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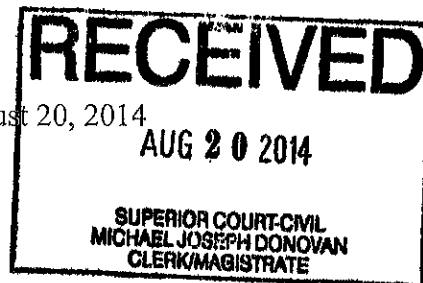
OF COUNSEL:
THOMAS P. SMITH
HON. NANCY HOLTZ

NORMAN HOLTZ
(1929-2008)
JOHN M. REED
(1930-2012)

BY HAND DELIVERY

Michael Joseph Donovan
Suffolk County Superior Court for Civil Business
Suffolk County Courthouse, 12th Floor
3 Pemberton Square
Boston, MA 02108

August 20, 2014



Re: Steward Health Care System LLC v. Boston Globe Media Partners LLC and John Doe

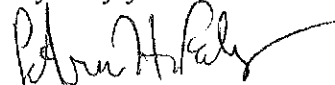
Dear Mr. Donovan:

Please find enclosed for docketing and filing the following:

1. Plaintiff Steward Health Care System's Verified Complaint;
2. Civil Action Cover Sheet;
3. Plaintiff Steward Health Care System's Motion for Declaratory Relief;
4. Plaintiff Steward Health Care System's Memorandum in Support of Motion for Declaratory Relief;
5. Plaintiff Steward Health Care System's Ex Parte Emergency Motion for Short Order of Notice on Motion for Declaratory Judgment;
6. Plaintiff Steward Health Care System's Motion to Appoint a Special Process Server;
7. [Proposed] Order on Plaintiff's Motion for Declaratory Relief Pursuant to G.L. c. 231A, §§1-7; and
8. A check for the filing fee and summonses to the Defendants.

Thank you for your attention to this matter.

Very truly yours,


Patrick Foley, Esq.

Enclosures (6)

SUFFOLK, ss.

Commonwealth of Massachusetts



SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION

No. 14-2665 A

Steward Healthcare System LLC

, Plaintiff(s)

v.

Boston Globe Media Partners LLC

, Defendant(s)

SUMMONS AND ORDER OF NOTICE

To the above-named Defendant: **Boston Globe Media Partners LLC, John Doe**

You are hereby summoned and required to serve upon Herbert L Holtz plaintiff's attorney, whose address is Holtz & Reed LLP, 225 Friend Street, Boston, MA 02114, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Boston either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

WE ALSO NOTIFY YOU that application has been made in said action, as appears in the complaint, for a preliminary injunction and that a hearing upon such application will be held at the court house at said Boston of our said court on Thursday August 21, courtroom 313 the Twenty-first day of August A.D. 2014, at two o'clock ~~XXX~~ P.M., at which time you may appear and show cause why such application should not be granted.

Witness, Barbara J. Rouse, Esquire, at Boston, the Twentieth day of August, in the year of our Lord two thousand and thirteen.

Neil Fuly-Sampson
Asst. Clerk/Magistrate

NOTES.

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

STEWARD HEALTH CARE
SYSTEM LLC,

Plaintiff,

v.

BOSTON GLOBE MEDIA PARTNERS,
LLC,

Defendant,

And

JOHN DOE,

A Necessary Party.

14-2665 A

Civil Action No.

8-20-14

*Allowed
(Sardis J.)*

*Attest
Heidi Joly - Baymont
asst Clerk*

2014 AUG 20 PM 3:58
MICHAEL J. JOHNSON
CLERK/JUDICIAL ASSISTANT

**PLAINTIFF STEWARD HEALTH CARE SYSTEM'S
MOTION TO APPOINT A SPECIAL PROCESS SERVER**

Pursuant to Mass. R. Civ. P. 4(c), Plaintiff Steward Health Care System LLC ("Steward") requests this Court to authorize The Constables Office, Mark P. Weisberg and/ or Associates or any other Massachusetts Constable, as a special process server in the above case. The undersigned swears that to the best of his knowledge and belief, the person to be appointed Special Process Server is at least 18 years of age and not a party to this action.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

STEWARD HEALTH CARE
SYSTEM LLC,

Plaintiff,

v.

BOSTON GLOBE MEDIA PARTNERS,
LLC,

Defendant,

And

JOHN DOE,

A Necessary Party.

Civil Action No.

