

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

KISLING, NESTICO & REDICK, LLC, et al.,

Defendant.

Case No.: 2016-09-3928

Judge: James Brogan

**KNR DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION TO COMPEL
THE KNR DEFENDANTS TO
PRODUCE FILES REQUESTED BY
FORMER KNR CLIENTS**

Plaintiffs' motion seeks to compel production of documents based upon a HIPAA authorization executed by seven former clients of KNR. Plaintiff claims that the patient authorization requires KNR to release the legal files of their clients without further inquiry or due diligence to protect the clients' privilege. A HIPAA authorization form is a document that allows an appointed person or party to share specific health information with another person or group. The Health Insurance Portability and Accountability Act of 1996 was put in place to help ensure the privacy and ease of access a patient's medical records. A "patient authorization form" for the release of medical records is an unorthodox, and potentially misleading way to request a law firm to produce the entire legal file of a former client.

Accordingly, as stated in Plaintiffs' motion, Defense Counsel sought to confirm that Mr. Pattakos was, in fact, counsel for these individuals before providing the legal files of the former clients to a third party. Inexplicably, Plaintiffs' counsel would neither confirm, nor deny, that he was representing these individuals. Obviously, if Plaintiffs' counsel was representing these individuals, the irregularity of requesting legal files via "patient authorization" for medical records could be reconciled and Defendants would provide the materials.

The HIPAA authorizations of the former KNR clients provided by Plaintiffs' counsel contain several categories of documents which are subject to the authorization, each marked with a "box" next to each category. See the following example:

TO: Sam Ghoubrial, M.D. and all entities owned or controlled by Ghoubrial or physicians employed by him; and/or Minas Floros D.C., Akron Square Chiropractic, and all related entities and chiropractors, the law firm of Kisling, Nestico and Redick and all attorneys and employees of that firm, and all medical professionals and any other person or entity to whom payment was made on the undersigned's behalf from the proceeds of settlements obtained by KNR.

Name of Healthcare Provider/Physician/Facility/Medicare Contractor

RE: Patient Name: JAIJUAN V. CARTER

Date of Birth: [REDACTED] Social Security Number: [REDACTED]

I authorize and request the disclosure of all protected information for the purpose of review and evaluation in connection with a legal claim. I expressly request that the designated record custodian of all covered entities under HIPAA identified above disclose full and complete protected medical information including the following:

☒ All medical records, meaning every page in my record, including but not limited to: office notes, face sheets, history and physical, consultation notes, inpatient, outpatient and emergency room treatment, all clinical charts, reports, order sheets, progress notes, nurse's notes, social worker records, clinic records, treatment plans, admission records, discharge summaries, requests for and reports of consultations, documents, correspondence, test results, statements, questionnaires/histories, correspondence, photographs, videotapes, telephone messages, and records received by other medical providers.

☒ All physical, occupational and rehab requests, consultations and progress notes.

☒ All disability, Medicaid or Medicare records including claim forms and record of denial of benefits.

☒ All employment, personnel or wage records.

☒ All autopsy, laboratory, histology, cytology, pathology, immunohistochemistry records and specimens; radiology records and films including CT scan, MRI, MRA, EMG, bone scan, myelogram; nerve conduction study, echocardiogram and cardiac catheterization results, videos/CDs/films/reels and reports.

☒ All pharmacy/prescription records including NDC numbers and drug information handouts/monographs.

☒ All billing records including all statements, insurance claim forms, itemized bills, and records of billing to third party payers and payment or denial of benefits for the period 2009 to present.

I understand the information to be released or disclosed may include information relating to sexually transmitted diseases, acquired immunodeficiency syndrome (AIDS), or human

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EXHIBIT 1

None of the categories of documents identified includes the former KNR clients' legal files. Instead, the "request" for the legal files is slipped into an entirely different section of this patient authorization form on the next page. The section begins at the bottom of page one above and states, "I understand the information to be released or disclosed may include information relating to...." and continues on to page 2 as follows, with emphasis added:

immunodeficiency virus (HIV), and alcohol and drug abuse. I authorize the release or disclosure of this type of information. I also specifically authorize the release of any and all documents, including but not limited to pleadings, correspondence, notes, investigative reports, and all other information written or otherwise recorded, contained in my legal file or relating to any past legal case involving me, including confidential attorney-client communications.

This protected health information is disclosed for the following purposes: _____

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This authorization is given in compliance with the federal consent requirements for release of alcohol or substance abuse records of 42 CFR 2.31, the restrictions of which have been specifically considered and expressly waived.

On March 29, 2019, Defendants agreed to produce the medical records of these individuals contained in KNR files pursuant to the HIPAA authorizations. The attorneys at KNR have consulted with ethics counsel and have been advised to independently confirm the consent of the former clients before producing their legal files to counsel for Plaintiffs in the instant matter in order to comply with the Rules of Professional Conduct as it relates to client confidences. If the clients consent, KNR will produce the files. If Plaintiffs' counsel confirms that he represents these individuals, none of this would even be necessary. However, due to the unconventional structure of this "patient authorization," it is not unambiguously clear to KNR that the clients have authorized release of their legal files to Plaintiffs' counsel in the instant matter. Therefore, KNR has a duty to confirm the former clients' consent. KNR will make a good faith effort to do so as soon as possible.

Respectfully submitted,

/s/ James M. Popson

James M. Popson (0072773)

SUTTER O'CONNELL CO.

1301 East 9th Street

3600 Erieview Tower

Cleveland, Ohio 44114

(216) 928-2200 phone

(216) 928-4400 facsimile

jpopson@sutter-law.com

Thomas P. Mannion (0062551)

Lewis Brisbois

1375 E. 9th Street, Suite 2250

Cleveland, Ohio 44114

(216) 344-9467 phone

(216) 344-9241 facsimile

Tom.mannion@lewisbrisbois.com

Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Response to Plaintiffs' Motion to Compel the KNR Defendants to Produce Files Requested by Former KNR Clients was filed electronically with the Court on this 29th day of March, 2019. The parties may access this document through the Court's electronic docket system.

/s/ James M. Popson

James M. Popson (0072773)