

139 Misc.2d 336

Supreme Court, New York County, New York,  
IAS Part 22.

John HEARD, Ruben Rodriguez, Joseph Catena  
and John Klostermann, individually and on behalf  
of all persons similarly situated, Plaintiffs,

v.

Mario M. CUOMO, as Governor of the State of  
New York, Richard C. Surles, as acting  
Commissioner of the New York State Office of  
Mental Health, Hal Margosian, as director of the  
Rockland Psychiatric Center, Steven Goldstein, as  
executive director of the Kings Park Psychiatric  
Center, Lucy Sarkis, as executive director of the  
South Beach Psychiatric Center and Peggy O'Neill,  
as director of the Pilgrim Psychiatric Center,  
Defendants.

Michael KOSKINAS, Harry Vasquez and John  
Heard, individually and on behalf of all persons  
similarly situated, Plaintiffs,

v.

Jo Ivey BOUFFORD, as President of the New York  
City Health and Hospitals Corporation, the New  
York City Health and Hospitals Corporation,  
Dennis Gowie, as executive director of  
Metropolitan Hospital, Harriet Dronska, as  
executive director of Bellevue Hospital, Sara L.  
Kellermann, as Commissioner of the New York  
City Department of Mental Health, Mental  
Retardation and Alcoholism Services, Mario M.  
Cuomo, as Governor of the State of New York, and  
Richard C. Surles, as acting Commissioner of the  
New York State Office of Mental Health,  
Defendants.

March 28, 1988.

Plaintiffs who sought to prove that state officials had failed to comply with their obligation to provide proper service plans to patients discharged from mental hospitals, and who sought injunction mandating compliance, sought sample of 200–300 service plans. The Supreme Court, New York County, Lehner, J., held that plaintiffs were not entitled to sample of plans based solely on allegation that they were relevant to litigation.

Request denied.

#### Attorneys and Law Firms

\*\*761 \*336 Paul, Weiss, Rifkind, Wharton & Garrison,  
New York City, for plaintiffs.

Robert Abrams, New York City, for State defendants.

Peter L. Zimroth, New York City, for City defendants.

#### Opinion

\*337 EDWARD H. LEHNER, Justice:

The sole issue in dispute herein is whether the State and City defendants shall be required to provide plaintiffs with a representative sample of written service plans issued to patients upon discharge from mental hospitals pursuant to § 29.15(f) and (g) of the Mental Hygiene Law (“MHL”). The court holds that by reason of the confidentiality provisions of MHL § 33.13(c), plaintiffs are not entitled to such material.

At oral argument the parties agreed that all applications for relief appearing on the calendar of February 19, other than that relating to the request for the aforesaid service plans, were withdrawn. Plaintiffs further stipulated that they would accept a sample of 200–300 service plans in lieu of their formal request for copies of all service plans issued to patients released from mental facilities after January 1, 1987.

Plaintiffs seek this information to prove that defendants have failed to comply with their obligation to provide proper service plans to patients in accordance with the requirements of MHL § 29.15, and that thus plaintiffs are entitled to an injunction mandating compliance.

Defendants contend that such information may not be disclosed to plaintiffs as, pursuant to MHL § 33.13(c), the information is required to be kept confidential. Defendants assert that even if the names are redacted, other information in the plans that plaintiffs seek may tend to identify the patients.

Subsection 33.13(c) reads in pertinent part as follows:

“Such information about patients or clients reported to the offices, including the identification of patients or clients, and clinical records or clinical information tending to identify patients or clients, at office facilities shall not be a public record and shall not be released by the offices or its facilities to any person or agency outside of the offices except as follows:

(1) pursuant to an order of a court of record requiring disclosure upon a finding by the court that the interests of justice significantly outweigh the need for confidentiality.”

Plaintiffs maintain that pursuant to the above-quoted

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exception, the service plans should be released in that they are relevant to the instant litigation.

