administrative proceedings or in civil proceedings in court exist:

(1) when the proceedings are brought by the patient against a physician, including but not limited to malpractice proceedings, and in any license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claims or defense of a physician;

(2) when the patient or someone authorized to act on the patient's behalf submits a written consent to the release of any privileged information, as provided in paragraph (f);

(3) when the purpose of the proceedings is to substantiate and collect on a claim for medical services rendered to the patient;

(4) as to a communication or record relevant to an issue of the physical, mental or emotional condition of a patient in any proceeding in which any party relies upon the condition as a part of the party's claim or defense;

(5) in any disciplinary investigation or proceeding of a physician conducted under or pursuant to the Medical Practice Act, TEX.REV.CIV.STAT. art. 4495b, or of a registered nurse under or pursuant to TEX.REV.CIV.STAT. arts. 4525, 4527a, 4527b, and 4527c, provided that the board shall protect the identity of any patient whose medical records are examined, except for those patients covered under subparagraph (e)(1) or those patients who have submitted written consent to the release of their medical records as provided by paragraph (f);

(6) in an involuntary civil commitment proceeding, proceeding for court- ordered treatment, or probable cause hearing under TEX.HEALTH & SAFETY CODE ch. 462; tit. 7, subtit. C; and tit. 7, subtit. D;

(7) in any proceeding regarding the abuse or neglect, or the cause of any abuse or neglect, of the resident of an "institution" as defined in TEX.HEALTH & SAFETY CODE § 242.002.

. . . . .

Comment to 2004 change: This comment is intended to inform the construction and application of this rule. The U.S. Congress enacted the Health Insurance Portability

& Accountability Act of 1996 (HIPAA), Pub. L. No. 104-191, 110 Stat. 1936 (2003) on August 21, 1996. HIPAA required the Secretary of Health & Human Services to issue privacy regulations governing individually identifiable health information, if Congress did not enact privacy legislation within three years of the passage of HIPAA. Congress did not enact privacy legislation. The U.S. Department of Health & Human Services developed the Standards for Privacy of Individually Indentifiable Health Information (Privacy Rule), 45 C.F.R. §§ 160.102-164.534 (2004), which is a federal regulation defining administrative steps, policies, and procedures to safeguard individuals' personal, private health information (known as "protected health information" or "PHI"). The exceptions to confidentiality or privilege provided for in this rule are subject to HIPAA and the Privacy Rule, and possibly to other federal laws and laws of this state regarding privacy.

AREC State Bar Version 514

In civil cases, a party or party's representative may not communicate with or obtain health care information from a physician or health care provider outside of formal discovery except by (1) written authorization of the patient or the patient's representative, or (2) pursuant to a court order which specifies the scope and subject matters that may be disclosed and which states that the health care provider is under no obligation to discuss such matters outside of formal discovery. A copy of such order must be provided to the health care provider prior to any such communication or disclosure. **Evidence obtained in violation of this Rule may subject the violating party to sanctions provided in Rule 215. This rule does not prohibit a party, a physician, or a health care provider from communicating health care information to another person or party where the communication would be privileged.**

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June 21, 2004

Mr. Jeffrey S. Boyd
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Dear Jeff:

I agree with your conclusion that HIPPA does not preempt the provisions of Rules 509 and 510. However, once that information is waived by the filing of the lawsuit, then one must look to HIPPA as to the protection the patient gets when his health care information is revealed.

First, I point out that Rule 509 pertains only to the physician-patient privilege. Rule 510 pertains to "confidential health information" between a patient and a "professional". Professional is defined in Evidence Rule 510. HIPPA does not define "health care information" (as that term is used in the AREC State Bar version 514). HIPPA does define "health care" as follows: Health care means care, services or supplies related to the health of an individual. Health care includes, but is not limited to the following: (1) Preventive, diagnosis, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and, (2) Sale or dispensing of a drug, device, equipment or other item in accordance with a prescription.

HIPPA was designed as a standard for privacy of individually identifiable health information. "Health information" (as defined by HIPPA) means any information, whether oral or recorded in any form or medium at: (1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearing house; and, (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of heath care to an individual; or the past, present, or future payment for the provision of health care to an individual.

The point I am making from the above is that HIPPA is much broader than Rules 509 and 510, which deal only with two limited privileges. HIPPA pertains to all medical information. HIPPA does

not deal with waiver or with the effect of filing a lawsuit. Therefore, there is nothing inconsistent in HIPPA with such waiver when one files a lawsuit. The thing that would be inconsistent with HIPPA is if that health information can be given ex parte without notice to the patient. Rules 509 and 510 do not specifically address how the information when waived should be made available. There is nothing in that rule that says ex parte is allowed or is disallowed. Thus, the express provisions of Rules 509 and 510 are not inconsistent with HIPPA until it comes to the question of how that information when waived is obtained. HIPPA is specific on that. Section 164.508 of HIPPA pertains to use and disclosure for which an authorization is required. When an authorization is given, Rules 509 and 510 are not invoked. Section 164.510 of HIPPA pertains to disclosure requiring an opportunity for the individual to agree or to object. This certainly requires notice and would not allow ex parte. This would be by subpoena, court order, or routine discovery. Section 164.512 pertains to disclosure for which an authorization or opportunity to agree or object is not required. This section is rather lengthy but affidavits must be given showing that notice can't be given to the patient and that efforts have been made to give notice, further requiring steps to protect the health care information. Certainly there is not included in this an ex parte communication with the doctor.

