

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SANDY JO BATTISTA,)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	05-11456-DPW
)	
KATHLEEN M. DENNEHY, ET AL.,)	
Defendants.)	

MEMORANDUM AND ORDER

February 10, 2009

WOODLOCK, D.J.

Following my findings and conclusions with respect to the propriety of preliminary injunctive relief, as dictated on the record in the notes of the Court Reporter on October 15, 2008, I issued a Preliminary Injunction Order (Docket No. 120), together with a Memorandum (Docket No. 119) detailing my reasons for crafting the injunction in the way I did. Thereafter, the defendants (hereinafter "DOC") moved for reconsideration with respect to paragraph 8 of the Preliminary Injunction Order, contending that the restrictions in the DOC's authority to obtain medical or mental health information somehow impermissibly restricted its ability to carry out its statutory, constitutional, contractual, and litigation responsibilities. See Motion to Reconsider (Docket No. 121). Battista opposed the motion.

On February 6, 2009, I held a hearing on the DOC's motion. While I noted at that hearing that it was unlikely that the Preliminary Injunction Order as it stood would be read to bar the release of records to the DOC without prior court order if there was an imminent threat of harm to Battista or others, I told the parties I would be prepared to issue a clarifying amendment. I

directed the parties to prepare a joint form of order expressly reflecting such an amendment.

On February 9, 2009, the parties each filed separate submissions, indicating that they could not reach an agreement on language modifying paragraph 8 of the Preliminary Injunctive Order. Instead, each side proposed differing language for such modification. See Plaintiff's Letter (Docket No. 126) and Defendants' Response (Docket No. 127). Upon review of these submissions, I find neither proposal managed to achieve the objective I outlined at the hearing.

Accordingly, I will modify the Preliminary Injunction Order to reflect more precisely my direction regarding the scope of the injunctive relief necessary to preserve Battista's constitutional rights, while balancing the DOC's mandate with respect to security issues. These security issues are the only matters raised by the DOC that would warrant a modification of the injunction.¹ In all other respects, I have found that the requirement that the DOC seek prior permission of the Court before obtaining any of the medical or mental health information generated by the clinicians (by filing a motion supported by a

¹The DOC attached to its response an affidavit (Docket No. 127-2) offering in a conclusory fashion an objection to the Preliminary Injunction Order. This belated affidavit, the first purportedly evidentiary submission -- as distinguished from lawyer's argument concerning the terms of the preliminary injunction -- adds nothing to what has already been developed in these proceedings. Indeed, it continues the defendants' pattern of neglecting to engage with the Plaintiff's particular circumstance by invoking generalities unballasted by specific demonstrations of particularized problematic circumstances.

credible showing of the need for such records), to be a permissible use of my injunctive powers under the circumstances and particularly appropriate to ensure that the DOC does not continue to act with deliberate indifference to Battista's medical needs.

Apart from paragraph 8 of the Preliminary Injunction Order, all other provisions contained in the initial Order (Docket No. 120) will remain in full force and effect. Only paragraph 8 of the Preliminary Injunction Order is modified; in the Amended Preliminary Injunction Order that paragraph is amended to read as follows:

8. Neither the DOC or any of its prison staff may obtain any medical or mental health information generated from the evaluation or treatment of Battista from its contractual health care providers without a prior Order of this Court.
 - (a) This paragraph shall not restrict the DOC or any prison staff from obtaining any medical or mental health information generated by its contractual health care providers where there exists an immediate threat of serious bodily harm to Battista or to others, when the information sought by the DOC pertains to legitimate concerns by the DOC for the safety and security of Battista or others. In obtaining such medical or mental health information pursuant to this harm exception, the DOC is not restricted to instances where the contractual health care providers make the determination that there is an imminent threat of serious bodily harm to Battista or others; rather, the DOC may consider other sources of information (*i.e.*, intelligence from non-health care providers) in determining whether there exists an imminent threat of serious bodily harm to Battista or others, and whether the medical and mental health information is necessary for the DOC to carry out its mandate to protect the safety and security of Battista and others.

