# State of New York
# Court of Appeals

**Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.**

To be argued Tuesday, January 8, 2019

**No. 1 Matter of Mental Hygiene Legal Service v Sullivan** *(papers sealed)*

Prior to the end of his prison sentence, D.J. was adjudicated a dangerous sex offender requiring confinement under Mental Hygiene Law article 10 and was civilly committed to the St. Lawrence Psychiatric Center, where officials were required to develop a treatment plan for him. In preparing the treatment plan, Mental Hygiene Law § 29.13(b) provides that certain persons "shall be interviewed and provided an opportunity to actively participate," including "an authorized representative of the patient" and "a significant individual to the patient including any relative, close friend or individual otherwise concerned with the welfare of the patient." The statute does not further define "authorized representative" or "significant individual." D.J. asked that his attorney from the Mental Hygiene Legal Service (MHLS) be allowed to attend his treatment planning meetings, but officials of the psychiatric center denied his request on the ground that counsel was not legally entitled to attend the meetings and counsel's presence could be counterproductive to his therapy. D.J. and MHLS brought this proceeding to challenge the denial. Supreme Court dismissed the suit, ruling the Mental Hygiene Law does not give MHLS staff the right to attend treatment planning meetings.

The Appellate Division, Third Department affirmed in a 3-2 decision, finding MHLS attorneys are neither an "authorized representative" or "significant individual" under section 20.13(b). The majority said the language of the statute "suggests that an 'authorized representative' is one 'authorized' to make treatment decisions on the patient's behalf, which is consistent with the general meaning of the term as a person with 'some sort of tangible delegation to act in [another's] shoes'.... Counsel does not have authority to make these types of decisions on behalf of a client -- instead, counsel must maintain a conventional attorney-client relationship with an impaired client so far as possible and then take steps to consult with individuals who have decision-making authority...." It said the text and history of the statute "reveal that a 'significant individual' is personally interested in a patient's mental health and welfare and in a position to assist in setting appropriate treatment goals while a patient is hospitalized and ensuring an appropriate placement upon his or her discharge. Counsel from MHLS, in contrast, comes from an agency whose 'statutory mission is to provide legal assistance to the residents of certain facilities' such as D.J., and legal advocacy may easily conflict with crafting an appropriate treatment plan if the medically advisable treatment conflicts with the client's legal goals...."

The dissenters turned to MHLS's enabling statute, saying "the plain language of Mental Hygiene Law §§ 47.01 and 47.03 establishes the broad scope of the duties of MHLS, encompassing the provision of 'legal services and assistance' related to a resident's 'care and treatment' and permitting MHLS full access to these facilities in carrying out these duties.... As to Mental Hygiene Law § 29.13, the Legislature expressly stated that its purpose in amending the act in 1993 was for the 'inclusion of a friend or advocate in treatment ... planning activities.... Recognizing the inherent vulnerability of residents encompassed by [section] 29.13, MHLS properly serves its duties by providing advocacy services concerning a resident's objections to care and treatment ... and concerning whether treatment is provided in accordance with statutory and regulatory standards...." They concluded that "MHLS counsel serves as a resident's authorized representative and, where identified by the resident as such, an MHLS employee constitutes a significant individual concerned with the resident's welfare."

For appellants MHLS and D.J.: Shannon Stockwell, Albany (518) 451-8710
For respondents Sullivan et al: Assistant Solicitor General Kathleen M. Treasure (518) 776-2021

# State of New York
# Court of Appeals



To be argued Tuesday, January 8, 2019

**No. 2 Matter of Mental Hygiene Legal Service v Daniels**

Mental Hygiene Legal Service (MHLS), which provides legal representation to hospitalized mental patients in New York, brought this proceeding against the director of the state-run Bronx Psychiatric Center (BPC) in 2016 to compel the facility to provide it with a copy of the complete clinical record of each patient who faced an involuntary retention hearing under Mental Hygiene Law § 9.31. MHLS argued that by copying only portions of the medical charts, BPC failed to comply with Mental Hygiene Law § 9.31(b), which requires hospital directors to "forward forthwith a copy of [the hearing] notice with a record of the patient" to the hearing court and MHLS.

Supreme Court granted the petition "insofar as it establishes that in failing to provide [MHLS] with a complete copy of a patient's medical chart in any proceeding pursuant to Mental Hygiene Law § 9.31(a), [BPC] is violating the clear language and legislative intent of Mental Hygiene Law § 9.31(b), which when read together with Mental Hygiene Law §§ 9.01, 33.16(a)(1), and 14 NYCRR 501.2(a), requires that [BPC] provide copies of the entire chart not just portions thereof prior to a hearing." It rejected BPC's argument that MHLS lacked standing.