Based on the above I agree with you that HIPPA does not preempt Rules 509 and 510 but that HIPPA does preempt any state court ruling that says that ex parte communications can be had with the patient's doctor.

Jeff, thank you very much for your help in this matter.

Sincerely,

Buddy Low

BL:cc

Connie Collis

From: John.Martin@tklaw.com
Sent: Thursday, June 03, 2004 9:29 AM
To: cac@obt.com
Cc: Stephen.Tipps@bakerbotts.com
Subject: SCAC---Ex Parte Communications


UTF-8.HTM

Buddy:

I have reviewed the material pertaining to the ex parte communications with physicians issues that you forwarded with your letters of May 20 and June 1, 2004. I am not a member of the Evidence Subcommittee, so I suppose technically I do not have a vote, but I would like to give you my comments about the new Rule 514 recommended by the State Bar Committee. While I think this proposed rule is far superior to the previous proposal from the AREC, I still see some major problems with it.

1. There is no definition of "health care information." If the committee's intent is to cover what HIPAA defines as protected health information ("PHI"), the rule should say so. I have not had time to analyze fully what the ramifications of using that definition in a state rule of evidence would be, but at the outset of discussing this rule, I think we need to know what is intended to be covered by the term "health care information" in the proposed rule.

2. My recollections is that everyone at the meeting of the Evidence Subcommittee at Stephen Tipps' office seemed to agree that some facts known by a treating physician simply are not privileged. One example I have used is the question of whether a surgeon may have left the operating room for a period of time during an operation. If such a claim is involved in a case, it would be perfectly appropriate for the defense lawyer representing the surgeon to ask the nurses and anesthesiologists who were present whether they recall that the surgeon was or was not present in the operating throughout the entirety of the procedure. That is not a privileged communication or protected health information under any definition, but is simply a fact, just like whether the light was red or green. Without a definition of "health care information" I do not know whether that would be covered by this rule or not. Also, any lawyer in a medical malpractice case should be able to ask a subsequent treating physician whether he or she has any criticisms of the health care providers who are parties to the case.

3. The proposed rule allows disclosure of health care information "outside of formal discovery" if there is a written authorization of the patient or the patient's representative. Under the revisions to the medical malpractice law enacted by House Bill 4, notice of a health care claim must be accompanied by a medical authorization in the form specified by Section 74.052 of the Texas Civil Practice & Remedies Code. That form specifically says, "The health information to be obtained, used, or disclosed extends to and includes the verbal as well as the written ...." The required form also provides, "I understand that information used or disclosed pursuant to this

authorization may be subject to redisclosure by the recipient and may no longer be protected by federal HIPAA privacy regulations." I have heard defense lawyers contend that language means once the defense lawyer has the authorization form that the plaintiff is required to produce before pursuing a claim, the defense lawyer may engage in ex parte communications with the treating physician. I express no opinion on whether that is correct. However, the proposed Rule 514 leaves that issue up in the air.

4. The way the rule is written, the last sentence allowing communication among parties, physicians and health care providers of privileged information seems to directly contradict the first sentence of the rule. The intent is clear, but I think better draftmanship would dictate that the rule be reworded so that the last sentence is preceded by "except" or "unless," and it should be placed either before or after the first sentence. I am not going to attempt to redraft it now, but I think that would have to be done if the Evidence Subcommittee of the SCAC decides to recommend anything similar to this rule.

As I have repeatedly emphasized, I am not an expert on HIPAA, and have not studied the regulations or the statute in great detail. On the other hand, Barbara Radnofsky of Vinson & Elkins has written and lectured extensively about the impact of HIPAA on discovery practices. I imagine you know Barbara and would agree that she is an exceptionally bright and talented lawyer. I would suggest that you submit the report of the AREC to her and ask for her comments. Of course they would not be binding, and she does not have a vote in the subcommittee, but I think her input would be valuable, and I am sure she would be happy to provide it. Please let me know if you agree.

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June 3, 2004

Mr. John H. Martin
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Dear John:

Thank you very much for your email. You have certainly raised some good points. The first point brings me back to our initial assignment, which was merely to consider ex parte communications with a doctor. Evidence Rule 509 pertains only to the physician-patient privilege. However, Evidence Rule 510 pertains to "confidential health information" between a patient and a "professional." Professional is defined in Evidence Rule 510. HIPPA does not define "health care information" (as that term is used in AREC State Bar version 514). HIPPA does define "health care" as follows: Health care means care, services or supplies related to the health of an individual. Health care includes, but is not limited to the following: (1) Preventive, diagnosis, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and, (2) Sale or dispensing of a drug, devise, equipment or other item in accordance with a prescription.

