

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JERRY VALDIVIA, ALFRED YANCY,
and HOSSIE WELCH, on their own
behalf and on behalf of the class
of all persons similarly situated,

Plaintiffs,

NO. CIV. S-94-671 LKK/GGH

v.

O R D E R

ARNOLD SCHWARZENEGGER, Governor of
the State of California, et al.,

Defendants.

_____ /

This matter is before the court on a joint stipulation
submitting a disputed issue concerning the scope of the
stipulated judgment in the above-captioned matter. On April 14,
2005, the parties appeared before Magistrate Judge Moulds for a
settlement conference. The parties resolved all but one
disputed issue at that conference. The parties agreed to submit
the remaining disputed issue for decision by this court without
oral argument.

////

1 The remaining disputed issue concerns whether parolees'
2 counsels' access to certain mental health records should be
3 subject to conditions of non-disclosure to the parolee under the
4 California Patient Access to Health Records Act ("PAHRA"), Cal.
5 Health & Safety Code §§ 123100-123149.¹

6 Upon consideration of the parties' papers, the court
7 concludes that the parolees' due process rights override any
8 condition of non-disclosure called for under the PAHRA. For
9 that reason, I conclude that parolees' counsel should receive
10 access to information in their client's field file without any
11 limitation on whether they can discuss the information with
12 their clients.

13 The defendants' position is that PAHRA controls.² Under
14 the approach suggested by the defendants, parolees' counsel
15 could view the mental health records, but would be bound by a
16 protective order to not discuss the records with the parolee if
17 a mental health clinician had determined that under that section
18

19 ¹ Section 123115 (b) provides that "when a health care
20 provider determines there is a substantial risk of significant
21 adverse or detrimental consequences to a patient in seeing or
22 receiving a copy of mental health records requested by the patient,
the provider may decline to permit inspection or provide copies of
the records to the patient." Cal. Health & Safety Code § 123115(b).

23 ² Given that this case arose under 42 U.S.C. § 1983, it is
24 clear that the applicable privilege law is federal rather than
25 state. See Fed. R. Evid. 501. Under California law, the privilege
26 established in Cal. Health & Safety Code § 123115(b) is recognized
to be subject to due process considerations arising under the
federal Constitution, however, there is no need for this court to
make an independent judgment, and instead I will adopt the
California court's analysis of the issue tendered by the parties.

1 "there is a substantial risk of significant adverse or
2 detrimental consequences," to the parolee. Cal. Health & Safety
3 Code § 123115(b). As plaintiffs argue, however, it is
4 established under California law that any privilege
5 circumscribing information conveyed to parolees in connection
6 with a revocation hearing may only be exercised within the
7 parameters of due process. In re Olsen, 37 Cal.App.3d 783, 790
8 (1974). Defendants argue that Olsen is distinguishable because
9 it did not involve psychiatric information that could be
10 detrimental to a parolee. The argument is unavailing.

11 Due process mandates full disclosure except in the narrow
12 set of circumstances delineated in Olsen. Specifically, records
13 may be withheld only if "the security of the institution will be
14 jeopardized or an informant will be exposed to an undue risk of
15 harm by the disclosure of a particular document." Olsen, 37
16 Cal.App.3d at 790. Section 123115(b) of PAHRA does not fall
17 within the narrow exception to disclosure recognized by the
18 California Court of Appeal. Releasing mental health records
19 does not pose a direct security threat to an institution or to
20 an informant. Thus, defendants may not rely on Section
21 123115(b) as grounds to restrict counsels' ability to discuss
22 sensitive mental health records with their clients.³

23
24 ³ Moreover, the revised memo, which outlines the defendants'
25 proposed policy on reviewing and releasing confidential
26 information, see Exhibit 2, as well as the defendants' amended
protective order on this issue, see Exhibit 4, do not comport with
the defendants' policies and procedures submitted by defendant
pursuant to the permanent injunction.

1 The court recognizes defendants' concerns about the
2 potential harm associated with sharing sensitive material with
3 parolees. The court, however, assumes that the parolees'
4 lawyers will use discretion in discussing such sensitive
5 material with their clients.⁴

6 Based on the court's review of the joint stipulation and
7 the attached papers and exhibits, the court orders that
8 parolees' counsel shall receive access to information in their
9 client's parole field files without any limitations or
10 restrictions on disclosing the information to the parolee based
11 on perceived risk of harm to the parolee's mental health under
12 Cal. Health & Safety Code § 123115(b). Defendants, in
13 delivering such material, may note its sensitive character and
14 urge counsel to use discretion in determining whether to discuss
15 its contents with a client.

16 IT IS SO ORDERED.

17 DATED: August 31, 2005.

18 /s/Lawrence K. Karlton
19 LAWRENCE K. KARLTON
 SENIOR JUDGE
 UNITED STATES DISTRICT COURT

20
21 ⁴ The court suggests that defendants review plaintiffs'
22 exhibit K, a copy of the United States Social Security
23 Administration Program Operations Manual System. The SSA policy
24 is helpful in situations posed by defendants' concern. Under the
25 SSA policy, if the agency is concerned about releasing sensitive
26 medical records, the records are released to a representative of
the patient's choosing. The representative is then given the
records and is directed to keep in mind the sensitive nature of the
records when discussing them with the patient. Similarly, the
parolees' lawyers may be instructed to use their discretion in
discussing sensitive material with their clients.