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

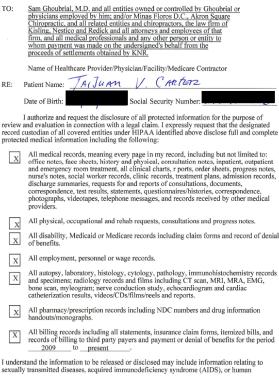
Judge: James Brogan

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 <u>health information</u> 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 <u>patient's medical records</u>. A "patient authorization form" for the release of <u>medical records</u> 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:



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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 <u>legal files</u> 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

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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
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