

Sugar v Wheeler

2007 NY Slip Op 31755(U)

June 7, 2007

Supreme Court, Albany County

Docket Number: 0032112/0071

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

JANET SUGAR,

Petitioner,

DECISION and ORDER

RJI NO.: 0107089126

INDEX NO.: 3211-07

-against-

JANET WHEELER, DIRECTOR, HUDSON
VALLEY DEVELOPMENTAL DISABILITIES
SERVICES OFFICES, a facility of the NEW
YORK STATE OFFICE OF MENTAL
RETARDATION AND DEVELOPMENTAL
DISABILITIES,

Respondent.

Albany County Supreme County All Purpose Term, May 16, 2007
Assigned to Justice Joseph C. Teresi

APPEARANCES:

William P. Seamon, Esq.
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Bruce S. Dix, Esq.
Director and Attorney for the
Mental Hygiene Legal service
Third Judicial Department
Sheila E. She, Esq., of counsel
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TERESI, J.:

Petitioner brings this motion for an Order pursuant to Mental Hygiene Law § 33.13(c)(1) directing Respondents to appear before Steven J. Goldsmith, Esq., American Arbitration

Association Arbitrator and to bring with them for delivery to the arbitrator clinical records maintained by the Hudson Valley Developmental Disabilities Services Office and the New York State Office of Mental Retardation and Developmental Disabilities, for a patient, or former patient, referred to as K.K. in the September 19, 2005 disciplinary charges as well as clinical records of any other patients or former patients who will be called to give testimony against Petitioner, so that the arbitrator can inspect the records in camera for the purpose of redacting and making available the redacted records to petitioner's advocate. Respondents oppose the motion.

After fully reviewing the record, this Court grants Petitioner's motion.

By Notice of Discipline dated September 19, 2005, Ms. Sugar, a psychologist at the Hudson Valley Developmental Disabilities Services Center, was charged with the failure to immediately report a sexual abuse allegation pursuant to Article 33 of the collective bargaining agreement between the State of New York and the Public Employees Federation. Petitioner contends that access to K.K.'s clinical records is necessary to her defense against the disciplinary charges in that the records are necessary to: (1) assess K.K.'s reliability and credibility; (2) assess K.K.'s propensity for making false allegations or accusations; (3) demonstrate if K.K. has previously made any other similar allegations; (4) demonstrate what notes, if any, were taken regarding the alleged incident in the NOD; (5) demonstrate if a report was taken by the DDSO and what the initial report states; and (6) ascertain the existence, nature and severity of injuries, if any, suffered by K.K. due to the incident.

Petitioner further contends that Mental Hygiene Law § 33.13(c)(1) specifically allows for patient confidentiality to yield to an employee's rights during a disciplinary proceeding where a patient's records are relevant to the defense (*See also, Office of Mental Retardation v. Mastracci*,

77 AD2d 473 [4th Dept 1980]; *Matter of Camacho v. Iafrate*, 55 AD2d 799 [2d Dept 1978]).

Respondents contend that the records are irrelevant to the defense because Ms. Sugar was obligated to report all allegations of sexual abuse, regardless of context or a patient history of false or even retributory allegations pursuant to 14 NYCRR § 624.4(c). While the lack of discretion allotted to Ms. Sugar in the regulations is certainly a factor in her disciplinary proceeding, it is unlikely to be the sole factor considered by the Arbitrator. The circumstances of the complaint and the reasonableness of Ms. Sugar's judgment as a psychologist dealing with a patient with a certain clinical history are quite relevant to the disciplinary consequences of Ms. Sugar's alleged failure to immediately report an allegation of sexual abuse. In particular, some of the contents of K.K.'s records which were prepared by Ms. Sugar may tend to establish the nature and timing of the measures Ms. Sugar took to report the allegation and protect the patient.

Accordingly, this Court grants Petitioner's motion and directs Respondents to appear before Steven J. Goldsmith, Esq., American Arbitration Association Arbitrator and to bring with them for delivery to the arbitrator clinical records maintained by the Hudson Valley Developmental Disabilities Services Office and the New York State Office of Mental Retardation and Developmental Disabilities, for a patient, or former patient, referred to as K.K. in the September 19, 2005 disciplinary charges as well as clinical records of any other patients or former patients who will be called to give testimony against Petitioner, so that the arbitrator can inspect the records in camera for the purpose of redacting and making available the redacted records to petitioner's advocate.

All papers, including this Decision and Order, are being returned to the attorney for the Petitioner. The signing of this Decision and Order shall not constitute entry or filing under

CPLR § 2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

SO ORDERED!

Dated: June 7 2007
Albany, New York



JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Petitioner's Notice of Motion, dated April 25, 2007.
2. Petitioner's Affirmation, dated April 25, 2007 with Attached Exhibit A.
3. Respondents' Opposition, dated May 15, 2007 with Attached Exhibit A.
4. Petitioner's Reply, dated May 16, 2007.