

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TRACY GRANT, Individually and as	:	
Administratrix of the Estate of Randall Pagano	:	
	:	
Plaintiff,	:	Civil Action
	:	
v.	:	No.: 010-CV-02204-ER
	:	
Bristol Township Police Officer	:	
Tiffany Winik, et al.	:	Jury Trial Demanded
	:	Filed Electronically
Defendants.	:	

ORDER

It is hereby ORDERED and DECREED that plaintiff's response to defendant Michael Baier's motion to compel plaintiff Tracy Grant to sign a HIPAA release is DENIED.

It is further ORDERED and DECREED that defendant Michael Baier's motion to compel non-parties to produce certain medical or treatment records of decedent Randall Pagano is DENIED.

J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TRACY GRANT, Individually and as	:	
Administratrix of the Estate of Randall Pagano	:	
	:	
Plaintiff,	:	Civil Action
	:	
v.	:	No.: 010-CV-02204-ER
	:	
Bristol Township Police Officer	:	
Tiffany Winik, et al.	:	Jury Trial Demanded
	:	Filed Electronically
Defendants.	:	

**PLAINTIFF’S RESPONSE TO DEFENDANT MICHAEL BAIER’S MOTION
TO COMPEL PLAINTIFF TRACY GRANT TO SIGN A HIPAA RELEASE
AND DEFENDANT MICHAEL BAIER’S MOTION TO COMPEL NON-
PARTIES TO PRODUCE CERTAIN MEDICAL OR TREATMENT
RECORDS OF DECEDENT RANDALL PAGANO**

Defendant Baier has filed two motions seeking disclosure of decedent’s confidential medical records. In response, Plaintiff avers the following in support of Plaintiff’s position that moving defendant is not entitled to the records he seeks, with one exception. Plaintiff has no objection to the disclosure of records from Lower Bucks Hospital.

Provisions of the Public Health Service Act 42 U.S.C. § 201, *et seq.* address access to the records of alcohol or drug abuse patients. These provisions, as well as the implementing regulations, 42 C.F.R. Part 2, are designed to protect the

confidentiality of medical records of patients who seek treatment for substance abuse. The confidentiality requirements are very strict, and disclosure of sensitive medical information is expressly prohibited, except in limited circumstances.

Disclosure without consent is only permitted in the following limited circumstances:

- Medical emergencies (42 C.F.R. § 2.51);
- Communications within a program or between a program and an entity having direct administrative control over that program (42 C.F.R. § 212(c)(3));
- Disclosures to a qualified service organization (42 C.F.R. § 2.12(c)(4));
- Crimes on program premises or against program personnel (42 C.F.R. § 2.12(c)(5));
- Reports of suspected child abuse and neglect (42 C.F.R. § 2.12(c)(6)); and ,
- Certain research and audit/evaluation activities (42 C.F.R. §§ 2.52 and 2.53). The records also may be disclosed for “good cause,” such as “the need to avert a substantial risk of death or serious bodily harm,” pursuant to a court order. (42 C.F.R. § 290dd-2).

A violation of the Public Health Service Act’s confidentiality protections concerning drug and alcohol abuse patient’s records is punishable by a fine of not more than \$500 for the first offense and not more than \$5,000 for each subsequent offense. 42 C.F.R. § 2.4

Also, according to 42 C.F.R. § 2.13:

(a) General. The patient records to which these regulations apply may be disclosed or used only as permitted by these regulations, and may not otherwise be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, State, or local authority.

(b) Unconditional compliance required. The restrictions or disclosure and use in these regulations apply whether the holder of the information believes that the person seeking the information already has it, has other means of obtaining it, is a law enforcement or other official, has obtained a subpoena, or asserts other justification for a disclosure or use which is not permitted by these regulations.

The more restrictive federal regulations, regarding an alcohol and/or drug abuse patient's permanently confidential treatment record, take precedence over the federal rules of civil procedure.

In addition, 42 C.F.R. § 2.63 mandates as follows:

(a) A court order under these regulations may authorize disclosure of confidential communications made by a patient to a program in the course of diagnosis, treatment, or referral for treatment only if:

(1) The disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties;

(2) The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime, such as one which directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse or neglect; or

(3) The disclosure is in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.

Here, only subpart (3) would apply. In the case at bar, plaintiff is not offering testimony or other evidence pertaining to the content of confidential communications between decedent and his therapists. The fact that the plaintiff, Tracy Grant, who is decedent's mother, testified at her deposition that she did not believe her son was using drugs at the time of the subject incident is immaterial. Decedent's mother has not testified about the content of her son's records or about her son's communications with his drug rehabilitation therapists at any of the facilities from which moving defendant is seeking records.

In addition, none of the cases cited by moving defendant are factually similar to the case at bar. Here, the decedent's drug rehabilitation records are sought after his death from facilities who have already voiced their opposition to production of said records.

For the reasons aforesaid, defendant's motions should be denied.

Respectfully submitted,

Kreithen, Baron & Carpey, P.C.

By: 

Stuart A. Carpey, Esquire

Attorney I.D. No.: 49490

100 W. Elm Street, Suite 310

Conshohocken, PA 19428

(610) 834-6030


(610) 834-6035 (fax)

scarpey@carpeylaw.com

Counsel for Plaintiff, Tracy Grant

CERTIFICATE OF SERVICE

I Stuart A. Carpey, Esquire, Co-Counsel for Plaintiff Tracy Grant, certify that a copy of the foregoing pleading was sent to all counsel of record via electronic filing system for the United States District Court for the Eastern District of Pennsylvania.



Stuart A. Carpey, Esquire

Date: 05/13/11