

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. RICHARD F. BRAUN

PRESENT: _____ **J.S.C.**
Justice

PART 23

BRAD H., et al

INDEX NO. 117882/99

MOTION DATE March 18, 2004

- v -

MOTION SEQ. NO. 16

CITY OF New York, et al.

MOTION CAL. NO. _____

The following papers, numbered 1 to 4 were read on this motion to for counsel defendants
to produce documents to the Compliance Monitor

PAPERS NUMBERED

1, 2

3

3, 4

~~Notice of Motion/~~ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Plaintiffs should give official costs in all cities.

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is settled and withdrawn
in part by stipulations of this date, 3/22/04
It is further ORDERED that the balance of
the motion is denied.

This constitutes the decision and order of the
Court. See separate Opinion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

ENTER

Dated: New York, New York March 19, 2004



J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JOHN RICHARD F. BRAUN
J.S.C.
Justice

PART 23

0117882/1999

H., BRAD, et al
VS
CITY OF NEW YORK, et al.

SEQ 017

INDEX NO. _____
MOTION DATE ^{seq. No} 017
MOTION SEQ. NO. ^{Date} 3/18/04
MOTION CAL. NO. _____

This motion is for Compel/Dependents

to disclose documents and information to the counsel

Amended Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1, 1A, 1B, 2, 3
4A
5A

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is settled and withdrawn
in part, by stipulation of the date, 3/18/04
It is further
ORDERED that the motion is denied.
This constitutes the decision and order
of this Court. See separate Opinion.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: New York, New York, March 18, 2004 ENTER [Signature]

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION J.S.C.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 23**

-----X
BRAD H., ROBERT K., MICHAEL R., SUSAN T.,
and KEVIN W., on behalf of themselves and all
others similarly situated,

Index No. 117882/99

Plaintiffs,

OPINION

-against-

THE CITY OF NEW YORK; HON. MICHAEL R.
BLOOMBERG, Mayor of the City of New York; the
NEW YORK CITY HEALTH AND HOSPITALS
CORP.; DR. BENJAMIN CHU, M.D., President of
the New York City Health and Hospitals Corp.; the
NEW YORK CITY DEPARTMENT OF HEALTH
AND MENTAL HYGIENE; DR. THOMAS R.
FRIEDEN, M.D., Commissioner of the New York
City Department of Health and Mental Hygiene; the
NEW YORK CITY DEPARTMENT OF
CORRECTION; MARTIN F. HORN, Commissioner
of the New York City Department of Correction; the
NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION; VERA EGGLESTON,
Commissioner of the New York City Human
Resources Administration; PRISON HEALTH
SERVICES, INC.; and GERALD F. BOYLE, chief
Executive and President of Prison Health Services,
Inc.,

Defendants.

-----X
RICHARD F. BRAUN, J.:

This is a class action. Plaintiffs moved for an order requiring defendants to produce to the compliance monitors, who were appointed by this court, copies of the medical, mental health, and discharge planning records of "Mr. A", and any other such records of individual class members requested by the compliance monitors in the future. Plaintiffs then moved separately for an order

to compel defendants to disclose to class counsel the documents and information covered by paragraph 154 (b) of the stipulation of settlement, dated January 8, 2003. The motions were settled in part by stipulations, dated October 21 and 27, 2003, and dated January 22, 2003 [*sic*] and so ordered on January 22, 2004.

In the latter stipulation, the parties agreed that the only issues remaining for decision are (1) whether the compliance monitors may obtain photocopies of compliance documents concerning plaintiffs, with individually identifying information, which “may be covered by the Substance Abuse Confidentiality Law”; (2) whether the compliance monitors may review and photocopy compliance documents as to plaintiffs, which “are covered by the New York State HIV/AIDS Confidentiality Law”, and (3) whether plaintiffs’ counsel may review and obtain photocopies of compliance documents regarding plaintiffs, with individually identifying information, which “may be covered by the Substance Abuse Confidentiality Law or the New York State HIV/AIDS Confidentiality Law and/or MHL § 33.13.”

Defendants were ordered by the amended final order and judgment, which incorporated the stipulation of settlement by reference, to disclose certain information to the compliance monitors and plaintiffs’ counsel. A motion for an order to compel what an order and judgment already provides is superfluous. It is defendants who should have moved pursuant to paragraph 158 of the stipulation of settlement to bar the disclosure of certain information as confidential. Therefore, because the motions were unnecessary, they have been denied by this court’s March 19, 2003 decision and order. Plaintiff’s could have pursued any other appropriate remedy.

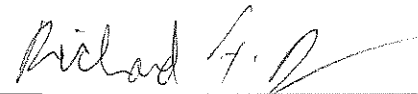
It was agreed by the October 27, 2003 stipulation that the compliance monitors could review substance abuse information regarding plaintiffs. However, neither the compliance monitors nor

plaintiffs' counsel fall under 42 CFR 2.53 (a) (1). Thus, neither has the right to obtain photocopies of any such information (*see* 42 CFR 2.53 [b]).

Public Health Law § 2782 (1) makes confidential HIV related information (*Brad H. v City of New York*, 188 Misc 2d 470, 473 [Sup Ct, NY County 2001]). Neither the compliance monitors nor class counsel fall under the exceptions thereunder to permit disclosure to them of such confidential information.

It has been agreed between the parties in paragraph 154 (b) of the stipulation of settlement that class counsel have the right to access all documents and information which is provided to the compliance monitors under the stipulation. Otherwise, class counsel do not have a right to review or obtain copies of documents, except within litigation disclosure procedures as plaintiffs' attorneys (*see e.g. Brad H. v City of New York*, 188 Misc 2d 470, *supra*). The parties have expressly stipulated in their October 21 and 29, 2003 stipulations that Mental Hygiene Law § 33.13 applies to certain mental health records regarding plaintiffs. If it does, the interest of justice outweighs the need for confidentiality of plaintiffs' mental health records, pursuant to Mental Hygiene Law § 33.13 (c) (1) (*see Brad H. v City of New York*, 188 Misc 2d at 472; *Matter of City of New York v Bleuler Psychotherapy Ctr.*, 181 Misc 2d 994, 997-998 [Sup Ct, NY County 1999]). Therefore, class counsel's right to obtain documents requested is limited to the right afforded them by paragraph 154 (b) of the stipulation of settlement.

Dated: New York, New York
March 22, 2004



RICHARD F. BRAUN, J.S.C.