

State Bar of South Dakota

Ethics Opinion 95-5

April 4, 1995

- **Rules: 1.6**
- **Subject: Client confidences; Client's medical records; Discovery materials**
- **Summary: Rules do not cover situation where Attorney A provides a client's medical records to Attorney B, and Attorney B discloses the records to other doctors.**

FACTS

You represent a plaintiff in a medical malpractice action. One of the potential witnesses in this matter is plaintiff's present physician. This physician is not your expert witness in this action but you intend to take this physician's deposition.

Defense counsel has requested and obtained all of your client's medical records, including numerous records having nothing to do with the malpractice action.

Plaintiff's present physician is represented by counsel. It recently came to your attention that defense counsel had offered unrestricted access to all of your client's medical records he had obtained in the discovery process to her present physician and his counsel. This offer was done without your knowledge and without any attempt to notify you.

Based upon these facts you have asked this Committee the following question:

Has there been a violation of the South Dakota Rules of Professional Conduct by this offer or the provision of medical records without plaintiff's knowledge to her present physician?

OPINION

It is the opinion of this Committee that there has been no violation of the South Dakota Rules of Professional Conduct under these facts. There are substantive legal issues involved with the possible ex parte contact between defense counsel and your client's present physician but there does not appear to be any violation of the South Dakota Rules of Professional Conduct.

Michael S. McKnight
Chair, Ethics Committee
State Bar of South Dakota