VERIFIED COMPLAINT

Nature of the Action

1. A prospective news story (the "Story") to be featured in this Sunday's edition of The Boston Globe (the "Globe") aims to unfairly malign and assassinate the reputation of Plaintiff Steward Health Care System LLC ("Steward"), the highest quality provider of mental health services in Massachusetts. The Boston Globe has informed Steward that it intends to publish a story on this coming Sunday, August 24. In this story, the Globe will highlight a series of claims against Steward relating to Steward's treatment of a patient with mental illness at its facilities. These claims are untrue. The Globe's primary source is a former patient of Steward's, described, in the Globe's own words, as "...delusional." The Globe has purportedly sought the input of

Steward regarding these allegations — however, with the full knowledge that Steward is prohibited by law from rebutting these untrue allegations and/or providing material facts relating to this patient’s care. The Globe story will thus be based on an incomplete record because the patient, John Doe, has only provided the Globe with selected portions of his medical records.

2. Denied the opportunity to respond to these scurrilous allegations and to provide the Globe with all of the relevant facts, Steward is faced with the certain and immediate spectre of an irreparably damaging, one sided attack on its delivery of healthcare to its patients. Further, such an untrue and incomplete story can only result in a severely chilling effect on the willingness of this vulnerable population – those with mental illness – to utilize the needed services of Boston’s leading provider of behavioral health care.¹

3. In its Motion for Declaratory Relief, Steward thus seeks (a) a declaration of right to disclose Doe’s personal health information to the Globe pursuant to 45 C.F.R. § 164.512(e)(1)(i) (permitting covered entity to disclose protected health information without patient’s written consent if pursuant to a Court Order), to the extent such disclosure is necessary to answer the allegations of inadequate care at Steward facilities advanced in the prospective Story; and an Order permitting such disclosure; (b) Steward seeks a declaration of right to disclose Doe’s protected health information to the Globe for its own health care operations pursuant to 45 C.F.R. § 164.506 (permitting covered entity to disclose protected health information for its own “Health Care Operations”); and an Order permitting such disclosure; and (c) an Order requiring

¹ As this Story will undoubtedly contribute to, if not steer the public debate surrounding the quality and availability of mental health services, the public interest weighs heavily in favor of including all sides to the Story.

the Globe to identify and/or produce to the Court and to Steward those portions of Doe's medical record that Doe has either permitted the Globe to review or authorized it to publish, so that the relief requested can be appropriately tailored by the Court (in accordance with HIPAA's "minimum necessary" requirement, see 45 C.F.R. §§ 164.502(b) and 164.514(d)).

The Parties

4. Steward is a limited liability company with its principal place of business at 500 Boylston Street, Boston, MA 02116.

5. The Globe is a limited liability company with its principal place of business at 135 Morrissey Boulevard, Boston, MA 02125.

6. Doe is the individual who is made the primary subject of the Story; as such, he is a Necessary Party to this action and named solely for this purpose. Steward seeks no relief or other damages against him.

Jurisdiction and Venue

7. This Court has subject matter jurisdiction to hear this matter pursuant to G.L. c. 231A, §1 et seq.

8. Personal jurisdiction over the Globe and Doe is proper under G.L. c. 223A, § 2, because both are domiciled in and/or maintain a principal place of business in Massachusetts.

9. Venue is proper under G.L. c. 223, § 1, because the Globe has its usual place of business in Suffolk County.

The Facts

10. On or about February 26, 2014, Brooke Thurston ("Thurston" or "Steward"),

Steward's Vice President of Media Relations was contacted by Jenna Russell ("Russell" or "the Globe"), a reporter for the Globe. See Correspondence from the Globe to Steward dated February 26, 2014, attached as Exhibit 1. The Globe's purpose for contacting Steward was to discuss the Story she was writing, which was "to be published in the Globe." See id.

11. Upon information and belief, the Story will be published on *Sunday, August 24, 2014*.

12. The Globe explained that the Story "follows one Boston area family through the mental health care system for much of last year as they deal with mental illness." See id. The Globe further explained that the Story:

[W]ill focus entirely on the texture of one family's experience. It is not an investigation or a comprehensive analysis of the mental health care system in any way. The goal is to help readers understand and feel, in a very vivid, detailed, personal way, what it's like to live with these issues when a relative is sick.

See id.

13. The Globe further indicated the Story would focus on a particular member of the subject family, Doe, who The Globe claimed had been a patient at three Steward hospitals within the time frame of the Story; namely, Norwood Hospital ("Norwood"), Carney Hospital ("Carney"), and Good Samaritan Hospital ("Good Samaritan"). See id.

14. The Globe proceeded to outline numerous (and false) allegations concerning Doe's treatment at these hospitals, including that:

- i. Carney discharged Doe prematurely, when he was not well enough to come home;
- ii. Carney discharged Doe with no money, phone, ID, or means of transportation, after denying his family members' request that he remain admitted until they were available to pick him up;

- iii. Good Samaritan discharged Doe prematurely;
- iv. Norwood failed to admit Doe upon his arrival pursuant to G.L. c. 123, § 12;
- v. Doe was required to wait in the Emergency Room at Norwood for almost two days before being given a bed in Norwood's psychiatric unit; and,
- vi. Norwood discharged Doe prematurely.

