

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

E.H., et al.,

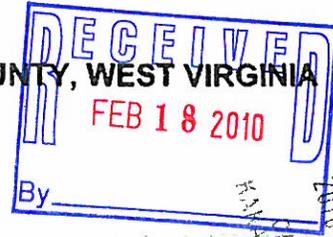
Petitioners,

v.

MATIN, et al.

Respondents.

CIVIL ACTION NO. 81-MISC-585



FILED
FEB 22 11:11:08
KAWAHA COUNTY CLERK'S OFFICE

ORDER

By order dated July 2, 2009, the Court appointed David Sudbeck to serve as Court Monitor in this case and that order expressly made the Court Monitor subject to the privacy protections set forth in West Virginia Code §27-3-1. West Virginia Code § 27-3-1 prohibits the disclosure of confidential mental health records, subject to the exceptions set out in subsection (b). Specifically, confidential mental health records may only be disclosed:

Pursuant to an order of any court based upon a finding that the information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section....

W.Va. Code § 27-3-1(b)(3).

The disclosure of protected health information by Respondents is also subject to federal law, namely the Health Insurance Portability and Accountability Act (HIPPA) and the Public Health Service Act (PHSA). Among the restrictions placed on the disclosure of confidential health information under HIPPA is a requirement that confidential health information may only be disclosed pursuant to a court order, and that only the minimum information necessary to accomplish

the intended purpose of the disclosure be permitted. 45 C.F.R. § 164.501, 45 C.F.R. § 164.502(b), 45 C.F.R. § 164.512(a), 45 C.F.R. § 164.514(d).

Prior to disclosure of substance abuse or mental health information pursuant to the PHSA, the disclosure must be authorized by a court. Specifically, PHSA provides that:

If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. **In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services.** Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(42 C.F.R. 290ee-3(c)) (emphasis added).

The Court Monitor has represented to the Court that in order to perform his duties, he and his assistants, hereinafter referred to collectively as the Office of the Court Monitor, require access to the following confidential information held by Respondents:

1. All available sources of data, including individualized and congregate data, from which conclusions regarding systemic reasons for commitment can be drawn;
2. Medical records for patients in the state psychiatric hospitals and any psychiatric units of acute care hospitals, who have undergone the commitment process, from which possible systemic causes for hospitalization can be identified; and
3. Direct access to committed patients, with their consent.

Accordingly, the Court hereby FINDS:

1. that the Office of the Court Monitor has shown good cause for disclosure to it of the confidential information described above;

2. that the information is sufficiently relevant to the instant proceeding to outweigh the confidentiality provided by West Virginia Code §27-3-1;
3. that it has weighed the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services;
4. that only the minimum information necessary to accomplish the duties of the Office of the Court Monitor may be disclosed;
5. that all reports prepared for the Court and the parties shall use aggregate and summarized data only;
6. that the Office of the Court Monitor shall not use the protected information for any purpose other than those provided under the Court's Order;
7. that the Office of the Court Monitor shall take necessary and reasonable safeguards against unauthorized disclosure;
8. that the Office of the Court Monitor shall implement and maintain an accounting of disclosures which complies with federal law; and
9. that the Office of the Court Monitor shall enter into data use agreements and such other agreements as are necessary to comply with federal law, where agreements are needed for the disclosure of the confidential information needed to perform the duties of the Office of the Court Monitor.

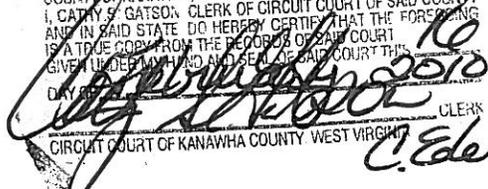
Pursuant to such findings it is hereby ORDERED that the Respondents and any hospital disclose to the Office of the Court Monitor such information as is herein found necessary to the performance of the duties of the Court Monitor, subject to the limitations set forth herein regarding such disclosures and to such other limitations as may be necessary to comply with state or federal law. The Respondents and the Court Monitor shall enter into an agreement further setting forth the means of access and uses to which that access and information may be made.

Entered this 12 day of FEB, 2010.


LOUIS H. BLOOM, CIRCUIT JUDGE

Prepared by:


Counsel for Respondents

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS
DAY OF February 2010

CLERK
C. Edens

Inspected by:


Counsel for Petitioners

2/16/10
Certified copy sent to
____ counsel
____ party
____ other
by
____ court clerk
____ fax
____ hand
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C. Edens