



## Health Law

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# **“In Utero” Medical Records Deemed Discoverable Without Birth Mother’s Consent**

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The Appellate Court of Illinois Fourth District recently analyzed a case involving the release of a birth mother’s medical records relating to the time that an adopted child was *in utero*. *Mazrim v. Decatur Memorial Hosp.*, 2022 IL App (4th) 210474. The Fourth District found that the birth mother’s medical records from while she was pregnant with the baby were discoverable, but subject to redaction. *Id.* ¶¶ 15, 23. The *Mazrim* decision serves to broaden discovery on any medical negligence matter implicated when the child was *in utero*.

## **Underlying Facts**

Baby G.M. was born on October 12, 2019, and subsequently adopted on March 16, 2021. *Mazrim*, 2022 IL App (4th) 210474, ¶ 4. While pregnant with Baby G.M., the birth mother was incarcerated and received prenatal care and treatment at the Logan Correctional Center. *Id.* Baby G.M. allegedly sustained birth-related injuries as a result of the negligent prenatal care that the birth mother received, as well as the negligent treatment surrounding her labor and delivery. *Id.*

The Petitioner, the adoptive parent and legal guardian of Baby G.M., sought to pursue a medical negligence action against individuals responsible for Baby G.M.’s alleged birth-related injuries and filed a discovery request pursuant to Illinois Supreme Court Rule 224 to obtain the birth mother’s medical records regarding her prenatal, labor, and delivery care. *Id.* ¶¶ 1, 4. According to the Petitioner, the discovery request was limited in scope to the birth mother’s prenatal and obstetric care records. The Petitioner claimed that without the birth mother’s medical records, they had no way to determine who was potentially liable for the injuries that Baby G.M. sustained. *Id.*

In response, the hospital argued that such a request was improper because the medical records pertained to the birth mother who had neither consented nor released such information. *Id.* ¶¶ 2, 9. The Circuit Court of Sangamon County held that, under Rule 224, “[a]ny and all communications, documents, and reports relating to the prenatal care of [the birth mother] during her pregnancy [with Baby G.M.] shall be considered within the scope of Petitioner’s allowable discovery requests.” *Id.* ¶ 7. The court, however, sealed the case file for protection and privacy purposes. *Id.*

The hospital filed a motion for reconsideration arguing that the request for information did not directly relate to Baby G.M. and, therefore, was improper without first obtaining the birth mother’s consent. *Id.* ¶¶ 2, 9. The hospital also argued that under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), healthcare providers are prohibited from disclosing protected health information. Under Illinois law, the medical records privilege is even more stringent than HIPAA, only allowing for the release of medical records in specific circumstances and with the consent of the patient involved. *Id.*

The Petitioner persuasively replied, however, that it would be nearly impossible to obtain the birth mother’s consent, given that she was “[nowhere] to be found.” *Id.* ¶ 9. According to the Petitioner, it would also be nearly impossible to

determine the identity of individuals who may be responsible in damages without referencing the prenatal care records. In her argument, the Petitioner highlighted that Illinois courts have previously held that prenatal care records, and similar medical records, of the birth mother during the period that her child was *in utero* are, for all practical purposes, also the medical records of the child. *Id.* ¶ 5; see *El-Amin v. Dempsey*, 329 Ill. App. 3d 800, 809 (1st Dist. 2002). Specifically, a birth mother's medical records regarding the period when the child was *in utero* are discoverable under the theory that there is an impossibility of severance between the records. *El-Amin*, 329 Ill. App. 3d 800 at 803 (quoting *Yetman v. St. Charles Hosp.*, 491 N.Y.S.2d 742, 744-45 (1985)). Under the *El-Amin* precedent, the circuit court found that the prenatal care records of the birth mother, during the time when Baby G.M. was *in utero*, were, for all practical purposes, Baby G.M.'s medical records. *Mazrim*, 2022 IL App (4th) 210474, ¶¶ 10, 16. Therefore, the circuit court deemed that Baby G.M., by and through his or her adoptive parent, was entitled to obtain copies of the prenatal medical records, without any prior authorization of the birth mother.

