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COMMONWEALTH OF KENTUCKY  
SUPREME COURT OF KENTUCKY  
CASE NO. 2003-SC-200-D

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SUPREME COURT  
APPELLANT

JULIO MELO, M.D.

v.

On review from Court of Appeals # 2002-CA-000080-MR  
Jefferson Circuit Court # 01-CI-003103

STEVEN G. BARNETT

APPELLEE

\*\*\* \*\*

**BRIEF OF AMICUS CURIAE AIDS VOLUNTEERS OF LEXINGTON,  
KENTUCKY HIV/AIDS ADVOCACY AND ACTION GROUP,  
AND KENTUCKY AIDS LIFE ALLIANCE.**

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## INTERESTS OF AMICI

Amici include three organizations that work with and advocate on behalf of people infected with the human immunodeficiency virus (“HIV”) in the Commonwealth of Kentucky. Amici collectively represent and advocate for the rights of hundreds of individuals throughout the state who are infected with HIV or otherwise affected by the HIV epidemic. Based on their experience and knowledge about the discrimination and stigma faced by people with HIV, amici believe that HIV-related information should be maintained in the strictest confidence.

## INTRODUCTION

In this case, the Court will address whether a physician’s disclosure of a patient’s medical records to the patient’s employer constitutes a tortious invasion of privacy when the medical records reveal that the patient is infected with HIV. Amici submit that the unwarranted disclosure of a patient’s HIV status to the patient’s employer is unlawful and highly offensive to a reasonable person for two reasons. First, the disclosure violates the express mandates of Kentucky Revised Statutes 214.181 and 214.625, which protect the confidentiality of HIV-related information. Second, the disclosure undermines the important societal interests in maintaining the confidentiality of medical care for people with HIV. For these reasons, amici request that the Court affirm the decision of the Court of Appeals in this matter.

## ARGUMENT

- I. **To Determine Whether Appellant Unlawfully Violated Appellee’s Right to Privacy, the Court Must Examine Whether the Disclosure of Appellee’s HIV Status Was Highly Offensive to a Reasonable Person.**

The central question presented by Appellee Steven G. Barnett’s complaint in this



case is whether Appellant Julio Melo committed an unlawful invasion of Appellee's privacy when he disclosed Appellee's HIV status to Appellee's employer. Although the case law on point is relatively sparse, the right to privacy is "well established in this jurisdiction." Wheeler v. P. Sorensen Mfg. Co., Ky. App., 415 S.W.2d 582, 584 (1967). While recognizing that the right to privacy is "not subject to precise definition," this Court has adopted the tort of "invasion of privacy" as set forth in Restatement (Second) of Torts. McCall v. Courier-Journal and Louisville Times Co., Ky., 623 S.W.2d 882, 887 (1981). Under this analysis, "[o]ne who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public." RESTATEMENT (SECOND) OF TORTS, § 652D (1977). To implement the "sweeping principle of law" underlying the right to privacy, see McCall, *supra*, courts of this state have "emphasize[d] the need for flexibility in the application of theory to conduct," and have found "egregious conduct" to be actionable "even where the fit to the recognized privacy tort categories has not been exact." McSurely v. McClellan, 753 F.2d 88, 112 (D.C. Cir. 1985) (interpreting Kentucky law).<sup>1</sup>

As set forth in Restatement (Second), the gravamen of the right to privacy is the reasonableness or offensiveness of the particular disclosure. As this Court has noted,

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<sup>1</sup>Under Kentucky law, the size of the "public" to whom private facts are disclosed is not relevant to whether a particular disclosure is tortious. See McSurely, 753 F.2d at 112-13 (finding unwarranted disclosure of personal information to plaintiff's husband constituted actionable conduct under Kentucky law). This is particularly true when, as in this case, the recipient of the private information is the plaintiff's employer or otherwise has a "special relationship" with the plaintiff. *Id.* (citing Beaumont v. Brown, 257 N.W.2d 522, 531 (Mich. 1977)). Perhaps for this reason, Appellant did not raise this issue in the Circuit Court or Court of Appeals in this case.

