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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JERRY VALDIVIA, ALFRED YANCY,  
and HOSSIE WELCH, on their own  
behalf and on behalf of the class  
of all persons similarly situated,

NO. CIV. S-94-671 LKK/GGH

Plaintiffs,

v.

O R D E R

ARNOLD SCHWARZENEGGER, Governor of  
the State of California, et al.,

Defendants.

\_\_\_\_\_ /

This matter is before the court on a joint stipulation  
submitting a disputed issue concerning the scope of the  
stipulated judgment in the above-captioned matter. On April 14,  
2005, the parties appeared before Magistrate Judge Moulds for a  
settlement conference. The parties resolved all but one  
disputed issue at that conference. The parties agreed to submit  
the remaining disputed issue for decision by this court without  
oral argument.

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1           The remaining disputed issue concerns whether parolees'  
2 counsels' access to certain mental health records should be  
3 subject to conditions of non-disclosure to the parolee under the  
4 California Patient Access to Health Records Act ("PAHRA"), Cal.  
5 Health & Safety Code §§ 123100-123149.<sup>1</sup>

6           Upon consideration of the parties' papers, the court  
7 concludes that the parolees' due process rights override any  
8 condition of non-disclosure called for under the PAHRA. For  
9 that reason, I conclude that parolees' counsel should receive  
10 access to information in their client's field file without any  
11 limitation on whether they can discuss the information with  
12 their clients.

13           The defendants' position is that PAHRA controls.<sup>2</sup> Under  
14 the approach suggested by the defendants, parolees' counsel  
15 could view the mental health records, but would be bound by a  
16 protective order to not discuss the records with the parolee if  
17 a mental health clinician had determined that under that section  
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19           <sup>1</sup> Section 123115 (b) provides that "when a health care  
20 provider determines there is a substantial risk of significant  
21 adverse or detrimental consequences to a patient in seeing or  
22 receiving a copy of mental health records requested by the patient,  
the provider may decline to permit inspection or provide copies of  
the records to the patient." Cal. Health & Safety Code § 123115(b).

23           <sup>2</sup> Given that this case arose under 42 U.S.C. § 1983, it is  
24 clear that the applicable privilege law is federal rather than  
25 state. See Fed. R. Evid. 501. Under California law, the privilege  
26 established in Cal. Health & Safety Code § 123115(b) is recognized  
to be subject to due process considerations arising under the  
federal Constitution, however, there is no need for this court to  
make an independent judgment, and instead I will adopt the  
California court's analysis of the issue tendered by the parties.

1 "there is a substantial risk of significant adverse or  
2 detrimental consequences," to the parolee. Cal. Health & Safety  
3 Code § 123115(b). As plaintiffs argue, however, it is  
4 established under California law that any privilege  
5 circumscribing information conveyed to parolees in connection  
6 with a revocation hearing may only be exercised within the  
7 parameters of due process. In re Olsen, 37 Cal.App.3d 783, 790  
8 (1974). Defendants argue that Olsen is distinguishable because  
9 it did not involve psychiatric information that could be  
10 detrimental to a parolee. The argument is unavailing.

11 Due process mandates full disclosure except in the narrow  
12 set of circumstances delineated in Olsen. Specifically, records  
13 may be withheld only if "the security of the institution will be  
14 jeopardized or an informant will be exposed to an undue risk of  
15 harm by the disclosure of a particular document." Olsen, 37  
16 Cal.App.3d at 790. Section 123115(b) of PAHRA does not fall  
17 within the narrow exception to disclosure recognized by the  
18 California Court of Appeal. Releasing mental health records  
19 does not pose a direct security threat to an institution or to  
20 an informant. Thus, defendants may not rely on Section  
21 123115(b) as grounds to restrict counsels' ability to discuss  
22 sensitive mental health records with their clients.<sup>3</sup>

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23  
24 <sup>3</sup> Moreover, the revised memo, which outlines the defendants'  
25 proposed policy on reviewing and releasing confidential  
26 information, see Exhibit 2, as well as the defendants' amended  
protective order on this issue, see Exhibit 4, do not comport with  
the defendants' policies and procedures submitted by defendant  
pursuant to the permanent injunction.

1 The court recognizes defendants' concerns about the  
2 potential harm associated with sharing sensitive material with  
3 parolees. The court, however, assumes that the parolees'  
4 lawyers will use discretion in discussing such sensitive  
5 material with their clients.<sup>4</sup>

6 Based on the court's review of the joint stipulation and  
7 the attached papers and exhibits, the court orders that  
8 parolees' counsel shall receive access to information in their  
9 client's parole field files without any limitations or  
10 restrictions on disclosing the information to the parolee based  
11 on perceived risk of harm to the parolee's mental health under  
12 Cal. Health & Safety Code § 123115(b). Defendants, in  
13 delivering such material, may note its sensitive character and  
14 urge counsel to use discretion in determining whether to discuss  
15 its contents with a client.

16 IT IS SO ORDERED.

17 DATED: August 31, 2005.

18 /s/Lawrence K. Karlton  
19 LAWRENCE K. KARLTON  
20 SENIOR JUDGE  
UNITED STATES DISTRICT COURT

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21 <sup>4</sup> The court suggests that defendants review plaintiffs'  
22 exhibit K, a copy of the United States Social Security  
23 Administration Program Operations Manual System. The SSA policy  
24 is helpful in situations posed by defendants' concern. Under the  
25 SSA policy, if the agency is concerned about releasing sensitive  
26 medical records, the records are released to a representative of  
the patient's choosing. The representative is then given the  
records and is directed to keep in mind the sensitive nature of the  
records when discussing them with the patient. Similarly, the  
parolees' lawyers may be instructed to use their discretion in  
discussing sensitive material with their clients.