See id.

15. These allegations are without basis in fact.

16. With each allegation, the Globe posed a series of questions to Steward regarding Steward's general policies (e.g., "How is it determined when a patient is ready for discharge? What is the standard? Is there an underlying philosophy that shapes the length of patient stays?"). See id.

17. Last, Russell previewed the tenor that the Story would adopt as to the care Doe received as a patient of Steward's hospitals:

The story will show a pattern of repeated short hospitalizations for this patient, and will describe the family's frustration at their inability to get the patient into a long-term treatment situation (which did not seem to have much to do with a shortage of long-term beds, but rather, with hospitals not finding reason to keep him for the long term or seek a bed at a hospital with a long-term care setting.) Ultimately he did find his way to long term care, and to greater stability, but it was preceded by months of upheaval and chaos that his family thought might have been avoided.

See id. (emphasis added).

18. Again, these suppositions-come-allegations are without basis.

19. On August 14, 2014, at Steward's request, The Globe provided Steward with more detailed information about the Story – based on allegations and (it appears based on the communications received from the Globe) selected disclosures of medical records made by John Doe:

There are, as you know, two threads in the story that concern Steward – one that has to do with [Doe’s] allegations of mistreatment at Norwood Hospital, and another about his visits in spring 2013 at Norwood and Good Samaritan.

See Correspondence from Steward to the Globe dated August 14, 2014, attached as Exhibit 2.

20. On the first thread of the story concerning Steward – [Doe’s] allegations of mistreatment at Norwood – the Globe told Steward as follows:

[Doe] alleges the following occurred at Norwood Hospital over a period of years:

- 1) that a nurse once ignored his pleas for water as he lay in restraints
- 2) that staff members once held him down to insert a catheter by force after he failed or refused to provide a urine sample
- 3) that on one occasion a technician who was taking his blood put an arm around his neck and choked him
- 4) that a security guard in the ER once pushed [Doe’s] face into a body lying on a gurney and told [Doe] the patient had died because [Doe] had refused to stop yelling.

See id.²

21. Russell added:

[I]t is well established from the beginning of the story that [Doe] is mentally ill and at times suffers from delusions. That is, of course, the subject of this story.

See id.³

22. On the second thread of the story concerning Steward – [Doe’s] visits at Norwood

² The Globe further explains that the Story “goes on to describe how [Doe] later punched the same Norwood security guard (on a visit to the ER in Feb 2013) and was charged with assault, and how he later encountered the guard again (in June 2013) on the hospital grounds, while the assault charge was still pending, and spoke to the guard about the case, and was as a result charged with intimidation of a witness.” Id.

³ “A letter from patient advocate Joanne Carry... notified [Doe] that the patient grievance committee had investigated his allegations about the security guard and the phlebotomist and determined that there was no evidence to support his claims. The investigation and finding is included in the story.” Id.

and Good Samaritan in spring 2013 – the Globe told Steward:

I have previously described to you the family’s frustration, expressed in the story, that the hospitals did not treat [Doe] for longer, or find him a bed elsewhere where he could be treated for longer, during a time when he was having increasing conflict with neighbors and interactions with police and courts. (His longest period of treatment in this period was at Norwood, for three or four days.) His family felt [Doe] was becoming unstable and needed more help than the hospitals gave him. [Doe], on the other hand, felt strongly that he did not need to be in the hospital.

See id.

23. The Globe also told Steward that [Doe] had “requested medical records from Norwood for 2013” and had shared them with her. See id.

24. The Globe proceeded to outline for Steward the referenced series of visits to Norwood and Good Samaritan, which the Globe indicated would be featured in her story. See id. The Globe indicates that this outline of events is based, in part, on the medical records given to her by Doe.

25. In the final line of her email to Thurston, Russell wrote: “I welcome any type of response or input you can provide.” See id.

26. On August 13, 2014, Steward’s Chief Marketing Officer, Brian Carty (hereafter “Carty”), “Carty, wrote to Russell and her editor, Steven Wilmsen (hereinafter “Wilmsen”), to express Steward’s concerns about the Story and its sourcing – viz. one sided, selectively based allegations by (as the Globe describes him) a delusional, psychiatric patient. See Email between the Globe and Steward dated August 13, 2014, included in exchange attached here as Exhibit 3.

27. Carty wrote, in part, as follows:

... We want to do everything we can to ensure the story is fair and informative to your readers. Behavioral health is a top priority of Steward and while many other

providers have been reducing these services Steward is expanding them ...

