

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BHARANIDHARAN PADMANABHAN, M.D., Ph.D.,)	
Plaintiff,)	
)	1:15-cv-10499-WGY
v.)	
)	
CITY OF CAMBRIDGE, et al,)	
Defendants)	

**NON-PARTY, CAMBRIDGE HEALTH ALLIANCE’S, MEMORANDUM IN SUPPORT
OF MOTION FOR RECONSIDERATION AND REVERSAL OF THE COURT’S
JUNE 12, 2015 ORDER**

Now comes non-party Cambridge Health Alliance¹ (“CHA”), and hereby respectfully requests this Court to reconsider its denial of Non-party, Cambridge Health Alliance’s, Motion for Protective Order (Document No. 59). This Court has the inherent power to reconsider its interlocutory orders. See Fernandez-Vargas v. Pfizer, 522 F. 3d 55, 61 n. 2 (1st Cir. 2008), Greene v. Union Mut. Life Ins. Co. of America, 764 F.2d 19, 22 (1st Cir. 1985) (noting “the inherent power of the rendering district court to afford such relief from interlocutory judgments ... as justice requires.” (quoting Dow Chem. USA v. Consumer Product Safety Comm., 464 F.Supp. 904, 906 (W.D.La. 1979))).

As grounds for this motion, CHA states that the Court’s June 12, 2015 order denying CHA’s Motion for Protective Order (Document No. 64) is grounded on incomplete and misinformation. Specifically, this Court’s June 12, 2015 Order was based on information that all medical records had been properly redacted. In fact, only *select* medical records were redacted, and certain CHA patient’s confidential and protected health information remains publicly accessible. Therefore, CHA respectfully requests that this Court reconsider and reverse its June

¹ CHA, although named as a party to this suit, has not been served in this matter.

12, 2015 Order and issue a protective order requiring the redaction of all patient names in all filings with the Court, including but not limited to Pages 40-44 of Document No. 57-8.

FACTUAL BACKGROUND

On May 18, 2015, various defendants, including defendants associated with CHA, filed a Motion to Dismiss the Plaintiff's Amended Complaint accompanied by a Memorandum in Support (Document Nos. 49, 53). On June 1, 2015, plaintiff filed an Opposition (Document No. 57). On June 3, 2015, approximately 190 pages in additional exhibits were added to the docket in support of the Plaintiff's Opposition. The original submission uploaded on the electronic filing system contained a number of pages with CHA patients' confidential and protected health information. After various discussions between defense counsel and plaintiff's counsel, plaintiff's counsel forwarded two pages of redacted materials to this Court's docket clerk to replace the originals. See June 5, 2015 Correspondence attached hereto as Exhibit 1. These two unredacted pages were replaced with redacted versions.

While the plaintiff agreed that certain pages of the supporting exhibits should be redacted, parties could not agree regarding the redaction of another patient's confidential and protected health information. As a result, confidential and protected patient information remains publicly available through PACER. Pages 40-44 of Document 57-8 contain confidential patient information, including the patient's name, medical record number, and portions on his medical record. After various discussions between counsel regarding potential redaction of this material, plaintiff's counsel forwarded defense counsel the patient's supposed authorization for the release of medical records. See Patient Authorization attached hereto as Exhibit 2. This authorization had never been provided to CHA or counsel for CHA prior to June 5, 2015. This authorization is inadequate under HIPAA and inapplicable to this case.

On June 12, 2015 this Court denied CHA's Motion for Protective Order. As reason for this order, the Court cited to "the representation that the document has already been properly redacted" (Document No. 64). In fact, only part of the document had been properly redacted. Although information related to one patient was redacted, additional protected and confidential health information of another patient remains publicly available. CHA has a strong interest in protecting its patients' confidential and protected health information. As such, this court should reconsider and reverse its June 12, 2015 Order and issue a protective order requiring the redaction of all patient names, including the but not limited to Pages 40-44 of Document No. 57-8.

ARGUMENT

I. THE PATIENT'S AUTHORIZATION IS INSUFFICIENT UNDER HIPAA, AND A PROTECTIVE ORDER SHOULD BE GRANTED

The plaintiff has essentially conceded that confidential and protected health information should be protected, since plaintiff largely ensured that attached records were redacted prior to filing. Further, when the plaintiff initially failed to redact certain patient information, the plaintiff voluntarily replaced the unredacted originals with a redacted version. Despite what appears to be a general consensus that a patient's protected health information is confidential and should be redacted, the parties continue to disagree as to whether one particular patient has sufficiently authorized the use and disclosure of his protected health information.

The only reason provided by the plaintiff as to why the remaining patient's health information should not be redacted is because the patient has already provided a HIPAA release permitting the disclosure of his health information.

The patient's Affidavit states:

I... declare that Dr. Bharani Padmanabhan and his attorneys have my permission to refer to me by name and use my protected medical records in order to bring bad doctors to justice for causing me deliberate harm. This is a full release as provided for under the HIPAA statute. Exhibit 2.

