



PC-NJ-001-005

ORIGINAL FILED

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

APR 06 1998

C.F., D.M., L.K., A.O. and J.W.,  
individually, and on behalf of all  
others similarly situated,

PLAINTIFFS,

v.

GARY J. HILTON,  
HOWARD L. BEYER, EUGENE F. O'NEILL,  
JOHN FORKER, DR. THOMAS FARRELL,  
and DR. RICHARD CEVASCO, CORRECTIONAL  
MEDICAL SERVICES, INC. AND  
CORRECTIONAL BEHAVIORAL  
SOLUTIONS, INC.

DEFENDANTS.

Civil Action No.: 96-1840 (AET)

Magistrate Judge  
John J. Hughes

AMENDED CONFIDENTIALITY  
AND PROTECTIVE ORDER

~~THIS MATTER~~ having been opened to the Court by Kalison & McBride, P.A., attorneys for Defendant, Correctional Behavioral Solutions of New Jersey, Inc. ("CBS") (Paul R. Murphy, Esq. appearing), and Laly, Holtzman, Gilligan, Duffin & Quasti, attorneys for Defendant Correctional Medical Services, Inc. ("CMS") (Stephen D. Holtzman, Esq. appearing), and consent having been obtained from Plaintiffs through their counsel Debevoise & Plimpton (Mary Beth Hogan, Esq. and Sandra Cobden, Esq. appearing), Seton Hall University School of Law Center for Social Justice (Patricia Perlmutter, Esq. appearing) and Loughlin & Latimer (Stephen Laumer, Esq. appearing), and from the remaining Defendants through Peter Verniero, Attorney General of the State of New Jersey (Dianne M. Moratti, D.A.G. and Andrew Sapolnick, D.A.G. appearing); and the Court having balanced the interests of the Plaintiffs in obtaining medical records of certain inmates at various correctional institutions in the State, confidential proprietary information and certain information described in N.J.A.C. 10A:22-2.2 from Defendants as well as the public's interest in open proceedings as set forth in *Patsy v. Borough of Stroudsburg*, 23 F.3d 772 (3<sup>rd</sup> Cir. 1994) and *Glenmede Trust Co. v. Thompson*, 56 F.3d 476 (3<sup>rd</sup> Cir. 1995), against the interests of such inmates in preserving the

confidentiality of their medical records and the interests of Defendants in preserving the confidentiality of their confidential proprietary information and complying with their obligations under N.J.A.C. 10A:22-2.2, and in complying with their obligations under federal and state law to preserve the confidentiality of medical records, including but not limited to the confidentiality obligations imposed on health care providers in the following New Jersey licensing regulations: N.J.A.C. 13:35-6.5 (physicians and psychiatrists); N.J.A.C. 13:42-8.5 (psychologists); N.J.A.C. 13:44G-12.3 (social workers), and the confidentiality obligations imposed in various state and federal confidentiality statutes and regulations, including but not limited to N.J.S.A. 26:5G-7 (AIDS Assistance Act); N.J.S.A. 2A:84-22.1 et seq. (physician-patient privilege in New Jersey Evidence Rule 506); N.J.S.A. 45:14B-28 (psychologist privilege in New Jersey Evidence Rule 505, including social workers as extended in Jaffee v. Redmund, 64 U.S.L.W. 4490 (1996)); 42 U.S.C.A. §290dd-2 and 42 C.F.R. §2.11 et seq. (substance abuse records); N.J.S.A. 30:4-82.4 (mental health records of inmates in correctional institutions in need of involuntary commitment); and N.J.A.C. 10A:16-2.18 and N.J.A.C. 10A:22-2.2 (medical records of inmates in correctional institutions); (the foregoing laws and regulations, collectively the "Confidentiality Laws"); and the Court having determined that the Stipulation of Confidentiality and Protective Order entered on May 28, 1996 should be superseded in the interests of justice; and good cause having been shown; and the Court having found that the medical records of various inmates should be disclosed because:

1. The claims are being asserted pursuant to federal law, and certain state statutory privileges may not necessarily apply.
2. The medical records sought are necessary for a full development of the facts in this litigation.
3. Plaintiffs' counsel are acting for the benefit of inmates who are, or may become, Class Members in this litigation.

PURSUANT TO THE RECORD OF MARCH 14, 1998  
AND THE ORDER FILED 4/9/98 :

4. The medical information sought is not available through any source other than the medical records of the inmates.

5. Obtaining the individual informed consent of each inmate may be impractical and unreliable in this case given the vast number of inmates who would have to consent to disclosure and the alleged mental conditions of those inmates who are or may become subject to this litigation.

