

RESOLUTION 11.2022-22 (A-23)
ATTORNEY’S’ RETENTION OF CONFIDENTIAL MEDICAL RECORDS
AND CONTROLLED MEDICAL EXPERT’S TAX RETURNS AFTER CASE
ADJUDICATION

ISMS Board Action Taken on 01/28/2023

Adopted Resolution 11.2022-22 (A-23), as amended by the Medical Legal Council.

Medical Legal Council Recommendation to ISMS Board on 01/28/2023

The Council was provided with a copy of the resolution, including relevant ISMS policy, and the results of a member survey. In *Haage v. Zavala*, the Illinois Supreme Court found that liability insurers are prohibited from using or disclosing protected health information for any purpose other than the litigation and are required to return or destroy the PHI at the end of litigation. The decision required a change to the Cook County standard qualified protective order to comply with the holding. The author attended the meeting and engaged in a discussion with the Council members. The Council was supportive of the intent of the resolution, and agreed with the author’s goals of safeguarding patient protected health information and personal information such as a tax return. The Council noted that the language in the first resolved is currently a statement, and recommends a clarification to make it actionable. The Council therefore recommends an amended resolution.

The Medical Legal Council recommends that the ISMS Board of Trustees adopt Resolution 11.2022-22 (A-23), as amended:

RESOLVED, that the ISMS advocate that attorney requests for controlled medical expert personal tax returns should be limited to 1099-MISC forms (miscellaneous income) and that entire personal tax returns (including spouse’s) should not be forced by the court to be disclosed; and be it further

RESOLVED, that the Illinois State Medical Society (ISMS) advocate through legislative or other relevant means the proper destruction by attorneys of medical records (as suggested by *Haage v. Zavala*, 2021 IL 125918) and medical expert’s personal tax returns within sixty days of the close of the case; and be it further

RESOLVED, that the Illinois Delegation to the AMA draft a resolution to create a policy to the same.