- (b) In any instance where the DOC seeks disclosure of medical or mental health information from the evaluation or treatment of Battista based on the perceived existence of an imminent threat of serious bodily harm to Battista or others, such disclosure shall be limited to the information necessary to address the safety and security threat and may not be used for any reason other than to secure Battista's safety or the safety of others. In the event the contractual health care providers make any such disclosure of Battista's medical or mental health information, the DOC shall, within five (5) days of receipt of the information, provide a Notice to this Court reporting the type and nature of the information obtained, and the specific basis on which the DOC sought disclosure with respect to security and safety concerns. Additionally, the Superintendent of the Massachusetts Treatment Center shall file an Affidavit representing to the Court that the medical or mental health information obtained pursuant to this harm exception will not be used for any reason other than to secure Battista's safety or the safety of others, and further, that all reasonable and necessary steps shall be taken to ensure that this information will not be placed within the DOC in a manner which would make it accessible to others not concerned with safety issues. The Notice and Affidavit filed by the DOC pursuant to this provision may be filed under seal, and must be disclosed to Battista's counsel.
- (c) Should the DOC or any of its prison staff seek to obtain medical or mental health information, for reasons that do not involve any immediate threat of serious harm to Battista or others, the DOC must provide a specific and particularized evidentiary demonstration of good cause for such disclosure.

The essential objective which gave rise to the limitation on immediate access by the defendants to the clinical records was that there be no interference, direct or indirect, in the development of an independent clinical judgment regarding the

proper course of therapy for the plaintiff. At the hearing in this matter on February 6, 2009, I informed the parties that the first January 27, 2009 status report of the therapy team had given me reason to believe that the perceived posture of the defendants was coloring or distorting the approach and judgment of the clinicians.

With respect to the January 27, 2009 supervision report by the clinicians, I stated my anxious concerns at the February 6th hearing that in some fashion -- anticipatory perhaps -- the individuals who were required to file the monthly report have taken it upon themselves to make an evaluation of the likelihood that their clinical suggestions would be accepted by the DOC, and, consequently, appeared to be tailoring or, in some fashion, modifying their independent clinical judgment.

At one point in the report there is language that reads: "It seems important in the near future to explore both the prison obstacles to taking hormones because of her civil status and concerns for her safety (which she minimizes glibly) and the fact that we doubt that she will ever be granted SRS as long as she is in custody." Language to similar effect is found in the penultimate paragraph of the report, where it reads: "Any decision to provide hormones should be with the understanding that, realistically, this may be all that can get accomplished. Given her civil commitment, we are not even sure that if the

clinical decision is made to try hormones, it will be accomplished because of security concerns."

As I informed counsel at the February 6th hearing, I believe the clinicians should be candid with the plaintiff about the real world environment in which their recommendations will be resolved. And if the plaintiff has a tendency to be less than fully sensitive to safety concerns, that is something which should be discussed in their sessions as they deem clinically appropriate.

But the clinicians should not approach their task on the assumption that their independent clinical judgment will be disregarded or should be tailored in some fashion by their own "doubt that [the plaintiff] will ever be granted SRS as long as she is in custody."

As I emphasized to the parties at the hearing, the clinicians' responsibility is to provide their best clinical judgment concerning the proper treatment of the plaintiff without regard to what others in authority may do with that clinical advice.

The record in this case suggests a passive aggressive approach by the defendants to their responsibilities for the medical care of the plaintiff. For that reason interlocutory relief was indicated to insure untainted clinical treatment and advice. The defendants' past approach and their current

litigation posture must not interfere with the best judgment of the clinicians. Accordingly, the clinicians should carefully consider whether they are operating under some sort of anticipatory influence by the defendants to address their task in a less than independent fashion. If they are, they are not properly approaching their responsibilities.

The parties are directed to provide a copy of this Memorandum to the clinicians responsible for the status reports ordered by the Preliminary Injunction Order.

SO ORDERED.

/s/ Douglas P. Woodlock
DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE