

## **Wrongful Death Beneficiaries Claiming Ongoing Loss of Companionship of Decedent Need Not Disclose Their Medical Records**

*Heaphy v. Metcalf* (Arizona Court of Appeals, Div. Two, June 18, 2010)

By: [Eileen GilBride](#)

This was a medical malpractice wrongful death case. The wrongful death beneficiaries were claiming an ongoing loss of companionship with the decedent, so the defendants sought the beneficiaries' medical records to determine whether any medical condition lowered the beneficiaries' life expectancy. The trial court ordered the plaintiffs to disclose the medical records, reasoning that the beneficiaries' life expectancies were at issue, and their medical records could be relevant to that issue. By claiming ongoing loss of companionship, the beneficiaries had waived the physician-patient privilege.

Plaintiffs took a special action to the court of appeals, which reversed. The court reasoned that merely placing one's general health at issue is insufficient to waive the physician-patient privilege. Instead, the privilege holder must make an assertion about, or present evidence about, a particular condition before waiver may be implied. "Defendant's position would mean that a plaintiff waives the physician-patient privilege in any case involving future damages—an expansion of Arizona law prohibited by our supreme court's precedent."

The court concluded by recognizing that the physician-patient privilege may prevent the defendants from presenting evidence that could mitigate a damage award. But, said the court, all privileges may exclude relevant evidence and "present[] an obstacle to the truth-seeking goal of the justice system." "The obvious policy underlying the physician-patient privilege is that patients should be encouraged to make full and frank disclosures to those who are attending them."

Defendants have thirty days to seek Supreme Court review. We will monitor this case and report any updates.

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### **ABOUT THE AUTHOR**



**EILEEN GILBRIDE** leads the firm's Appellate Department, and focuses her practice on representing clients in federal and state appellate matters and dispositive motions. She also counsels and assists trial lawyers in the substantive areas of their practices, from the answer stage through the post-trial motion stage. Eileen has handled 400+ appeals at every level of the state and federal courts, in Arizona and other states, which have resulted in more than 80 published decisions.

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