### **Appellate Court Opinion**

In its analysis on appeal, the Fourth District held that as a legal guardian, rather than the birth mother of Baby G.M., the Petitioner had no other avenue of obtaining such information other than to file a petition under Rule 224 to retrieve the birth mother's medical records. *Mazrim*, 2022 IL App (4th) 210474, ¶ 10. The Fourth District noted that a simple list of names of medical providers failed to provide the Petitioner with sufficient information to identify which medical staff may be responsible for Baby G.M.'s birth-related injuries. *Id.* ¶ 24. The Fourth District emphasized that when a petitioner is apprised of sufficient information to make a connection between the injury and a responsible individual or entity, such as to identify an individual or entity as a possible defendant, the petitioner may not seek additional facts pertaining to specific instances of wrongdoing *Id.* ¶ 26; see *Beale v. EdgeMark Fin. Corp.*, 279 Ill. App. 3d 242, 252 (1st Dist. 1996). However, when the information provided leads to no connection, or too remote of a connection, which does little to decrease the number of potential defendants, the petitioner shall not be precluded from ascertaining additional information to refine the scope of potential defendants. *Mazrim*, 2022 IL App (4th) 210474, ¶ 26; *Beale*, 279 Ill. App. 3d 242, 252-53 (1st Dist. 1996). Given that the Petitioner's discovery request was simply an attempt to connect the dots between Baby G.M.'s birthing care and potentially liable medical staff, the Fourth District found that the records should be disclosed given the inability to obtain the records in any other matter. *Mazrim*, 2022 IL App (4th) 210474, ¶ 10.

The Fourth District ultimately concluded that the birth mother's medical records during the time she was pregnant with Baby G.M. were discoverable under Rule 224 and Illinois precedent set forth in *El-Amin*, 329 Ill. App. 3d 802. *Mazrim*, 2022 IL App (4th) 210474, ¶ 15. As a practical matter, it would be impossible for any individual to obtain a child's medical records—separate from his or her birth mother's—regarding the time that the specific child was *in utero*. *Id.* ¶ 16; *El-Amin*, 329 Ill. App. 3d at 809.

The Fourth District further reasoned that the medical records were jointly the birth mother's and Baby G.M.'s, and under a theory of impossible severance, the birth mother's consent was not required to release the records to Baby G.M.'s legal guardian as a proxy for the infant themselves. *Mazrim*, 2022 IL App (4th) 210474, ¶ 17. Thus, based on the plain language of Rule 224, Baby G.M.'s medical records regarding the period of time he or she was *in utero*, were discoverable, but subject to redaction. *Id.* ¶ 23; ILL. SUP. CT. R. 224. The Fourth District concluded that regardless of entitlement, given the sensitive nature of the information and the birth mother's right to privacy, a remand was required so the medical records could be inspected by the court, *in camera*, and redacted to remove any information "not ascertaining the identity of one who may be responsible in damages." *Id.* ¶ 29.



## Conclusion

The *Mazrim* decision broadens the scope of discovery when litigation involves a minor's injuries resulting from prenatal care or birth. In this case, the confidentiality of a birth mother's medical records during the time when she was pregnant with the child may be circumvented if a medical malpractice action is brought on the behalf of that infant-child. While it is important to understand the broad strokes of this decision, it is also important to continue to vigorously argue that the redaction of as much information as possible better aligns with the best interests of the birth mother.

### About the Authors

**Ann Barron** is a Shareholder at *Heyl, Royster, Voelker & Allen, P.C.* and serves as the Co-Chair of the Appellate Department. Ms. Barron handles medical malpractice, environmental and commercial litigation pending in state and federal court. Before joining Heyl Royster, she served as in-house counsel at Valero in San Antonio, Texas, where she managed complex environmental, commercial, class action and tort litigation. After graduating from the University of Illinois College of Law in 1994, Ms. Barron began her legal career serving as a law clerk to the Honorable James D. Heiple of the Illinois Supreme Court. After her clerkship, she worked for two law firms in the St. Louis area. She represented clients in environmental, class action, commercial, and personal injury matters pending throughout the country. Ms. Barron has represented clients before the Seventh Circuit Court of Appeals, the Illinois Supreme Court and various appellate courts in Illinois and Missouri.

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