Although the patient concludes that his Affidavit is sufficient to serve as a release under HIPAA, his declaration does not make it so. In fact, the submitted Affidavit does not comply with requirements of HIPAA and is therefore inadequate.

As the plaintiff concedes in exhibits to his Opposition to CHA's Motion for Protective Order, there are strict statutory requirements for an authorization to be sufficient under HIPAA. See 45 C.F.R. § 164.508(c)(1); 45 C.F.R. § 164,508(c)(2). For example, an authorization is required to state: the individual's right to revoke the authorization in writing; notice the covered entity's ability or inability to condition treatment or eligibility if a patient refuses to sign an authorization; and the potential for protected health information to be re-disclosed. See 45 C.F.R. § 164.508(c)(2). Further, an authorization pursuant to HIPAA must describe the protected health information to be used or disclosed; name the persons or class of persons to whom the covered entity may disclose the protected health information; an expiration date; and a description of each purpose of the requested disclosure. See 45 § 164.508(c)(1). A covered entity, such as CHA, is not authorized to disclose protected health information without an authorization that conforms to the requirements above. 45 C.F.R. § 164.508(a)(1). Because the patient's authorization fails to conform to the statutory authorization requirements, the patient's information should be protected. Pending the execution of a HIPAA compliant authorization, CHA has a strong interest in protecting the otherwise confidential and protected patient

information of its patients. Therefore, a protective order should issue requiring the redaction of all patient names, including the but not limited to Pages 40-44 of Document No. 57-8.

II. THE PATIENT'S AUTHORIZATION IS INAPPLICABLE TO THE CIRCUMSTANCES OF THIS CASE, AND A PROTECTIVE ORDER SHOULD BE GRANTED

The plaintiff contends that the submitted patient Affidavit is sufficient to permit the release of confidential protected health information in this litigation. The authorization states that the plaintiff and his attorneys may use his protected health information "to bring bad doctors to justice for causing me deliberate harm." Exhibit 2. This case does not directly involve the patient, and the purpose of this litigation is not to "bring bad doctors to justice" for causing the patient deliberate harm. This is a civil (not criminal) lawsuit brought by Dr. Padmanabhan, in which he apparently alleges that he was wrongfully terminated from CHA and that various defendants (many of whom are not doctors) conspired to violate Dr. Padmanabhan's constitutional rights. See Amended Complaint (Document No. 47). Although the plaintiff may wish to use the patient's protected health information to prove that Dr. Padmanabhan was wrongfully terminated from CHA, the purpose of the lawsuit does not involve the patient at all, and it certainly does not involve the defendants' intent to cause the patient "deliberate harm." As such, even if the authorization provided by plaintiff were HIPAA compliant, it would be inapplicable to this litigation. Therefore, a protective order should issue requiring the redaction of all patient names, including the but not limited to Pages 40-44 of Document No. 57-8.

III. THE PLAINTIFF IS NOT PREJUDICED BY THE PROPOSED PROTECTIVE ORDER

The plaintiff is not prejudiced by CHA's proposed protective order, since the content of the patient's medical record can still be used to support the plaintiff's claims. The protective order sought by CHA does not prohibit the plaintiff from using medical records already in the

plaintiff's possession. Instead, the proposed protective order only prevents the plaintiff from publicly revealing certain identifying information about CHA patients. Therefore, a protective order should issue requiring the redaction of all patient names, including the but not limited to Pages 40-44 of Document No. 57-8.

CONCLUSION

CHA has a strong interest in protecting its patients' protected and confidential health information. Although certain patient information has been redacted, some information remains publicly available on the PACER system. For the reasons stated above, non-party Cambridge Health Alliance, requests that this Court reconsider and reverse its June 12, 2015 order and issue a protective order requiring the redaction of all patient names in all filings with the Court, including but not limited to Pages 40-44 of Document No. 57-8.

Respectfully submitted,
Cambridge Health Alliance,
By its Attorney,

/s/ Rebecca A. Cobbs

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DATE: June 17, 2015

CERTIFICATION UNDER LOCAL RULE 7.1

Counsel for Cambridge Health Alliance hereby certifies, pursuant to Local Rule 7.1(a)(2), that on June 17, 2015, I conferred with plaintiff's counsel concerning the issues set forth in the attached Motion for Reconsideration and Reversal of the Court's June 12, 2015 Order.

/s/ Rebecca A. Cobbs

Rebecca A. Cobbs

CERTIFICATE OF SERVICE

I, Rebecca A. Cobbs, Esquire, attorney for defendants hereby certify that on this day, June 17, 2015 I served a copy of Non-Party Cambridge Health Alliance's Memorandum in Support of Motion for Reconsideration and Reversal of The Court's June 12, 2015 Order, upon all parties, by electronically filing to all ECF registered parties and by sending a copy, first class mail, postage prepaid to all unregistered parties.

/s/ Rebecca A. Cobbs

Rebecca A. Cobbs