Unfortunately, the fact that we are unable to respond to your questions about the care provided to the patient in your story - because of his refusal to sign a waiver - will negatively impact your ability to tell the whole story and will deny us the basic fairness of being able to address questions about his care. We think our patients and this important issue deserve better.

We are very concerned that since we are not allowed to know the identity of the patient and cannot respond to his family's claims, only one side of this story will be told. This is clearly unfair, and will not allow the Globe to tell the whole story about this important issue. We have been very willing to work with you on this story and believe strongly in providing care to this population of patients. All we are asking for is the ability to respond based on the facts.

You have described this patient apparently diagnosed as having a bipolar disorder as being "unreliable" and "delusional" at times. Bipolar disorder is complicated and hard to understand if you are not a clinician. We find it hard to believe that you could present an accurate depiction of the patient's medical condition without that input of clinicians. The patient and his family may have presented an incomplete or inaccurate description of his care - without the ability to address the specific issues raised, there is no way to determine the accuracy of these claims.

I look forward to resolving this matter with you and your team.

See id.

28. Notwithstanding these concerns, the Globe responded to Steward on August 15, 2014, conveying the Globe's intent to publish the Story. See Email between the Globe and Steward dated August 15, 2014, included in exchange attached here as Exhibit 3.

29. Wilmsen's justified this decision, in part, as follows:

I believe at this point, Jenna has provided the identity of the patient ... and that she has described in detail any intersections he had with Steward hospitals. It is also my understanding that [Doe] will not sign a waiver as you request, and we cannot force him to do so.

I remain unclear about your concerns once that option is off the table.

See id.

30. Notwithstanding Steward's inability to respond to those selective disclosures, the Globe also indicated that it remained "interested in hearing any additional information [Steward is] able to provide." See id.

31. In response to Wilmsen, Steward explained that "due to patient privacy laws, we cannot even confirm if [Doe] has been a patient in our system." See id. Steward continued:

We believe it is entirely unfair to print this patient's allegations of mistreatment if he will not sign a waiver so that we can comment on the record in your story. If he is unwilling to sign the release, we ask that you strike mention of [Doe's] interactions with Steward hospitals or any concerns or critiques of the care he received in our system. It is unfair to print them if we are not in a position to respond.

See id.

32. Adding to Steward's reply, Carty clarified:

[T]he specific answer to you being "unclear" about our concerns is simple: there are enormous business implications for Steward if we are included in the story.

See id.

COUNT I – For Declaratory Relief (G.L. c. 231A)

33. An actual controversy exists between the parties.

34. The Globe intends to publish a Story to an expansive community that includes numerous (and false) allegations of inadequate treatment at Steward facilities and presents Steward as grotesquely insensitive to, and uncaring for, the needs of patients with mental illness. These allegations are advanced through selected disclosures of medical information by Doe – the Story's primary source, who the Globe describes as being bi-polar, mentally ill, and at times suffering from delusions.

35. The Globe has purportedly sought comment from Steward; however, as the Globe is fully aware, under HIPAA, Steward is prohibited from responding to these claims, or in any way commenting on the Story.

36. Steward will suffer irreparable harm to its business, reputation, and good standing if the Story is published without Steward's comment and participation. To prevent this, Steward must be permitted disclose Doe's protected health information under one of the HIPAA exceptions that permits such use and disclosure without Doe's authorization or consent.

37. Steward seeks a declaration of right to disclose Doe's personal health information to the Globe pursuant to 45 C.F.R. § 164.512(e)(1)(i) (permitting covered entity to disclose protected health information without patient's written consent if pursuant to a Court Order), to the extent such disclosure is necessary to answer the allegations of inadequate care at Steward facilities advanced in the prospective Story; and an Order permitting such disclosure. See G.L. c. 231A, § 2.

38. Steward seeks a declaration of right to disclose Doe's protected health information to the Globe for its own health care operations pursuant to 45 C.F.R. § 164.506 (permitting covered entity to disclose protected health information for its own "Health Care Operations"); and an Order permitting such disclosure. See G.L. c. 231A, § 2.

39. Steward seeks an Order requiring the Globe to identify and to deliver to the Court and to Steward those portions of Doe's medical record that Doe has either permitted the Globe to review or authorized it to publish by Thursday, August 21st by 4:00 P.M., so that, if the above-requested relief is granted, Steward may appropriately measure the scope of its own disclosures to the Globe, in accordance with HIPAA's "minimum necessary" requirement. See 45 C.F.R. §§

164.502(b) and 164.514(d).

40. Given the timeliness of Plaintiff's request, declaratory relief is appropriate and will terminate the uncertainty or controversy between the parties. See G.L. c. 231A, § 3.