The Appellate Division, First Department affirmed on a 3-2 vote, agreeing with the trial court that, "when read together, these statutory duty and regulatory provisions impose upon BPC a compulsory duty to provide MHLS with a copy of its clients' complete medical charts" before their retention hearings are held. "Ultimately, as a matter of due process..., the detriment that these patients may experience in not having copies of their charts available at their hearings is of a plainly higher and more compelling nature than the detriment to the hospital in having to undertake additional photocopying responsibilities...." While MHLS has the right to review and copy its clients' charts at their hospitals, the majority said, "It is abundantly clear that the medical charts ... are a fluid set of documents that the medical staff ... are constantly updating during the continuing constant treatment and care of the patient. Thus, MHLS attorneys' right to access the charts, 'at any given time,' would not assure the attorney that he or she was looking at the very same documents BPC relies on at the retention hearing." It also ruled MHLS had organizational standing to bring the proceeding.

The dissenters said, "Pursuant to Mental Hygiene Law § 47.03(d), MHLS is entitled to access to patient charts 'at any and all times,' and MHLS -- which has offices at BPC -- admits that it has always had such around-the-clock access to patient charts, as well as the ability to make copies.... Thus, the majority's concern that not requiring BPC to copy patient charts for MHLS might somehow deprive patients of 'due process' ... is unfounded.... [T]he majority simply cannot point to any provision of either the Mental Hygiene Law or of the regulations issued thereunder that provides authority for construing section 9.31(b) to require BPC to provide MHLS, at BPC's expense, with a physical paper copy of a patient's entire medical chart in advance of a retention hearing.... BPC honors the right of MHLS ... to inspect the chart of any patient it represents whenever it wants, and to copy as much of that chart as it sees fit. However, there is simply no provision of law that authorizes this court to shift from MHLS to BPC the expense of copying an entire patient chart for MHLS's benefit."

For appellant Daniels (BPC): Assistant Solicitor General Matthew W. Grieco (212) 416-8014
For respondent MHLS: Sadie Zea Ishee, Manhattan (646) 386-5891

# State of New York
# Court of Appeals



To be argued Tuesday, January 8, 2019

**No. 3 Matter of James Q.** *(papers sealed)*

James Q. was charged with statutory rape, weapon possession, and related crimes for assaulting his underage girlfriend in Suffolk County in 2010. He entered a plea of not responsible by reason of mental disease or defect and was committed to the custody of the Office for People with Developmental Disabilities (OPWDD) at the Sunmount Developmental Center, a secure facility in Franklin County. He remained confined under a series of retention orders issued pursuant to Criminal Procedure Law (CPL) 330.20, based on findings that he continued to suffer from a dangerous mental disorder. After OPWDD applied for a fifth retention order in 2015, the parties agreed to an 18-month retention order without a hearing.

James Q. moved to seal the entire record of the proceeding under Mental Hygiene Law § 33.13. Section 33.13(a) provides that a patient's clinical record "shall contain information on all matters relating to the admission, legal status, care, and treatment of the patient or client and shall include all pertinent documents relating to the patient or client;" and section 33.13(c) provides, "Such information about patients or clients reported to the [Office of Mental Health or OPWDD (the offices)], including the identification of patients or clients, 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...."

Supreme Court sealed the report of a psychologist who evaluated James Q. for the proceeding, but refused to seal OPWDD's retention petition, the psychologist's sworn affidavit, or the retention order.

In a 3-2 decision, the Appellate Division, Third Department modified by ordering redaction of any information about James Q.'s diagnoses and treatment, and otherwise affirmed. It said, "The distinction between an insanity acquittee, as we have here, and an involuntarily committed civil patient is apparent by the Legislature's enactment of a separate statutory scheme -- CPL 330.20 -- to address the commitment and retention procedures for persons found not responsible for their crimes by reason of mental disease or defect. The detailed statutory framework of CPL 330.20 does not include a provision that requires, or even contemplates, the sealing of these commitment and retention proceedings.... By its own language, the prohibition contained in Mental Hygiene Law § 33.13(c) applies solely to the Office of Mental Health, OPWDD" and their facilities. It is a confidentiality provision, not a sealing provision...." As a matter of policy, it said, "The victim of [James Q.'s] crimes, as well as the public at large, have a right to know how [he] is being civilly managed pursuant to CPL 330.20."

The dissenters, noting that CPL 330.20(17) "affords [James Q.] 'the rights granted to patients under the [M]ental [H]ygiene [L]aw,'" said documents filed in the retention proceeding must be sealed because they "formed part of his clinical record within the meaning of Mental Hygiene Law § 33.13.... [I]t is difficult to perceive how they do not, for each document directly pertains to [James Q.'s] legal status. Moreover, the subject documents are protected from being made public pursuant to Mental Hygiene Law § 33.13(c), not only due to their classification as clinical records, but also because they all identify [James Q.] by name..., identify [his] status as a resident at an OPWDD secure facility, and ... disclose clinical information," including the psychologist's opinion that he "suffers from a 'dangerous mental disorder'...."

For appellant James Q.: Brent R. Stack, Albany (518) 451-8710
For respondent: Suffolk County Assistant District Attorney Guy Arcidiacono (631) 852-2500