

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Derrick Phipps, et al.,)	
)	
Plaintiff,)	07 C 3889
)	
vs.)	Honorable Judge
)	Elaine Bucklo
Sheriff of Cook County and Cook County,)	
)	Magistrate Judge Cole
Defendants.)	

DEFENDANTS’ MOTION TO STRIKE PLAINTIFF’S HIPAA FORMS

NOW COMES Defendant COOK COUNTY, by its attorney RICHARD A. DEVINE, State's Attorney of Cook County, through his assistant, JAMIE M. SHEEHAN, and moves this Honorable Court to strike all HIPAA forms submitted by plaintiff by defendant. In support thereof, Defendant states as follows:

INTRODUCTION

On September 11, 2008, this Court held a discovery status. Counsels for the plaintiffs, Messrs. Flaxman and Morrissey were both present, as were the undersigned counsel for the County and Ms. McClellan, counsel for the Sheriff. The topic was the waivers tendered by the plaintiff’s pursuant to HIPPA relative to the identification of possible class members. During our conversation the Court agreed with counsel for the County that the releases tendered should comply with the following; First, that all forms be obtained only from individuals whom, after answering a few qualifying questions posed by Messrs. Flaxman and Morrissey, appeared likely to be disabled within the meaning of the ADA and fit the class as defined by plaintiff’s in the motion for class certification. Second, that only the Cermak authorization form be used. Third, that the

form be signed by the proposed plaintiff f. And fourth that it be executed solely for the purpose of obtaining the individuals medical records relative to this litigation. To date, none of the thirty-four forms submitted by Messrs. Flaxman and Morrissey meet these criteria. Thus, defendant moves that they be stricken and that counsel for the plaintiff be made to obtain newly executed forms which are compliant, and that they not be allowed to merely redact forms the forms they already possess as this would be barred by law because they would be material alterations made to the form subsequent to the individual having signed them.

ARGUMENT

A. THE FORMS AS EXECUTED SEEK DOCUMENTS NOT RELEVANT TO THE CASE AT BAR

Several of the forms provided have been marked in such a way that they order the County to provide not only the individual's medical records, but his HIV/AIDS status information, as well as his mental health records. Given that plaintiff's counsel has defined the class in this case to include individuals who were confined to wheelchairs due to an ADA qualified disability, an individual's HIV/AIDS status is irrelevant, as is an individual's psychiatric records.

Counsel for the County telephoned Mr. Morrissey and raised this issue with him. His "cure" was to suggest that I redact the forms, blackening out the portions requesting HIV/AIDS information and psychiatric records, prior to submitting them to my client. I explained that to do so would be illegal because I would be making material alterations to the forms, outside the presence of the signatory and without their permission. I requested that Messrs. Flaxman and Morrissey obtain corrected forms from their clients, however, he declined to do so.

Therefore, defendant Cook County requests that the Court direct that these forms be stricken and that new forms which request only the individual's medical records be provided.

B. THE FORMS AS EXECUTED ARE FOR A PERIOD OF TIME IN EXCESS OF THAT NEEDED FOR THIS PARTICULAR LITIGATION

Once the County is in receipt of a signed HIPAA waiver, those files are pulled within thirty days. Admittedly, however, it does take a longer period of time to photocopy said documents, but that is in no way relevant to the date of validity wherein that date is relevant only to the time frame in which the documents must be procured.

Several of the forms submitted by Messrs. Flaxman and Morrissey have validity dates that expire on December 31, 2009 and some go as far out as December 31, 2010, more than two years from now. This can only mean that counsels expect to hold on to these forms and have them at their disposal for future litigation against the County. Defendant Cook County therefore requests that these forms be stricken and that new forms be executed by these individuals where redaction is not an option under the law.

C. THE ONLY ACCEPTABLE FORM TO BE USED, PER THE COURT'S DIRECTIVE, IS THE CERMAK HEALTH SERVICES FORM

Despite the Court agreeing with counsel for the County that one uniform type of waiver be used, specifically the Cermak Health Services form, Messrs. Flaxman and Morrissey have nevertheless sent forms supplied by Record Copy Service which is not even a HIPAA waiver, but is a form granting permission to photocopy certain documents, and must always be used in conjunction with a properly executed HIPAA form. Therefore, defendant Cook County asks that any forms of this nature be stricken and that a properly executed Cermak HIPAA form be tendered in its place.

CONCLUSION

To date , of the thirty-four HIPPA forms submitted by Messrs. Flaxman and Morrissey, eight seek both AIDS/HIV medical information and psychiatric records in addition to the relevant medical records, while another four seek psychiatric records in addition to the relevant medical records.

Of the thirty-four forms submitted, twenty-three have validity dates of December 31, 2009 and an additional nine have dates of December 31, 2010.

Of the thirty-four forms submitted, two are forms provided by Record Copy Services and are not Cermak Health Services forms.

WHEREFORE YOUR DEFENDANT PRAYS:

That the forms submitted by Messrs. Flaxman and Morrissey be stricken and that plaintiff's counsel be directed to obtain newly executed forms which comply as to type of form used, validity date, and scope of authorization be submitted in their place.

Respectfully Submitted,

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