41. The irreparable harm that will result to Steward if the relief is denied outweighs the consequences resulting from an order allowing Steward to sufficiently respond to Doe's allegations with the Globe and provide a response to said allegations.

42. The public interest – here, an at-risk population requiring proper and efficient medical treatment by Steward, and which treatment will otherwise be irreparably impaired – supports the issuance of an order for the requested declaratory relief.

COUNT II – For Declaratory Relief (G.L. c. 231A) Against the Globe

43. Steward seeks an Order requiring the Globe to identify and to deliver to the Court and to Steward those portions of Doe's medical record that Doe has either permitted the Globe to review or authorized it to publish by Thursday, August 21st at 4:00 pm., so that, if the above-requested relief is granted, Steward may appropriately measure the scope of its own disclosures to the Globe, in accordance with HIPAA's "minimum necessary" requirement. See 45 C.F.R. §§ 164.502(b) and 164.514(d).

Relief Requested

Wherefore, Plaintiff requests that this Court:

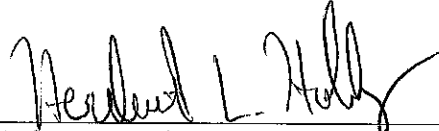
- a. Immediately find for Plaintiff on all the claims for relief in this Verified Complaint because the Story will be published on Sunday, August 24, 2014;
- b. Pursuant to G.L. c. 231A, declare Steward's right to disclose Doe's personal health

information to the Globe pursuant to 45 C.F.R. § 164.512(e)(1)(i) (permitting covered entity to disclose protected health information without patient's written consent if pursuant to a Court Order), to the extent such disclosure is necessary to answer the allegations of inadequate care at Steward facilities advanced in the prospective Story; and issue an Order permitting such disclosure.

- c. Pursuant to G.L. c. 231A, declare Steward's right to disclose Doe's protected health information to the Globe for its own health care operations pursuant to 45 C.F.R. § 164.506 (permitting covered entity to disclose protected health information for its own "Health Care Operations"); and issue an Order permitting such disclosure.
- d. Issue an Order requiring the Globe to identify and/or produce to Steward and this Honorable Court those portions of Doe's medical record that Doe has either permitted the Globe to review or authorized it to publish by August 21st at 4:00pm EST, so that, if the above-requested relief is granted, Steward may appropriately measure the scope of its own disclosures to the Globe, in accordance with HIPAA's "minimum necessary" requirement. See 45 C.F.R. §§ 164.502(b) and 164.514(d).
- e. Enter such other and additional relief to Steward as the Court deems just and proper.
- f. Award Plaintiffs their costs and attorney fees pursuant to G.L. c. 231, § 7.

STEWARD HEALTH CARE SYSTEM LLC

By its attorneys,



Herbert L. Holtz, BBO#554843

hlh@holtzandreed.com

Patrick H. Foley, BBO#679019

pfoley@holtzandreed.com

HOLTZ & REED, LLP

225 Friend Street

Boston, MA 02114

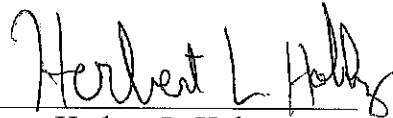
(617) 720-0501 (telephone)

(617) 720-0502 (facsimile)

Dated: August 20, 2014

Certificate of Service

I, Herbert Holtz, certify that on this date, August 20th, 2014, I served a true copy of the above document on each other party by the appointed process server in this case, The Constables Office, Mark P. Weisberg and/or Associates, pursuant to Superior Court Rule 9A.



Herbert L. Holtz

VERIFICATION

Joseph C. Maher, Jr., Esq., being duly sworn, says that he is the General Counsel of Steward Health Care System LLC; that he has read the foregoing Complaint and is familiar with its contents; and that the allegations set forth in the Complaint are true to the best of his knowledge, information and belief.

Signed under the pains and penalties of perjury this 20th day of August, 2014.



Joseph C. Maher, Jr., Esq.

EXHIBIT 1

Hilda Velez

From: <Russell>, Jenna Russell <jenna.russell@globe.com>
Date: Wednesday, February 26, 2014 at 4:10 PM
To: Brooke Thurston <brooke.thurston@steward.org>
Cc: Jenna Russell <jenna.russell@globe.com>
Subject: Re: Following up from Steward

Brooke,

Thank you for following up on this, and for your patience.

As we discussed, my story, to be published in the Globe sometime this spring, follows one Boston area family through the mental health care system for much of last year as they deal with a mental illness. Because the closest hospital to their home is Norwood, that's the hospital they interact with most often, and it will have a presence in the story, as will, to a much lesser degree, Carney (the patient was there once) and Good Samaritan. As we discussed, other hospitals will also have a presence in the story: some public, some private; some nearby, some not.