Prior to the adoption of Chapter 912 in 1984, which **\*338** amended paragraph 1 of MHL § 33.13(c) to read as quoted above, said paragraph provided for release of confidential records “pursuant to an order of a court of record.” The 1984 amendment clearly further protected confidentiality by limiting release to situations where “the interests of justice significantly outweigh the need for confidentiality.”

**\*\*762** The memorandum of the Office of Mental Health (McKinney’s 1984 Session Laws, p. 3476) submitted in support of the amendment indicates that the purpose of the bill (which made many other changes in the section) was to “protect the confidentiality of records at all facilities” and “to restrict the release of clinical records and identifying information about patients or clients in instances where consent has not been obtained...” In his approval message, Governor Cuomo stated (McKinney’s 1984 Session Laws, p. 3654):

“At the very heart of the client-professional relationship in mental health care is its confidentiality. The bills strengthen existing protection against the inappropriate disclosure of mental health records and thereby strengthen the integrity of mental health care.”

In commenting on the 1984 amendments, the Court of Appeals said in *New York News, Inc. v. Ventura*, 67 N.Y.2d 472, 476, 503 N.Y.S.2d 714, 494 N.E.2d 1379 (1986):

“The confidentiality provisions of the Mental Hygiene Law operate to protect the patient’s interests by preventing private or embarrassing disclosures and also by encouraging unconstrained diagnoses and treatment appropriate to the patient’s condition; they extend not only to patient records on care and treatment but also to clinical information, including information concerning the patient’s admission and legal status and the documents pertinent to those matters (Mental Hygiene Law § 33.13), and to hospitalization and discharge proceedings (Mental Hygiene Law § 9.31). The limited instances when

information about a patient or a patient’s proceeding may be disclosed, and to whom it may be disclosed, are strictly prescribed by statute.”

In that case a former mental patient was charged with attempted murder, and the media sought a transcript of the judicial retention hearing at which the patient was ordered released. The court, noting that the identity of the patient was widely known, allowed release of only that portion of the transcript in which the public had a legitimate concern, to wit: “whether the court ordered her release contrary to or in accordance with the doctor’s medical recommendation”, and **\*339** disallowed the release of the portion of the record dealing with the patient’s history, medical condition and treatment.

Although there are cases where courts have indicated that relevancy to a judicial proceeding may be a basis for release of confidential matter [e.g., *State of New York—Office of Mental Retardation & Developmental Disabilities v. Mastracci*, 77 A.D.2d 473, 433 N.Y.S.2d 946 (4th Dep’t 1980); *Civil Service Employees Association, Inc. v. Director, Manhattan Psychiatric Center*, 72 A.D.2d 526, 420 N.Y.S.2d 909 (1st Dep’t 1979); *Jablonski v. Brezenoff*, New York County Index No. 41132/1980], these cases arose prior to the 1984 amendment.

A mere claim of relevancy is insufficient to reach the threshold set forth in the current law, and plaintiffs have not otherwise demonstrated that the interests of justice significantly outweigh the need for these unknown patients to have their medical records kept confidential.

Although the court believes the representations of plaintiffs’ counsel that they would do all they can to keep the material confidential in their office, it does not believe that records of the requested 200–300 patients, who know nothing about this proceeding, should be used in the manner requested as there can be no adequate assurance that the information would not become public during the course of the proceedings, nor that the records (even as redacted) would not tend to identify the patients, in violation of the statute.

Accordingly, the request for the representative sample is denied. This, however, does not prevent plaintiffs from obtaining the information necessary to establish their claims of widespread violation of MHL § 29.15. As indicated at argument, if **\*\*763** plaintiffs obtain the consents of former patients, the defendants will release their records. Since this action was apparently instituted at the request of an advocacy group for the homeless, it would seem that such consents could be obtained from former patients residing at various homes and shelters

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throughout the City.

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**Parallel Citations**