“[t]he right of privacy is relative to the customs of the time and place, and it is determined by the norm of the ordinary man.” Wheeler, 415 S.W.2d at 585 (citing Voneye v. Turner, Ky. App., 240 S.W.2d 588, 590 (1951)). In the lower courts in this matter, the dispute between the parties focused on whether the disclosure of Appellee’s HIV-related health information was reasonable, and, unsurprisingly, Appellant’s motion for discretionary review in this Court sought consideration of the same issue.<sup>2</sup> Accordingly, the Court’s resolution of this case should focus on whether Appellant’s disclosure of Appellee’s HIV status was “highly offensive to a reasonable person.” McSurely, 753 F.2d at 112.<sup>3</sup>

**II. The Unauthorized Disclosure by a Physician of a Patient’s HIV Status is Unreasonable and Highly Offensive to a Reasonable Person.**

Considering the context of the disclosure in this case, amici submit that Appellant’s disclosure of Appellee’s HIV status clearly was not reasonable and, indeed, was highly offensive under an objective standard. As the Court of Appeals concluded in its decision in this matter, Kentucky law specifically requires that HIV-related medical

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<sup>2</sup>See Memorandum in Support of Defendant’s Motion for Summary Judgment, filed October 15, 2001, at 4-5, 8, 10; Memorandum in Support of Plaintiff’s Motion for Summary Judgment, filed October 17, 2001, at 5-6; Brief for Appellee, filed May 16, 2002, at 4-5, 11; Motion for Discretionary Review, filed March 12, 2003, at 4, 6, 10-11; Brief on Behalf of Appellant, filed April 12, 2004, at 16-17, 26.

<sup>3</sup>In addition to pursuing a tort claim for breach of privacy, Appellee might have pursued a claim for violation of KRS 214.181, pursuant to KRS 446.070. The latter provision creates a cause of action for injuries resulting from the violation of a state statute. See State Farm Mutual Auto. Ins. Co. v. Reeder, Ky., 763 S.W.2d 116 (1988). Additionally, because of the implicit understanding between the patient and physician that disclosures will remain confidential, Appellee’s claims may arise out of a contract implied in fact rather than a common law tort duty. See Ky. Op. Att’y Gen. 77-71, 1977 WL 27861 (Ky. A.G.). It is not clear that Appellee is proceeding in this case under KRS 446.070 or an implied contract theory, but amici note that these claims would raise public policy concerns similar to those that amici discuss in this brief.

records remain confidential. KRS 214.181. In light of this statutory mandate, Appellant's unnecessary disclosure of Appellee's HIV status in this case was unreasonable as a matter of law. Moreover, even in the absence of a statutory prohibition, the disclosure of a patient's HIV status to the patient's employer is unwise, unreasonable and highly offensive. Patients' substantial interest in the confidentiality of private medical information derives from long-standing public policy protecting the confidence of the doctor-patient relationship in order to promote public health and prevent embarrassment, stigmatization, discrimination and harassment. Especially when patients seek HIV-related health care, the risks associated with disclosure rise significantly, and the importance of maintaining patient privacy increases accordingly. In light of these important policy considerations, the disclosure of an individual's HIV-related health information without the individual's express consent is unreasonable and highly offensive except in extremely rare and specifically circumscribed situations.<sup>4</sup>

**A. The Unauthorized Disclosure of an Individual's HIV Status Is *Per Se* Unreasonable in Light of Kentucky's Statutory Prohibition on the Disclosure of HIV-Related Health Information.**

To determine the reasonableness of the disclosure in this case, the Court's inquiry should begin—and perhaps end—with Kentucky's statutory prohibition on unauthorized

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<sup>4</sup>As Appellee's brief will discuss more directly, the disclosure of Appellee's HIV-related medical information in the case before the Court was particularly unreasonable because (1) Appellant obtained the information in the sensitive context of the doctor-patient relationship, (2) the disclosure was unnecessary under the state's workers compensation laws, (3) Appellee had not specifically consented to the disclosure, and (4) the recipient of the information, Appellee's employer, was unaware of Appellee's HIV status and held a position of authority over Appellee which made re-disclosure or discrimination a predictable possibility.

disclosures of HIV-related information. See KRS 214.181.<sup>5</sup> That statute mandates that “[n]o person who has obtained or has knowledge of [an HIV] test result . . . shall disclose or be compelled to disclose the identity of any person upon whom [an HIV] test is performed, or the results of the test in a manner which permits identification of the subject of the test,” with certain enumerated exceptions—none of which applies here. KRS 214.181(5)(c). In those cases when the statute permits disclosure, an individual who reveals another person’s HIV status must deliver a written notice to the recipient of the information explaining that the confidentiality of the information “is protected by state law” and that “[s]tate law prohibits . . . further disclosure of such information without the specific written consent of the person to whom such information pertains.” KRS 214.181(5)(c). At the time that Appellee’s claims arose, any healthcare provider who violated the confidentiality requirements of the statute could be subjected to professional disciplinary action. KRS 214.181(8).<sup>6</sup>

The terms of this statute obligate healthcare providers and others to maintain the privacy and confidentiality of patients’ HIV-related health information. Under Kentucky law, a statutory charge creates a legal duty and a mandatory standard of care, and a violation of the statute constitutes a breach of that duty. See Lewis v. B & R Corp., Ky.