IT IS THEREFORE ORDERED this \_\_\_ day of April, 1998, pursuant to Federal Rule of Civil Procedure 26 that Defendants shall produce inmate medical records, confidential proprietary information and 10A Information (all as are defined below) subject to the following provisions which shall govern medical records, confidential proprietary information and 10A Information produced in discovery in this litigation:

1. Definitions

For the purpose of this Order:

A. "Medical records" means any written records or documentation of the medical and/or mental health services provided to any inmate, including but not limited to those medical records deemed to be confidential pursuant to N.J.A.C. 10A:22-2.2(a)(1). Medical records shall also include any list of inmates receiving medical and/or mental health services.

B. "Confidential proprietary information" means any and all information, material or documentation, other than medical records, that has been or will be produced by CBS or CMS at any time during the course of this litigation and which contain confidential business information or trade secrets.

C. "10A Information" means any and all information, material or documentation, other than medical records, internal affairs records or voting records of classification committee members, that have been or will be produced by the DOC Defendants at any time during the course of this litigation and which contains information described in N.J.A.C.

10A:22-2.2. Prior to production of 10A Information under this Order, the DOC defendants shall redact the names of any confidential informants, the targets of ongoing investigations, the manner in which the fruits of Internal Affairs investigations are compiled and filed and Internal Affairs investigatory techniques.

D. "Health care provider" means any physician (including any psychiatrist), psychologist, clinical social worker, social worker, nurse, records clerk or other administrator or employee, who is or was employed by, or under contract with the New Jersey Department of Corrections and/or Defendants Correctional Medical Services or Correctional Behavioral Solutions and who is or was involved in the provision or administration of medical or mental health care to inmates.

E. "Mental health service" means any psychiatric, psychological or social work service provided by, or under the supervision of, a psychiatrist, psychologist, clinical social worker or social worker.

F. "Correctional Medical Services, Inc." or "CMS" is the corporation which contracted with the New Jersey State Department of Corrections to provide medical services to inmates commencing April 27, 1996, and which contracted for the provision of mental health services to inmates on August 17, 1996 and subcontracted the provision of mental health services to inmates to Correctional Behavioral Solutions on that same date.

G. "Correctional Behavioral Solutions, Inc." or "CBS" is the corporation which provides mental health services to inmates pursuant to a subcontract with Correctional Medical Services commencing on August 17, 1996.

H. "Class Member" means all persons who suffer DSM IV, Axis I and/or Axis II disorders such that they are unable to meet the functional requirements of prison life without mental health treatment, who now or in the future will be confined within the facilities of the New Jersey Department of Corrections, as certified by Order of the United States District Court for the District of New Jersey dated November 20, 1996.

2. Confidentiality Designations

A. Medical Records: Except as permitted under Paragraph 8A, all medical records shall be deemed "Confidential". If any medical records are filed with the Court, they shall be redacted by the offering party to eliminate the name, number and other identifying information of the inmate who is the subject of the record. During depositions and at trial, the parties agree to use a key that permits the identification of the named plaintiffs and other class members by pseudonym.

B. Those parts of trial or deposition testimony, deposition transcripts, exhibits, memoranda of law, certifications and affidavits which refer to, or consist of, confidential proprietary information or 10A information shall be deemed "Confidential." If any such items are filed with the Court, they shall be filed under seal.

C. Confidential Proprietary Information and 10A Information:

(i) Within thirty (30) days of the date of this Order, Defendants will notify Plaintiffs which, if any, of the documents previously produced shall be designated as "Confidential." The producing party's failure to so notify Plaintiffs will result in the automatic removal of the Confidentiality designation.

(ii) Prior to producing any document which Defendants believe contain confidential proprietary information or 10A information, the producing party may designate the document as "Confidential". Documents designated as "Confidential" must be sent to Plaintiffs' counsel under separate cover accompanied by a letter clearly indicating that the documents have been

designated as "Confidential".

(iii) Plaintiffs' counsel will review any document designated as "Confidential" under (i) or (ii) to determine whether they consent to such designation and will notify the producing party of their decision.

(iv) If Plaintiffs' counsel does not consent to the designation of a document as "Confidential" then Plaintiffs' counsel may seek further relief from the Court within thirty (30) days by letter application and conference telephone call with the Court. Prior to such application, Plaintiffs' counsel shall confer with the affected Defendant in accordance with L.Civ.R.37.

(v) Until the later of the expiration of the thirty (30) day period without application to the Court or an Order of the Court entered on an application under (iv), the documents shall be treated as "Confidential" and entitled to the benefits of this Order.