The story will focus entirely on the texture of one family's experience. It is not an investigation or a comprehensive analysis of the mental health care system in any way. The goal is to help readers understand and feel, in a very vivid, detailed, personal way, what it's like to live with these issues when a relative is sick.

At Carney, the patient was admitted for a couple of days in 2013. Two issues arose for the family when the hospital decided to discharge him, and informed his mother they would do so. Her first concern was that his stay had been too brief, and that he was not well enough to come home yet. To understand better the hospital's perspective, I would be interested in learning more about discharge standards for psychiatric patients. Questions I would be interested in asking include:

-What is this hospital equipped to provide in terms of length of stay for psych patients? What is the range of stays? What is typical? What determines how long a patient stays? How is it determined when a patient is ready for discharge? What is the standard? Is there an underlying philosophy that shapes the length of patient stays?

The second issue that came up at Carney for this family took shape after it was made clear to them that the patient would not be staying any longer. At that time the mother (and then another family member) told the hospital she could not pick him up at the time set for discharge, and asked if they could keep him until she was available. They were not able to accommodate the request, so he was discharged, says the family, with no money, no phone, no ID, and no way to get home. He ended up walking much of the way home from Dorchester, while his family searched for him, very concerned. To understand better the hospital's perspective, I would be interested in hearing what the hospital's general policies and procedures are for discharging psych patients when no one is available to meet and transport them.

At Good Samaritan, the family's concern was similar to the initial concern at Carney, about the length of stay. (The patient was at Good Sam twice, both times committed by a judge. He stayed once for two days and the second time, for one day.) My questions for the hospital would be the same as for Carney, aimed at understanding what determines length of stay for adult psychiatric patients. (Not sure if there are differences between these two hospitals in terms of what they are equipped to provide, what their psych units are set up to do, etc. It would be great to understand how those limitations play into stay length at the individual institutions.)

Again, at Norwood, the family had concerns about length of stay. In particular, there was one week last spring when the patient was sent to Norwood on a Section 12 order (by a nurse), was released a few hours later, and then was sent back the next day on a second Section 12 order (by medical staff at the same day program). The family was concerned (1), about the initial failure to admit, as they felt he should have been admitted at that time. They were also concerned, (2), when he returned to the hospital the next day, that he had to wait for almost two days in the ER before being sent up to a bed in Norwood's psychiatric unit (I understand that long waits in ERs is a problem statewide for psych patients, one we have written about before), and finally, they were concerned (3) that he was ultimately kept in the unit at Norwood only from Friday until Monday morning before being released again. (I understand there is a limit on stay length set by the Section 12 law, but my understanding is that it covers only business days, so the weekend days in this case would not have counted under the limits of the law.) My questions on this series of events, again, would have to do with the hospital's standards, practices and procedures for determining how long psych patients need to be there and when they are well enough to be released.

As you can see, there is a great deal of overlap here, and really just a couple of core concerns. The story will show a pattern of repeated short hospitalizations for this patient, and will describe the family's frustration at their inability to get the patient into a long-term treatment situation (which did not seem to have much to do with a shortage of long-term beds, but rather, with hospitals not finding reason to keep him for the long term or seek a bed at a hospital with a long-term care setting.) Ultimately he did find his way to long term care, and to greater stability, but it was preceded by months of upheaval and chaos that his family thought might have been avoided. It would be helpful to me to put this in some larger context by understanding the role played by hospitals, their limits and their decision making.

I hope this is helpful, and will allow us to move forward with some form of dialogue -- please let me know what you think makes sense for a next step.

I appreciate it,

Jenna

On Mon, Feb 24, 2014 at 3:19 PM, Brooke Thurston <Brooke.Thurston@steward.org> wrote:
Thanks, Jenna. I'll be in the office tomorrow.

--

Brooke Thurston
VP, Media Relations
Steward Health Care System LLC
(w) [617.419.4729](tel:617.419.4729)
(c) [202.256.7671](tel:202.256.7671)

From: <Russell>, Jenna <jenna.russell@globe.com>
Date: Monday, February 24, 2014 at 1:09 PM
To: Brooke Thurston <brooke.thurston@steward.org>
Subject: Re: Following up from Steward

Hi Brooke -- very sorry to leave you hanging -- I was off last week but neglected to update my voicemail/email alerts. I'm just back and a bit overwhelmed today, but will check in with you tomorrow for sure with the info we talked about earlier this month. Still plenty of time remaining on this project -- many thanks for your efforts to get in touch.
Talk soon,
Jenna

On Mon, Feb 24, 2014 at 11:58 AM, Brooke Thurston <Brooke.Thurston@steward.org> wrote:

Hi Jenna,

I left you a couple of voicemails last week and thought I would drop you an email as well.