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<sup>5</sup>The text of this statute, KRS 214.181, is nearly identical to the language of a second state law in the same chapter, KRS 214.625. Unless otherwise noted, all citations herein to KRS 214.181 also refer to the corresponding provision in KRS 214.625.

<sup>6</sup>In the most recent legislative session, the General Assembly amended KRS 214.181 to increase the penalty for violation of the statute’s confidentiality requirements. On April 9, 2004, the Governor signed the bill, which mandates that any individual who unlawfully discloses another person’s HIV status in violation of KRS 214.181 shall be guilty of a Class A misdemeanor. H.B. 82, 2004 Gen. Assem. Reg. Sess., § 5 Ky. (2004).

App., 56 S.W.3d 432, 438 (2001) (“it is unquestioned that violations of statutes constitute negligence *per se*”); KRS 446.070. Indeed, it is black-letter law that the failure to comply with the terms of a statute is unreasonable *per se*, so long as (1) the statutory violation is the proximate cause of the plaintiff’s injury, and (2) the harm caused by the statutory violation is the “type of harm which the statute was intended to prevent.” Estate of Wheeler v. Veal Realtors and Auctioneers, Inc., Ky. App., 997 S.W.2d 497, 498-99 (1999). In this case, there appears to be no dispute regarding the proximate cause of Appellee’s injury, and, as discussed in more detail below, the injury suffered by Appellee is precisely the type of harm that KRS 214.181 and other similar statutes aim to prevent. In short, because Defendant violated the terms of the statutory mandate against disclosure of HIV-related information, his actions are unreasonable and objectively offensive as a matter of law.

**B. Unauthorized Disclosure of a Patient’s HIV Status by a Physician is Unreasonable and Highly Offensive in Light of the Significant Individual and Societal Interests in Maintaining the Privacy of Such Information.**

**1. Unauthorized Disclosure of Medical Information by a Physician, Whether or Not the Information Is Related to HIV, Is Highly Offensive to a Reasonable Person.**

Even in the absence of a statutory violation in this case, a physician’s unwarranted disclosure of a patient’s private medical information is patently unreasonable and highly offensive. “[T]here are few matters that are quite so personal as the status of one’s health, and few matters the dissemination of which one would prefer to maintain greater control over.” Doe v. City of New York, 15 F.3d 264, 267 (2d Cir. 1994). Accordingly, courts in this state and throughout the nation have recognized the delicacy of medical

information and the vital importance of maintaining the confidentiality of that information. See, e.g., Stidham v. Clark, Ky., 74 S.W.3d 719, 729 (2002) (Keller concurring) (ethical code adopted by State Board of Medical Licensure “prohibit[s] the extra-judicial disclosure by a physician of confidential patient communications and information unless such disclosure is otherwise authorized or required by law.”) (footnotes omitted). Medical professionals and policy makers recognize that a patient must disclose details about “his life and habits . . . in his consultation with his doctor—even that which is embarrassing, disgraceful, or incriminating. To promote full disclosure, the medical profession extends the promise of secrecy. . . .” Geary v. Schroering, Ky. App., 979 S.W.2d 134, 136 (1998) (quoting Hammonds v. Aetna Casualty & Sur. Co., 243 F. Supp. 793, 801 (N.D. Ohio 1965)). See also Pagano v. Oroville Hosp., 145 F.R.D. 683, 697 (E.D. Cal. 1993) (“Patients may disclose highly personal details of lifestyle and information concerning sources of stress and anxiety. These are matters of great sensitivity going to the core of the concerns for the privacy of information about an individual.”); Haddad v. Gopal, 787 A.2d 975, 981 (Pa. Super. Ct. 2002) (“Doctors have an obligation to their patients to keep communications, diagnosis, and treatment completely confidential. Especially when, as in this case, a sexually transmitted disease is in issue.”).

Both the state and federal governments have recognized the importance of patient privacy by enacting legislation to ensure that personal medical records remain confidential. See e.g., KRS 211.670; KRS 311A.190; KRS 422.315; Hardin County v. Valentine, Ky. App., 894 S.W.2d 151 (1995) (medical records are not public records under Kentucky Open Records Act); 45 C.F.R. pt. 160 & 164; U.S. v. Sutherland, 143 F.