*D. Internal Affairs Records and Voting Records of Classification Committee Members:* Internal Affairs records and voting records of classification committee members shall be deemed confidential. If any such items are filed with the Court, they shall be filed under seal. Prior to producing internal affairs records and voting records of classification committee members, the DOC defendants shall redact the name of any confidential informant, the targets of ongoing investigations, the manner in which the fruits of Internal Affairs investigations are compiled and filed and Internal Affairs investigatory techniques.

**3. Production of Medical Records**

A. The New Jersey Department of Corrections shall produce medical records of inmates to Plaintiffs' counsel in the following instances:

(1) medical records of the named plaintiffs herein shall be produced without obtaining the consent of such named plaintiffs;

(2) medical records of inmates who have been determined to be Class Members shall be produced without obtaining the consent of such Class Member;

(3) medical records of any inmate who committed suicide while incarcerated from and after April 11, 1996;

(4) medical records of any inmate, who is neither a named plaintiff nor a Class Member, shall be produced upon the execution of the Authorization For Disclosure/Release of Health Information Including Alcohol And/Or Drug Abuse, HIV/AIDS and Psychiatric Records in the form attached hereto as Exhibit A, or upon further Order of this Court.

(5) medical records of any inmates who, prior to the date of this Order, have executed a release prepared by Plaintiffs' counsel. The Court finds that these previously executed releases satisfy the requirements of the Confidentiality Laws and good cause exists to give effect to such releases until entry of a final, non-appealable Order in this case, subject to the terms of this Order and the inmate's right to revoke such release.

**4. Use of Medical Records, Confidential Proprietary Information and 10A Information**

Except as permitted under Paragraph 8A, all persons obtaining access to medical records under this Order shall use the records or information only for preparation and trial of this action, including any appeal or retrial, and shall not use such records or information for any other purpose. All persons obtaining access to confidential proprietary information or 10A Information

under this Order shall use the records or information only for the preparation and trial of this action, including any appeal or retrial, and shall not use such records or information for any other purpose.

**5. Disclosure of Medical Records, Confidential Proprietary Information and 10A Information**

A. Except as permitted under Paragraph 8A, medical records may be disclosed only to the following persons. Confidential proprietary information and 10A Information shall be disclosed only to the following persons:

(1) Any health care provider;

(2) Any of the named defendants, including their directors, officers, employees, agents and personnel or any administrative personnel of the New Jersey Department of Corrections who is determined by defendants to be necessary to assist in the defense of this action.

(3) Counsel for the parties to this action or counsel for any health care provider, including partners, associates, law clerks, law students, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in this action;

(4) Court officials involved in this action;

(5) Court reporting personnel involved in taking or transcribing testimony in this action;

(6) Any person that the Court in this action designates in the interest of justice, upon terms that the Court deems proper; and

(7) Former employee witnesses, outside non-party consultants or experts retained for purpose of assisting counsel in this action.

B. Neither the New Jersey Department of Corrections, CMS, CBS nor their counsel shall reveal the name of any class member or discuss the class member's role in this case



with any custody personnel or health care provider other than in connection with the delivery of health care services to such inmate or for the preparation of its defense in this case. The New Jersey Department of Corrections, CMS, CBS and their counsel shall inform any custody personnel or health care provider, to whom such disclosure is necessary for the preparation of their defense in this case, that the identities and roles of all class members must remain confidential.

C. Persons obtaining access to 10A Information or diagnostic or evaluative information set forth in medical records shall not disclose 10A Information or the substance of the diagnostic or evaluative information to any named Plaintiffs, any Class Members or any other inmate; however, factual information contained in such records may be verified by the specific Class Member who is the subject of such 10A Information or medical record.

D. Should any Class Member voluntarily disclose his or her identity, the defendants may initiate a conference call with the Court to determine whether and to what extent the provisions of this Amended Confidentiality and Protective Order shall continue to be applicable.

E. Any person receiving information under this Paragraph 5.A. or 8.A. shall be provided a copy of this Order and shall execute an acknowledgment in the form attached hereto as Exhibit B in which such person shall agree to be bound by the terms hereof.

**6. Deposition and Trial Testimony**

Deposition and trial testimony by health care providers shall be permitted regarding any inmate who is subject to Paragraph 3. For the purpose of providing deposition testimony only, the parties agree that any inmate who has a prescription for any of the medications set forth on Exhibit C or is the subject of a forced medication order is presumably a class member. CMS agrees that it will use its best efforts to update such lists every thirty (30) days during the conduct of depositions.

