

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 21-00625

PRESENT: LINDLEY, J.P., NEMOYER, CURRAN, WINSLOW, AND BANNISTER, JJ.

IN THE MATTER OF THE APPLICATION OF M.B.,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

SUICIDE PREVENTION AND CRISIS SERVICES, INC.,
ET AL., RESPONDENTS,
AND NEW YORK STATE OFFICE OF MENTAL HEALTH,
RESPONDENT-APPELLANT.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (ALLYSON B. LEVINE OF
COUNSEL), FOR RESPONDENT-APPELLANT.

THE TARANTINO LAW FIRM, LLP, BUFFALO (ANN M. CAMPBELL OF COUNSEL), FOR
PETITIONER-RESPONDENT.

Appeal from a supplemental order of the Supreme Court, Erie
County (Catherine R. Nugent Panepinto, J.), entered January 7, 2021.
The supplemental order, insofar as appealed from, granted the petition
to seal records from respondent New York State Office of Mental
Health, with certain limitations.

It is hereby ORDERED that the supplemental order insofar as
appealed from is unanimously reversed on the law without costs and the
petition against respondent New York State Office of Mental Health is
dismissed in its entirety.

Memorandum: Petitioner, who has been committed to psychiatric
facilities on multiple occasions for paranoid schizophrenia and
bipolar disorder with psychotic features, commenced this proceeding to
seal his psychiatric records under Mental Hygiene Law § 33.14 (a) (1)
(b). To prevail in such a proceeding, the petitioner is obligated,
among other things, to prove "by competent medical evidence that he
[or she] is not currently suffering from a mental illness" and that
"the interests of . . . society would best be served by sealing [his
or her] records" (*id.*). Supreme Court granted the petition in
relevant part and directed respondent-appellant (State) to, inter
alia, seal petitioner's psychiatric records. The State appeals, and
we now reverse.

As the State correctly contends, petitioner failed to establish
either the mental illness prong or the societal interests prong of
Mental Hygiene Law § 33.14 (a) (1) (b). The psychiatrist's
affirmation upon which petitioner relies to establish the mental

illness prong is entitled to no weight because the psychiatrist failed to review petitioner's psychiatric records and offered a conclusion that was entirely at odds with petitioner's longstanding and well-documented history of severe, incapacitating mental illness. Indeed, the psychiatrist simply accepted at face value petitioner's self-serving and counterfactual claim that he never actually suffered from any mental illness and that all of his diagnoses and hospitalizations were his mother's fault. Moreover, petitioner is seeking to seal his psychiatric records in order to join the military or become a police officer—callings that offer advanced weapons training and the privilege of using lethal force in defense of civil society. The interests of society are not "best" served by removing a barrier to petitioner's ability to join the military or police (*id.*). Indeed, it would be inimical to society's best interests to facilitate the induction of petitioner into the security services of the United States (see e.g. *People v Westchester County S.P.C.C.*, 173 AD2d 687, 688 [2d Dept 1991], *lv dismissed* 78 NY2d 1041 [1991], *lv dismissed* 79 NY2d 819 [1991], *rearg denied* 79 NY2d 914 [1992]).

We have considered and rejected petitioner's jurisdictional challenges to our power to entertain this appeal.

Entered: June 3, 2022

Ann Dillon Flynn
Clerk of the Court