Supp. 2d 609, 612 (W.D. Va. 2001) (noting that recently enacted federal regulations “indicate a strong federal policy to protect the privacy of patient medical records”). In short, because proper medical treatment must depend on honest and open disclosures of intensely personal details of patients’ lives, society expects that patient disclosures to physicians in the course of treatment must remain strictly confidential. An unwarranted violation of that confidential relationship must be considered unreasonable and highly offensive to a reasonable person.

**2. Disclosure of HIV-Related Information by a Physician Is Particularly Troubling and Highly Offensive to a Reasonable Person.**

When a patient is infected with HIV, expectations of confidentiality—and the dangers that accompany improper disclosure—increase exponentially. The treatment of HIV and other blood-borne and sexually transmitted diseases frequently involves discussions of deeply private topics such as a patient’s sexual activities, his or her recent sexual partners, drug use, or other high-risk behaviors. Physicians frequently probe into the intimate details of their patients’ private lives to ascertain the source of transmission of the virus, to assist patients in protecting themselves and others from infection, and to determine whether patients will benefit from often rigorous and highly structured medication regimens.<sup>7</sup> As such, HIV-related medical records tend to reveal intensely personal information, and patients’ interests in maintaining the confidentiality of that information is extremely high.

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<sup>7</sup>See *Guidelines for Using Antiretroviral Agents Among HIV-Infected Adults and Adolescents: Recommendations of the Panel on Clinical Practices for Treatment of HIV*, 51 U.S. DEP’T OF HEALTH AND HUM. SERVICES MORBIDITY AND MORTALITY WKLY. REP. 1 (2002).

Moreover, because of the societal stigma surrounding this disease and the private behaviors that frequently are associated with it, the disclosure of HIV-related information can be very dangerous. See Doe v. S.E. Pa. Transp. Auth., 72 F.3d 1133, 1140 (3d Cir. 1995) (recognizing that stigma, harassment, and discrimination can result from “non-consensual dissemination of the information that an individual is inflicted with AIDS”). Indeed, “[s]ociety’s moral judgments about the high-risk activities associated with the disease, including sexual relations and drug use, make the information of the most personal kind.” Doe v. Borough of Barrington, 729 F. Supp. 376, 384 (D.N.J. 1990); see also Woods v. White, 689 F. Supp. 874, 876 (W.D. Wis. 1988). Although over 20 years have passed since doctors reported the first cases of HIV in the United States, HIV-related stigma continues to be prevalent and well documented.<sup>8</sup>

Beyond the potential for negative societal judgment on the basis of HIV status, the disclosure that a person has tested positive for HIV frequently wreaks havoc on his or her personal life. Indeed, “[a]n individual revealing that she is HIV seropositive potentially exposes herself not to understanding or compassion but to discrimination and intolerance, further necessitating the extension of the right to confidentiality over such information.” Doe v. City of New York, 15 F.3d at 267. People living with HIV frequently find themselves discriminated against in employment, victimized by hate crimes, or cut off from family and friends as a result of overwhelming and pervasive stigma. See Doe v.

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<sup>8</sup> See, e.g., D.A. Lentine, et al., *HIV-Related Knowledge and Stigma – United States, 2000*, 49 U.S. DEP’T OF HEALTH AND HUM. SERVICES MORBIDITY AND MORTALITY WKLY. REP. 1062 (2000); Gregory M. Herek, et al., *HIV-Related Stigma and Knowledge in the United States: Prevalence and Trends, 1991-1999*, 92 AM. J. PUB. HEALTH 371 (2002); Gregory M. Herek & John P. Capitanio, *AIDS Stigma and Sexual Prejudice*, 42 AM. BEHAV. SCIENTIST 1126 (1999).



Coughlin, 697 F. Supp. 1234, 1237 (N.D.N.Y. 1988) (recognizing that people living with AIDS may be abandoned by family members); Estate of Behringer v. Med. Ctr. at Princeton, 592 A.2d 1251, 1269-70 & 1272 n.12 (N.J. Super. 1991) (noting that “[u]nauthorized disclosure of a person’s serologic status can lead to social opprobrium among family and friends,” and citing examples of “hysterical public reaction to AIDS”). The negative reaction of Appellee’s employer following the disclosure of Appellee’s HIV status in this case is just one example of the unfortunately foreseeable effects of unwarranted disclosure of HIV-related information.