I wanted to follow up with you about the piece you are writing about a patient who visited some of our hospitals.

Can you please give me a call?

Thanks,
Brooke

--

Brooke Thurston
VP, Media Relations
Steward Health Care System LLC
(w) [617.419.4729](tel:617.419.4729)

(c) 202,256,7671

--
Jenna Russell
The Boston Globe
(617) 929-3153
jrussell@globe.com

Jenna Russell
The Boston Globe
(617) 929-3153
jrussell@globe.com

EXHIBIT 2

Hilda Velez

From: <Russell>, Jenna Russell <jenna.russell@globe.com>
Date: Thursday, August 14, 2014 at 8:17 AM
To: Brooke Thurston <brooke.thurston@steward.org>
Subject: Re: checking in

Hi Brooke -- my apologies for the delay in getting you more detailed information about the story. I appreciate your patience.

The name of the patient I'm writing about is [REDACTED] -- I'm not sure how much use that is to you without the signed release, but there you have it.

There are, as you know, two threads in the story that concern Steward -- one that has to do with [REDACTED] allegations of mistreatment at Norwood Hospital, and another about his visits in spring 2013 at Norwood and Good Samaritan.

On the first point, [REDACTED] alleges the following occurred at Norwood Hospital over a period of years:

- 1) that a nurse once ignored his pleas for water as he lay in restraints
- 2) that staff members once held him down to insert a catheter by force after he failed or refused to provide a urine sample
- 3) that on one occasion a technician who was taking his blood put an arm around his neck and choked him
- 4) that a security guard in the ER once pushed [REDACTED] face into a body lying on a gurney and told [REDACTED] the patient had died because [REDACTED] had refused to stop yelling.

A letter from patient advocate Joanne Carry, dated July 22, 2013, notified [REDACTED] that the patient grievance committee had investigated his allegations about the security guard and the phlebotomist and determined that there was no evidence to support his claims. The investigation and finding is included in the story.

As we have discussed, it is well established from the beginning of the story that [REDACTED] is mentally ill and at times suffers from delusions. That is, of course, the subject of this story.

The story goes on to describe how [REDACTED] later punched the same Norwood security guard (on a visit to the ER in Feb 2013) and was charged with assault, and how he later encountered the guard again (in June 2013) on the hospital grounds, while the assault charge was still pending, and spoke to the guard about the case, and was as a result charged with intimidation of a witness.

On the second point that concerns Steward [REDACTED] visits to the two hospitals in spring 2013 -- I have previously described to you the family's frustration, expressed in the story, that the hospitals did not treat [REDACTED] or longer, or find him a bed elsewhere where he could be treated for longer, during a time when he was having increasing conflict with neighbors and interactions with police and courts. (His longest period of treatment in this period was at Norwood, for three or four days.) His family felt [REDACTED] was becoming unstable and needed more help than the hospitals gave him [REDACTED] on the other hand, felt

strongly that he did not need to be in the hospital. [REDACTED] requested medical records from Norwood for 2013 that he shared with me.

He was brought by the police to the Norwood ER on May 7 on a Section 12 from the Riverside day program after an angry, yelling argument with his psychiatrist. According to the medical records, he told clinicians there that he didn't want to be there and he wanted to go home. He denied that he would harm himself or others. He was given Ativan, and discharged (the same day) with his condition improved.

He was brought back to the ER by police the next day, May 8, on another Section 12 from Riverside. He was admitted and kept in the ER until he moved to a bed in the psychiatric ward at Norwood on May 9 or 10, and stayed until the following Monday, May 13.

The next day, May 14, after [REDACTED] was arrested for disturbing the peace, a judge sent him to the ER at Good Samaritan, where he stayed in the ER until being released on May 16.

Police brought [REDACTED] to Norwood again late at night on June 2 on a Section 12 after he caused a disturbance in his neighborhood. At the ER, he "became calm and rational," according to the medical records, and denied any suicidal or homicidal ideation. The notes also describe him as "very volatile" and "probably not taking his meds." He was released from the ER to go home on June 3.

The next day, June 4, police arrested [REDACTED] again for disturbing the peace in his neighborhood. A judge sent him back to the Good Samaritan ER on a 15B order. He was released and returned home on June 5.

The family was troubled that [REDACTED] cycled in and out of hospitals five times in a month, before being sent by the court to Bridgewater State for a 20-day evaluation, and ultimately on to Worcester State for a stay of several months. [REDACTED], again, maintained that his symptoms and/or behavior did not warrant any kind of hospitalization.

I welcome any type of response or input you can provide.

