

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ROGER CANUPP, JACOB MYERS,)
 LAWRENCE MCGEE, HUBERT)
 DAVIDSON, TYWAUN)
 JACKSON, and CHARLES DURDEN,)
 individually, and on behalf of a)
 Class of all persons similarly situated,)
)
 Plaintiffs,)
)
 vs.)
)
 LUCY HADI, in her official capacity)
 as Secretary of the Department of)
 Children and Families,)
)
 Defendant.)

Case No. 2:04-cv-260-UA-DNF

**PLAINTIFFS' AND DEFENDANT'S JOINT STIPULATION REGARDING
RESOLUTION OF POTENTIAL HIPAA OR PRIVACY CONCERNS
AND REQUEST TO BE RELIEVED FROM FILING BRIEFS**

The parties, by and through undersigned counsel, submit this Joint Stipulation to resolve concerns regarding the Health Insurance Portability and Accountability Act, (HIPAA). They state:

- (1) On November 9, 2006, Defendant Hadi filed a "Motion to Compel and for Protective Order Compelling Return of Work Product Privilege Document Inadvertently Produced by Co-Defendant Liberty Behavioral Healthcare Corporation." (Dkt. #146).
- (2) On December 15, 2006, Plaintiffs filed their Response. (Dkt. #151).
- (3) The document at issue in these pleadings was a spreadsheet containing a list of 451 residents at FCCC which identified Axis I, Axis II diagnoses and information regarding the intellectual capacity for FCCC residents. (Dkt. #151).

(4) On January 18, 2007, this Court determined that the document was not protected under the work product privilege and denied Defendant Hadi's Motion. (Dkt. #156).

(5) In this same order, the Court expressed concern about protecting the confidentiality of the mental health and medical information of non-class members contained in the document. (*Id.*). The Court ordered both parties to submit briefs detailing what, if any, HIPAA or privacy concerns are raised by Plaintiffs' possession of the document. (*Id.*).

(6) The parties have agreed to the redaction of the identifying information for residents who may not be class members.¹ The parties respectfully submit that the redaction of such identifying information should address any concerns regarding HIPAA or other privacy interests of non-class members.

(7) Defendant Hadi will produce a redacted copy of the document to Plaintiffs on February 8, 2007. Upon receipt of the redacted document, Plaintiffs will confirm with Defendant Hadi's counsel the destruction of any copies of the original un-redacted list and any notes or correspondence related to redacted information.

(8) The residents who are class members will not have any identifying information redacted from the document as they fall under the control of this Court's "Order of Protection of Confidential Information Relating to Class Members." (Dkt. #120).

(9) The parties respectfully suggest that they have resolved all HIPAA or privacy issues arising from Plaintiffs' possession of this document.

(10) The parties request the Court no longer require the parties to submit HIPAA briefs on or before February 8, 2007.

¹ By agreeing to the redaction of these names, Plaintiffs do not waive any right to present proof at a later date to establish that some of these residents may be class members.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 7, 2007, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: **Jason Vail, Esq.**, Senior Assistant Attorney General; **Chesterfield Smith, Jr., Esq.**, Senior Assistant Attorney General; and **Susan Maher, Esq.**, Assistant Attorney General.

s/ Kristen Cooley Lentz