The Kentucky legislature has recognized the reality and prevalence of this type of discrimination against people with HIV. In 1990, the legislature found that HIV has “raised public fears” and “changed the attitudes of employers, insurers, educators, law enforcement personnel, and health and medical providers.” KRS 214.600. Accordingly, the legislature amended the Equal Opportunities Act specifically to protect people with HIV against discrimination in employment and other contexts. KRS 207.135, KRS 207.150, KRS 207.160. See generally Hardaway Mgmt. Co. v. Southerland, Ky., 977 S.W.2d 910, 913-14 (1998). See also KRS 214.181(5)(c)(9)(a) (recognizing that “disclosure . . . may lead to discrimination”). Amici’s experiences indicate that this statutory protection has not eradicated discrimination against people with HIV in Kentucky, and the existence of the statute suggests broad societal recognition of the seriousness of the problem.

Because the disclosure of a person’s HIV status may result in stigma, harassment and outright discrimination, patients who fear that medical information will not remain confidential may simply avoid HIV testing and treatment altogether. Unless the law

maintains and protects the strict confidentiality of doctor-patient discussions of these sensitive matters, patients may be dissuaded from seeking proper treatment. See KRS 214.181(1) (legislative finding that “many members of the public are deterred from seeking [HIV] testing because they . . . fear that test results will be disclosed without their consent”). See also Anderson v. Strong Mem’l Hosp., 531 N.Y.S.2d 735, 740 (1988) (“The stigma which comes from the disclosure that a person is a patient at an AIDS clinic will deter a person from seeking treatment or testing, particularly at the early stages of the disease before symptoms develop.”); U.S. v. Hughes, 95 F. Supp. 2d 49, 60 (D. Mass. 2000) (recognizing, in the context of drug treatment, that assurances of privacy and confidentiality encourage some in “more troubled populations—populations who have been traditionally suspicious of government programs, medical services and other institutions—to seek the help they need”) (internal quotations omitted).

It is particularly dangerous to chill testing and treatment of people who are or suspect that they might be HIV-positive. Because HIV can be transmitted unwittingly by those who are not aware that they are infected or who are not educated about how to prevent transmission of the virus, it is vital that anyone who engages in behaviors that can transmit HIV be encouraged to seek testing and treatment. For that reason, recognizing that the fear of improper disclosure may discourage some individuals from seeking HIV testing, the state requires that individuals be provided the option of anonymous HIV testing. See KRS 214.181(6).<sup>9</sup> Still, when assurances of privacy and confidentiality are

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<sup>9</sup>In addition to the confidentiality guarantees of KRS 214.181, Kentucky law protects the confidentiality of HIV-related information in a variety of other statutes and regulations. See, e.g., KRS 214.420 (declaring “that confidentiality is essential for the proper administration and operation of sexually transmitted disease control activities in

undermined by the improper disclosure of HIV test results, patients become less willing to seek testing, and private and public health suffer as a result.

Finally, those individuals who do seek treatment for HIV or AIDS may be less likely to disclose information to their doctors if they fear that their private discussions will be shared with their employers, family members or others. As noted above, a wide variety of highly personal information is often relevant to the treatment of people living with HIV. If patients are afraid to disclose information to their physicians, their doctors will be unable to accurately determine the best course of treatment, and patients' and public health may be compromised.<sup>10</sup>

In sum, the unwarranted disclosure of HIV-related information may have serious negative consequences on a personal level, leading to discrimination and harassment. Additionally, unless promises of privacy and confidentiality are strictly enforced,

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this state and that the principle of confidentiality must remain inviolate," and mandating that health department records regarding people with sexually transmitted diseases, including HIV, are "strictly confidential"; KRS 214.990(6) (violation of confidentiality provisions of KRS 214.420 constitutes criminal violation); KRS 304.12-013(4)(f) (requiring insurance companies to "maintain strict confidentiality" of HIV test results); KRS 438.250 (restricting disclosure of HIV test results of certain inmates and criminal defendants); KRS 510.320 (same); KRS 197.055(3) (restricting disclosure of HIV test results of inmates); KRS 635.110(3) (restricting disclosure of HIV test results of juvenile defendants); KRS 211.180(1)(b) (requiring consideration of "protection for the privacy and confidentiality of the patient" in epidemiological reporting of sexually transmitted diseases); KRS 214.645 (setting confidentiality standards for state HIV surveillance program); 201 KAR 9:315 (noting that information relating to health of HIV-positive healthcare providers is exempt from Open Records Act because it is "personal in nature").

