

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Mental Health
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October 13, 2010



RE: Appointed Attorneys Access to DMH Client Records

Dear Mr. [REDACTED]:

I am writing to follow up on our discussion last week concerning access of attorneys appointed by the Probate Court to represent individuals in guardianship proceedings. Our discussion was in specific reference to vendors of the Department of Mental Health serving DMH clients in the community.

I have reviewed the language of the standard Probate Court appointment form which provides that the appointed attorney:

is authorized by this Court to have access to, and the authority to copy, any and all records pertaining to the Respondent including, but not limited to, medical and mental health care records, drug or substance use treatment records and educational and school records, including any records that may otherwise be confidential. This authority includes the right to speak with any of the Respondent's treatment providers.

In addition I have consulted with members of the Uniform Probate Code Article V implementation task force, on which I served, concerning this language.

It is my opinion, and I would so advise my client, that this language encompasses all confidential medical and mental health records of the respondent, including those that might at some point be considered privileged for purposes of admissibility in a legal proceeding. My legal opinion on this point is buttressed by the practical consideration that I would not consider it within the

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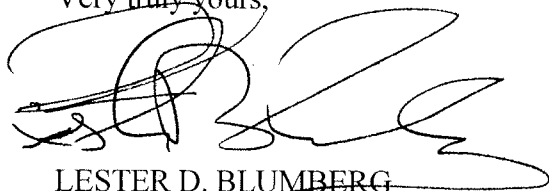
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expertise of a medical records department, or a keeper of the records, to make the legal distinction between confidential material and that which a court might later determine to be privileged.

In cases where a respondent has expressed a clear direction to the appointed attorney, either that the attorney not represent the respondent, or that the attorney not have access to the respondent's records, I believe it would be prudent for the attorney to bring the matter back to the Probate Court for instructions. I would, however, advise my client to consult with me or one of my colleagues before refusing to produce records to an attorney in possession of an order granting access in a case where the respondent has expressed contrary instructions.

I hope this letter helps clarify the position of the Department of Mental Health in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lester D. Blumberg", written over a horizontal line.

LESTER D. BLUMBERG

General Counsel

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LDB/wp

cc: Stan Goldman, Esq.

Karen Talley, Esq.