

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI EX REL JOHN W. COLLINS, MD,

Relator

v.

HONORABLE MARCO ROLDAN.

Respondent

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DOCKET NUMBER WD70350

DATE: **June 9, 2009**

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**Appeal From:**

**ORIGINAL WRIT PROCEEDING OF PROHIBITION**

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**Appellate Judges:**

Writ Division: James Edward Welsh, P.J., Lisa White Hardwick and Alok Ahuja, JJ.

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**Attorneys:**

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Counsel for Relator,

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**Attorneys:**

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**STATE OF MISSOURI EX REL JOHN W. COLLINS, MD, Relator,  
v. HONORABLE MARCO ROLDAN, Respondent**

**WD70350**

**ORIGINAL WRIT PROCEEDING OF PROHIBITION**

Before Writ Division Judges: Welsh, P.J., Hardwick and Ahuja, JJ.

Carli Smith, by her mother (Sherri Smith) as next friend, filed a medical malpractice action against three doctors, including Relator John W. Collins, M.D. Collins requested that Smith execute a medical authorization form he provided her. The authorization form provided Smith's consent to the disclosure of "[a]ny and all information, including records, concerning any medical care provided to, or medical treatment of, the person named above."

Smith's mother signed the medical authorization form for her minor daughter. However, Sherri Smith modified the authorization by specifying that the information subject to disclosure included only "[m]edical records and bills concerning any medical care provided to, or medical treatment of, the person named above." In addition, she added a prominent qualification at the top of the authorization's first page, specifying that the authorization "does not extend to private interviews between any health care provider" and Collins's attorneys, and that such private conversations "would be contrary to the [Smiths'] express wishes."

Collins filed a motion to compel requesting that the court order Smith to execute his form of medical authorization. The circuit court overruled Collins's motion. Collins then filed a petition for a writ of prohibition with this Court, requesting that we direct the circuit court to compel Smith to execute a medical authorization form without the limiting language. This court issued a preliminary writ of prohibition ordering the circuit court to refrain from further action in the case until further order of this Court.

**PRELIMINARY WRIT OF PROHIBITION QUASHED.**

**Writ Division holds:**

Although Collins's appellate arguments focus on the admonition added by Sherri Smith to the authorization form, we believe the circuit court could properly refuse to grant Collins's motion to compel based on the broad scope of the information whose disclosure Collins sought to have the Smiths authorize. The authorization form the Smiths returned authorized release of "[m]edical records and bills" related to Carli Smith's medical treatment; Collins, on the other hand, sought disclosure of "[a]ny and all information, including records." The evident purpose of Collins's broader language was to have Smith execute an authorization that was broad enough to expressly authorize *ex parte* interviews with her treating physicians.

It may be that, under HIPAA, Collins requires an authorization containing such a broad definition of the information subject to disclosure in order to conduct *ex parte* interviews

pursuant to the authorization. However, the Missouri Supreme Court has held in a series of cases that the courts will not compel a plaintiff to execute a medical authorization authorizing his treating physician to engage in *ex parte* discussions with opposing parties.

Because Collins is, in essence, seeking a court order compelling Smith to execute a medical authorization authorizing *ex parte* interviews with her treating physicians, the circuit court did not err in refusing the requested relief, and we quash the preliminary writ of prohibition previously issued

**Concurring opinion:**

Judge Welsh concurs with the majority's opinion quashing the Court's preliminary writ in prohibition, but writes separately in the hope that his rationale, although not that of the majority, might be of some assistance to those judges and lawyers that struggle with these discovery issues on a daily basis. Given that the issue of whether or not the plaintiff in this case must execute a medical authorization form is a matter involving informal discovery, Judge Marco Roldan appropriately refused to compel the plaintiff to execute the medical authorization form. Judge Roldan did not have the authority to compel the plaintiff to sign a medical authorization form and thus embroil himself in what is essentially an informal discovery process.

**Opinion by: Alok Ahuja, J.**

**Separate concurring opinion by: James Edward Welsh, P.J.**

June 9, 2009

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**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**