

Sebast v Loyola Recovery Found.

2014 NY Slip Op 33932(U)

March 7, 2014

Supreme Court, Albany County

Docket Number: 2072-2013

Judge: Michael C. Lynch

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

SHERREE SEBAST, RUTH PINTUS, and
RONALD PINTUS

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Plaintiff,

-against-

DECISION
AND
ORDER

LOYOLA RECOVERY FOUNDATION

Defendants.

Supreme Court, Albany County
Index No. 2072-2013
RJI No. 01-13-111733

(Justice Michael C. Lynch, Presiding)

APPEARANCES:

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Burke, Scolamiero, Mortati & Hurd LLP
Attorneys for Defendant
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LYNCH, J

Plaintiffs commenced this action for negligence and negligent infliction of emotional distress against defendant, an entity that provides drug and alcohol treatment services on behalf of the United States Department of Veterans Affairs (hereinafter, Veterans Administration) rehabilitation facility. Plaintiffs served discovery demands on or about October 2, 2013. Now, defendant seeks a protective Order pursuant to CPLR 3103.

By their complaint, the plaintiffs allege defendant failed to notify them that a certain

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individual who was in its custody had died. By their discovery demands, the plaintiffs seek, inter alia, a “complete copy” of records kept or pertaining to the individual and any records documenting defendant’s attempts to provide notification of the individual’s death (Siegel Affirmation, Exhibit B).

Records kept by a federally-assisted facility that provides drug and alcohol abuse prevention and treatment are confidential and may not be disclosed unless “expressly authorized” (42 CFR 2.1 (a); 42 CFR 2.2 (a)). This prohibition extends to records “of the identity, diagnosis, prognosis, or treatment” of any patient (Id.). This Court may authorize disclosure in limited circumstances with certain conditions (42 CFR 2.1 (a)[2](C); 42 CFR 2.2(a)[2](C)). As it is undisputed that defendant is a facility that is subject to these regulations, the Court finds that it has demonstrated that it is entitled to a protective order pursuant to CPLR 3103. As defendant argues, the regulations prohibit them from disclosing or otherwise confirming that the individual at issue was even a patient (42 CFR 2.13).

In response to defendant’s motion, plaintiffs cross-move for an Order compelling disclosure of the requested records. Counsel contends that “[g]ood cause exists for disclosure as the discovery sought..is necessary to properly prosecute the matter” (Schockmel ¶ 6). Further, plaintiffs argue that since the individual is deceased, “disclosure would not be detrimental to the physician-patient relationship nor to treatment services” (Id., ¶ 7). In response to the cross-motion, defendant argues that it can not be compelled to disclose records, as an Order pursuant to 42 CFR Subpart E “is a unique kind of court order” intended only to “authorize disclosure” that “would otherwise be prohibited” by statute and regulation but that “does not compel disclosure” (42 CFR 2.61(2)).

While the confidentiality restrictions are applicable even where a patient is deceased, the parties do not discuss whether plaintiffs may consent to disclosure on behalf of the individual who is deceased (see 42 CFR 2.15; 42 CFR 2.33). Here, prior to issuing a Court Order authorizing disclosure, this Court must determine whether “good cause” exists for disclosure (42 CFR 2.64(d)[2]).

“Good cause” for disclosure may exist if “(1) [o]ther ways of obtaining the information are not available or would not be effective; and (2) [t]he public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services” (Id.). Here, plaintiffs do not identify any public interest favoring disclosure. While, “in general there is a broad public interest in assuring the availability of all material and competent evidence for the proper resolution of litigated matters”, such general interest does not “weigh heavily” in the analysis (Commissioner of Social Services v. David S., 55 NY2d 588, 594-595 [1982]). For its part, defendant does not argue that the requested information is available through other means. It does contend that the requested patient records may include a psycho-social evaluation, which would be “highly sensitive” (Siegel Opposition, ¶10). Based on the record presented, this Court agrees that such information would not be relevant to this action. In contrast, plaintiffs’ request for records with regard to whether the individual was being treated at the time of his death and; if he was being treated, records related to the notification(s) provided following his death may be relevant to the action.

Based on the foregoing, the Court finds that while defendant may be entitled to a limited protective order, the record demonstrates that there is “good cause” for an Order authorizing disclosure of certain information. **Counsel are directed to appear at a conference before**

this Court on March 21, 2014 at 10:00 a.m. to discuss the content of the Order based on the foregoing. Counsel may agree to submit a proposed Order in advance, but the conference will continue for the purpose of developing a schedule for resolution of this case.

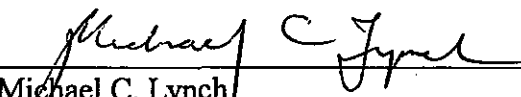
Accordingly, based on the foregoing, it is

ORDERED AND ADJUDGED that the defendant's motion is granted, in part; and it is further

ORDERED AND ADJUDGED that the plaintiffs' cross-motion to compel disclosure is denied.

This Memorandum constitutes the Decision and Order of the Court. This original Decision and Order is being returned to counsel for defendant. The below referenced original papers are being filed with the Albany County Clerk. **The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the provision of that rule regarding filing, entry, or notice of entry.**

DATED: March 7, 2014
Albany, New York



Michael C. Lynch
Justice of the Supreme Court

Papers Considered:

1. Notice of Motion for Protective Order dated October 11, 2013, with Affidavit in Support (Sharon Siegel, Esq.), Exhibits thereto;
2. Notice of Cross Motion dated October 25, 2013 with Affirmation in Support (Keith F. Schockmel, Esq.);
3. Affidavit in Opposition sworn October 31, 2013 (Sharon Siegel, Esq.).