<sup>10</sup>See D.A. Lentine, et al., *HIV-Related Knowledge and Stigma - United States, 2000*, 49 U.S. DEP'T OF HEALTH AND HUM. SERVICES MORBIDITY AND MORTALITY WKLY. REP. 1062 (2000) ("HIV-infected persons who fear being stigmatized . . . may experience real or perceived barriers to prevention and other health-care services.").

individuals are less likely to seek HIV testing and treatment or to share vital information with healthcare providers. People with HIV must be able to expect near-absolute confidentiality when they seek medical care. When a physician discloses confidential HIV-related information in violation of a patient's trust, the physician's acts are highly offensive to a reasonable person.

**C. Courts in Other Jurisdictions Have Found that Unwarranted Disclosures of HIV-Related Health Information Are Unreasonable and Highly Offensive to Reasonable People.**

Considering the extensive harms that often accompany the unwarranted disclosure of HIV-related information, amici submit that a physician's disclosure of a patient's HIV status to the patient's employer is unreasonable and highly offensive. In analogous situations, courts in other jurisdictions have found that the unwarranted disclosure of the identities or diagnoses of people with HIV were actionable violations. See, e.g., Multimedia WMAZ, Inc. v. Kubach, 443 S.E.2d 491 (Ga. Ct. App. 1994); Estate of Behringer, supra, 592 A.2d 1251; Anderson, supra, 531 N.Y.S.2d 735.

The significant privacy concerns that supported the courts' decisions in these cases apply equally in the workers compensation context. Indeed, appellate decisions in two other states have concluded that a doctor's disclosure of a patient's HIV status to support or supplement a workers compensation claim may violate the patient's right to privacy. In Urbaniak v. Newton, 226 Cal. App. 3d 1128 (1991), the HIV-positive plaintiff met with a physician in connection with a workers compensation claim unrelated to the plaintiff's HIV status. During the course of the examination, the plaintiff disclosed to a nurse that he was HIV-positive. Id. at 1134. Following that meeting, the physician sent a medical report disclosing the plaintiff's HIV status to the attorney for the plaintiff's

employer. Id. at 1134-35. The California appellate court interpreted the case under the state constitution's privacy guarantees, which were substantively similar to the common law principles that apply in this case. Id. at 1138. Recognizing the substantial harm that commonly follows the disclosure of HIV-related information, the court acknowledged that HIV-positive patients may have reasonable expectations of privacy in the health-related information they share with their healthcare providers. Id. at 1140-41. Applying privacy principles to the case before it, the court concluded that the physician violated the plaintiff's privacy rights, notwithstanding the fact that the examination took place in the context of a workers compensation claim. The court noted that "[t]he offending information had limited relevance to the medical examination," and that the physician easily could have relayed all relevant information to the plaintiff's employer "without specifically mentioning his HIV positive status." Id. at 1141.

An appellate court in New York reached the same conclusion in a case with similar facts. See Doe v. Roe, 599 N.Y.S.2d 350 (1993). In the course of seeking treatment for ear and sinus problems, the plaintiff in Doe disclosed to his physician in confidence that he was HIV-positive. Id. at 351. When the plaintiff later filed a workers compensation claim for work-related ear and sinus injuries, the physician voluntarily forwarded the plaintiff's entire medical chart, including references to the plaintiff's HIV status, to the attorney representing the plaintiff's employer. Id. at 352. The plaintiff filed suit against the physician, alleging violations of "common-law and statutory duties to preserve the confidentiality of his HIV status," and the New York appellate court allowed the case to proceed. Id. Despite the physician's arguments that she had relied in good faith on the attorney's request for records and earlier authorizations signed by the

plaintiff, the court reinstated the plaintiff's claim for punitive damages. Id. at 356-57. In reaching its conclusion, the court noted that exceptions to the general rule of HIV confidentiality should be strictly construed under state law. Id. at 355.

These decisions by the courts of other states support the conclusion that a physician should reveal a patient's HIV status only in extremely rare circumstances. In the Commonwealth of Kentucky, those circumstances are clearly enumerated in KRS 214.181. In light of the requirements of that statute and the significant individual and public policy concerns that mitigate in favor of maintaining the confidentiality of HIV-related information, amici urge the Court to conclude that the disclosure of Appellee's HIV status by his physician was highly offensive to a reasonable person.

#### CONCLUSION

For the reasons discussed herein, the decision of the Court of Appeals should be affirmed.

Respectfully submitted,



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