**7. Subpoenas or Other Discovery Requests Seeking Medical Records Or Confidential Proprietary Information**

If any party or person that has obtained medical records, confidential proprietary information or 10A Information under the terms of this Order receives a subpoena or other discovery request commanding the production of any such records or information, such party or person shall immediately notify the party or person that produced the medical records or confidential proprietary information of the service of the subpoena or request, so that such party may object to the production of the medical records or confidential proprietary information, and seek to quash the subpoena or have an appropriate protective order entered.

**8. Miscellaneous**

A. Nothing in this Order shall preclude or prevent an inmate who is the subject of a medical record from expressly consenting to a specific, broader or wider dissemination of his or her own medical records through Plaintiffs' counsel. Plaintiffs' counsel shall give Defendants ten (10) days written notice of any such proposed dissemination. If Defendants do not consent to such dissemination, Defendants may seek further relief from the Court within ten (10) days by letter application and conference telephone call with the Court. Prior to such application, Defendants' counsel shall confer with Plaintiffs' counsel in accordance with L.Civ.R.37. In no event shall any diagnostic or evaluative parts of the medical records be disclosed directly to the inmate who is the subject of the record or to anyone who could reasonably be acting as the inmate's agent. The name of any person who makes a mental health diagnostic evaluation shall not be disclosed, other than as permitted under Paragraph 5(A).

B. Nothing herein shall affect any party's or person's right to object to any discovery request, including the right to assert that no discovery should be had of certain documents or information.

C. The confidentiality provisions and obligations of this Order shall survive the conclusion of this action.

D. Should any party desire a modification of this Amended Confidentiality and Protective Order at any time during this litigation, said party may apply to the Court for a modification of its terms.

  
Hon. John J. Hughes, U.S.M.J.

**EXHIBIT A**

**AUTHORIZATION FOR DISCLOSURE/RELEASE OF HEALTH INFORMATION INCLUDING  
ALCOHOL AND/OR DRUG ABUSE, HIV/AIDS AND PSYCHIATRIC RECORDS**

To: The N.J. Department of Corrections, Correctional Medical Services, Inc. and Correctional Behavioral Solutions, Inc.

I, \_\_\_\_\_, authorize you to disclose and provide to the  
Name

attorneys, law students and other staff of the Seton Hall University School of Law Civil Litigation Clinic and the law firms of Debevoise & Plimpton and Laughlin & Latimer, any and all information relating to my incarceration, including, but not limited to, medical and psychiatric records, disciplinary reports, classification documents, criminal records and parole reports. This authorization extends to all documents in your possession, regardless of their original source. It also permits you and your employees or consultants and my mental health care provider to give deposition or trial testimony about this information and all medical and mental health information about me received during the course of my mental health treatment.

I understand that this authorization can include but is not limited to the release of information concerning drug and/or alcohol use, venereal disease, AIDS, HIV infection, Tuberculosis, Hepatitis, psychosocial history and treatment recommendations.

I understand that at any time I may revoke this authorization, except to the extent action has already been taken, by a written notice to Debevoise & Plimpton, Laughlin & Latimer, Seton Hall University School of Law Civil Litigation Clinic, the New Jersey Department of Corrections, Correctional Medical Services, Inc. or Correctional Behavioral Solutions, Inc. This consent is effective immediately. I hereby release the New Jersey Department of Corrections, Correctional Medical Services, Inc., and Correctional Behavioral Solutions, Inc., their employees, personnel, officers, directors and physicians and mental health professionals from any and all legal responsibility or liability resulting from the release of the above information to the extent indicated and authorized herein.

Signature: \_\_\_\_\_

Prison or Jail: \_\_\_\_\_

Inmate Identification No.: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B**

**Acknowledgment**

The undersigned acknowledges receipt of a copy of, has read and agrees to be bound by the terms of, the Amended Confidentiality and Protective Order dated \_\_\_\_\_, 1998 entered in the United States District Court for the District of New Jersey by Honorable John J. Hughes, U.S.M.J. in the matter of C.F. v. Hilton, Civil Action No. 96-1840 (AET).

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## EXHIBIT C

<u>Brand Name</u>	<u>Generic Name</u>
Clausiril	N/A
Clorazil	Clozapine
Haldol	Haloperidol
Lithane.Lithobid.Eskalith	Lithium
Mellaril	Thlorodazine
Navane	Thlothlxine
Norpramin	Desipramine
Paxil	Paroxetine
Prollxin	Fluphenazine
Prozac	Fluoxetine Hcl
Risperdol	Risperidone
Stelazine	Trifluoperazine
Thorazine	Chlorpromazine
Tofranil	Imipramine
Triavil, Etrafon	Perphenazine/Amltriptyline
Trilafon	Perphenazine
Zyprexa	N/A

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