HIPPA also defines "protected health information" as meaning "individually identifiable health information", and then goes on to give exceptions. I think there is a good understanding of the term "health care information" and do not believe we need to attempt to define it.

I will point out that the AREC proposed Rule 514 does relate to and affect Evidence Rule 509 and Evidence Rule 510. Evidence Rule 509, as pointed out above, pertains only to the physician-patient privilege and 510 pertains to "professional and patient." The AREC version pertains to all health care providers. I am confident that HIPPA pertains to all health care providers. Yet, I am not totally convinced that we should try to follow HIPPA in everything it does. In other words, our present Rules of Evidence pertain only to doctors and professionals, and I think we should address only doctors and professionals. If a patient feels that his record should not be revealed by other health care providers that can be taken up and argued under HIPPA. Otherwise, we would have to

amend Evidence Rules 509 and 510, because the privilege, as well as the lawsuit exception as written in the rules, only pertains to doctor-patient and professional and patient. The privilege, as well as the waiver, does not extend to other health care providers.

Statutes in this regard are not entirely consistent. Occupation Code Section 159 pertains only to physician and patient. Health and Safety Code Section 611.001 pertains to patient and professional. When Section 611.004 was first passed in 1974, it had a Section 9 which said information could be given in civil or criminal cases as authorized by law or rule. Thus, there was the lawsuit exception. The 1995 amendment left this out. Thus, the Health and Safety Code Section 611.004 does not have the lawsuit exception that is provided in Rules 509 and 510 and in the Occupation Code. Occupation Code Section 159.005 speaks of consent and says that it must have three elements (the same as those required in present Rule 509).

We get no help from the Federal Rules of Evidence because there is no privilege provision. Each federal courts follow the privileges of the state in which it sits.

In brief, I would strongly consider substituting the word "professional" for the words "health care provider" as used in AREC State Bar version 514.

John, I don't necessarily agree that whether a doctor was in the operating room or was not in the operating room is not "health care information." It certainly is information as to whether the doctor was doing anything or whether health care was being provided by the doctor and those present are there only for purposes of providing health care to the patient.

With regard to whether a lawyer in a medical malpractice case should be able to ask the subsequent treating physician whether he or she is critical of the health care providers who are parties in the case, that would come under the exception of where a malpractice case is filed as long as it does not involve giving information as to health care given by the subsequent treating doctor. I don't think that would be prohibited. However, it could be argued that the opinion of the doctor is based upon subsequent examination and information about the patient's health that he obtained from the patient and in that event I feel it would be covered. I don't think we should get into that.

With regard to the authorization required by Section 74.052 of the Texas Civil Practice & Remedies Code, this is specifically for a medical malpractice claim. I don't believe we should be that specific, and I don't think HIPPA requires us to be that specific in the authorization. I don't feel we should try to interpret whether the authorization provided in CPRC Section 74.052 authorizes ex parte conversations or not.

Your suggestion no. 4 is well taken, and I would propose that the word "however", followed by a comma, be used before the last sentence.

Your suggestion to call Barbara Radnofsky is well taken. I attempted to call her today and she is out for almost a week. She along with many others have written various articles about HIPPA. Some of the articles are confusing because people have not distinguished between earlier versions of HIPPA and the final version and some writers have misstated what HIPPA says by failing to distinguish this. I have spent considerable time reading the entire HIPPA more than once, and I find no exception stating that a lawsuit or claim is a waiver. It is clear that we can do whatever we want as long as we are as restrictive as HIPPA or more restrictive than HIPPA. Section 160.202 of HIPPA provides as follows: "Contrary, when used to compare a provision of state law to a standard, requirement or implementation specification adopted under this chapter means: (1) A covered entity would find it impossible to comply with both the state and federal requirements or (2) The provision of state law stands as an obstacle to the accomplishment and exception of full purposes and objectives of Part C of Title XI of the Act...." Section 160.203 provides that HIPPA preempts any provision of state law except if one of several conditions is met. One of those conditions is: "The provision of state law relates to the privacy of individually identifiable health information and is more stringent than a standard, requirement or implementation specification adopted under Sub-part E of Part 164 of this chapter."

If the State Bar version is adopted, I would also strongly consider a footnote with regard to the last sentence referring to professional review activities as provided in 42 USCA 11101, et seq. and Section 160.001 of the Occupation Code referring to the Federal Health Care Quality Improvement Act (medical peer review).

John, I do consider you a member of the Evidence Committee because I asked you to sit on the committee and I certainly will consider your vote. I assume that you still prefer your version, but if I am in error, please let me know.

Thanks for all the work and thought you have put in this. I appreciate very much your help.

Sincerely,

Buddy

Buddy Low

BL:cc