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SPRINGFIELD

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FILE NO. S-1140

**MENTAL HEALTH:
Release of Patients'
Records**

Honorable Frank X. Yackley
State's Attorney
LaSalle County
Court House
Ottawa, Illinois 61350

Dear Mr. Yackley:

This is in response to your letter concerning disclosure of information contained in hospital records of patients who receive psychiatric treatment at the facility operated by the LaSalle County Mental Health Board under authority of the Community Mental Health Act. (Ill. Rev. Stat. 1975, ch. 91 1/2, pars. 300.1 et seq.) You state that the county operates such a facility in conjunction with the local hospital. You ask for a determination of when and to whom the County Mental Health

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Board or the hospital may disclose the contents of records of patients who have received treatment in this facility.

I am of the opinion that all records kept by the facility which pertain to the patient may be disclosed by the County Mental Health Board or the hospital, only to those parties and agencies enumerated in section 12-3 of the Mental Health Code (Ill. Rev. Stat. 1975, ch. 91 1/2, par. 12-3) and under the conditions stated therein. In addition, section 5.2 of "AN ACT in regard to evidence and depositions" (Ill. Rev. Stat. 1975, ch. 51, par. 5.2) provides that communications between a patient and his psychiatrist, which relate to treatment or diagnosis, are privileged. The patient or his psychiatrist may claim this privilege in civil, criminal, legislative or administrative proceedings.

Section 12-3 of the Mental Health Code states:

"The hospital records of and other information including both clerical and clinical data pertaining to patients are not open to inspection by the general public, or any person representing any agency of a local, state or Federal government or any other political subdivision, but may be examined by the Director; by the State's Attorney of the county from which the person is admitted or in which he resides or in which the hospital is located; by the patient; by an attorney for the patient; by any circuit court in which the mental condition of the patient is or has been a matter of inquiry or question; or by a State or Federal agency for the sole purpose of enabling the

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patient to acquire eligibility for benefits under any State or Federal law. Provided, however, clerical data and the presence of a patient in a State-operated hospital or institution may be disclosed, in response to a request relating to a specific patient, to the United States Secret Service when, in the judgment of the Director, it is necessary to protect the life of persons whom the Secret Service is required by statute to protect.

For the purposes of this Section, clerical data includes, but is not limited to a patient's name, address, age, date of commitment or discharge, and whether or not a person has been a patient of the Department."

For purposes of section 12-3 the term "hospital" has the meaning as defined in section 1-5 and section 1-6 of the Mental Health Code. (Ill. Rev. Stat. 1975, ch. 91 1/2, pars. 1-5 and 1-6.)

These sections state:

"§ 1-5. 'Hospital', means any licensed private hospital and any facility operated by the State or a political subdivision thereof for the treatment of persons who are mentally retarded or in need of mental treatment, and includes all hospitals, institutions, clinics and mental health centers which provide treatment for such persons."

"§ 1-6. 'Licensed Private Hospital', means any privately-owned home, hospital, or institution licensed by the Department of Public Health for the care, treatment, detention and training of persons who are mentally retarded or in need of mental treatment."

Since a county is a subdivision of the State, the facility operated by the county in conjunction with the local hospital

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falls within the scope of section 12-3. It therefore follows that all records kept by the facility which pertain to the patient's mental illness and treatment may be disclosed only to those parties and agencies enumerated in section 12-3 and under the conditions stated therein.

Section 5.2 of "AN ACT in regard to evidence and depositions" provides additional protection for a patient. Section 5.2 states:

"In civil and criminal cases, in proceedings preliminary thereto, and in legislative and administrative proceedings, a patient or his authorized representative and a psychiatrist or his authorized representative have the privilege to refuse to disclose, and to prevent a witness from disclosing, communications relating to diagnosis or treatment of the patient's mental condition between patient and psychiatrist, or between members of the patient's family and the psychiatrist, or between any of the foregoing and such persons under the supervision of a psychiatrist in the accomplishment of the objectives of diagnosis or treatment.

There is no privilege under this Section for any relevant communications

(a) when a psychiatrist, in the course of diagnosis or treatment of the patient, determines that the patient is in need of hospitalization, provided that such communications shall be admissible only with respect to issues relating to the need for such hospitalization;

(b) if the judge finds that the patient, after having been informed that the communications would not be privileged, has made communications to a

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psychiatrist in the course of a psychiatric examination ordered by the court, provided that such communications shall be admissible only with respect to issues involving the patient's mental condition;

(c) in a civil or administrative proceeding in which the patient introduced his mental condition as an element of his claim or defense or, after the patient's death, when his mental condition is introduced by any party claiming or defending through or as a beneficiary of the patient; the provisions of this sub-section '(c)' shall not apply to preclude the assertion of the privilege in any action brought or defended under the Divorce Act of the State of Illinois, as amended, unless the patient or the psychiatrist on behalf of the patient first testifies as to such communications;

(d) in any proceeding brought by the patient against his psychiatrist, including but not limited to any malpractice proceeding, and in any criminal or license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claim or defense of the psychiatrist.

As used in this Section, 'Patient' means a person who for the purpose of securing diagnosis or treatment of his mental condition consults a psychiatrist; 'psychiatrist' means a person licensed to practice medicine who devotes a substantial portion of his time to the practice of psychiatry, or a person reasonably believed by the patient to be so qualified; 'authorized representative' means a person empowered by the patient or the psychiatrist to assert the privilege and, when given permission by the patient or the psychiatrist, to make disclosure of communications made privileged by this Section."

Therefore, unless one of the exceptions contained in parts (a) through (d) applies, the patient or his psychiatrist is able

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to prevent the disclosure of such privileged communications which relate to diagnosis or treatment of the patient's mental condition. This privilege would probably apply only in the event that the County Mental Health Board or the hospital had control over the psychiatrist's records.

Finally, you state that a particular insurance carrier has refused to process Medicare claims without full examination of the claimant's medical records. The patient's insurer does not appear to qualify under any of the exceptions listed in section 12-3 and therefore it does not have direct access to a patient's records. The patient himself, or his attorney, may obtain the pertinent records and present them to the insurer, or he may authorize the hospital to provide them directly to the insurer. This method will remove the obstacle to the patient's receipt of insurance benefits.

Very truly yours,

A T T O R N E Y G E N E R A L