Many thanks,
Jenna Russell

On Fri, Aug 8, 2014 at 8:10 AM, Brooke Thurston <Brooke.Thurston@steward.org> wrote:

Hi Jenna,

Thanks for the update on the timing of your story.

Have you and Steve figured out how you can address the concerns I shared with you both earlier this week?

Thank you,
Brooke

From: <Russell>, Jenna Russell <jenna.russell@globe.com>
Date: Thursday, August 7, 2014 at 9:10 PM
To: Brooke Thurston <brooke.thurston@steward.org>
Subject: Re: checking in

Brooke - we're going to aim for the 23rd - our senior projects editor is out next week, and he wants to oversee every detail of the story.

I know I promised you an email, and I apologize for the delay - too many meetings. I will try to get that to you tomorrow.

On Thu, Aug 7, 2014 at 3:05 PM, Brooke Thurston <Brooke.Thurston@steward.org> wrote:

Hi Jenna,

Just checking in. Any updates on your end that you can share?

Thank you,
Brooke

Brooke Thurston
VP, Media Relations
Steward Health Care System
[\(617\) 419-4729](tel:6174194729)

Jenna Russell
The Boston Globe
[\(617\) 929-3153](tel:6179293153)
jrussell@globe.com

EXHIBIT 3

Hilda Velez

From: Brian Carty <Brian.Carty@steward.org>
Date: Saturday, August 16, 2014 at 4:26 PM
To: Brooke Thurston <brooke.thurston@steward.org>, "Wilmsen, Steven" <steven.wilmsen@globe.com>
Cc: Jenna Russell <jenna.russell@globe.com>
Subject: RE: Steward Concerns

Steve

In addition to Brooke's comments, the specific answer to you being "unclear" about our concerns is simple: there are enormous business implications for Steward if we are included in the story.

This article containing serious allegations about the quality of Steward's behavioral health care by someone Jessica has termed "delusional", will have a profound impact on our business. Our caregivers who give heart and soul to serve this difficult population will be discouraged, dispirited and feel attacked. Behavioral health is a large and important part of Steward's overall business (as the Globe has recently reported) and a perception that quality is lacking will cause patients and their families to flee our services.

As the Globe has reported, behavioral health services are crucial to the accountable care model on which our \$ 2.5 billion company is based. Including the allegations we are legally proscribed from addressing will cause serious financial and reputational damage to Steward.

Brian

From: Brooke Thurston
Sent: Saturday, August 16, 2014 12:59 PM
To: Wilmsen, Steven; Brian Carty
Cc: jenna.russell@globe.com
Subject: Re: Steward Concerns

Steve,

As we have discussed, due to patient privacy laws, we cannot even confirm if [REDACTED] has been a patient in our system.

We believe it is entirely unfair to print this patient's allegations of mistreatment if he will not sign a waiver so that we can comment on the record in your story. If he is unwilling to sign the release, we ask that you strike mention of [REDACTED] interactions with Steward hospitals or any concerns or critiques of the care he received in our system. It is unfair to print them if we are not in a position to respond.

Thank you,
Brooke

—
Brooke Thurston
VP, Media Relations
Steward Health Care System LLC
(w) 617.419.4729
(c) 202.256.7671

From: <Wilmsen>, "Wilmsen, Steven" <steven.wilmsen@globe.com>
Date: Friday, August 15, 2014 at 6:46 PM
To: Brian Carty <Brian.Carty@steward.org>
Cc: Jenna Russell <jenna.russell@globe.com>, Brooke Thurston <brooke.thurston@steward.org>
Subject: Re: Steward Concerns

Hello Brian and Brooke --

Thank you for your correspondence on this story. I want to assure you that we are as committed to fairness as you. I believe at this point, Jenna has provided the identity of the patient, [REDACTED] and that she has described in detail any intersections he had with Steward hospitals. It is also my understanding that [REDACTED] will not sign a waiver as you request, and we cannot force him to do so.

I remain unclear about your concerns once that option is off the table. It would be helpful to know if you have specific areas that you wish to address. Possibly there are other ways to approach them.

I would like to add that Jenna's story is a lengthy narrative whose principal focus is on a family attempting to cope with a mentally ill son. As such, it follows their lives as they traverse a broad sweep of experiences and includes [REDACTED] difficult behavior and his

interactions with many entities, including police and the court system.

It is my judgment that in reporting and writing this story Jenna has been scrupulously fair in her depiction of all [REDACTED] interactions, including those that involve Norwood. Obviously, we are interested in hearing any additional information you are able to provide. It's late on Friday now, but feel free to call Monday.

Best regards,
Steven Wilmsen

On Wed, Aug 13, 2014 at 4:25 PM, Brian Carty <Brian.Carty@steward.org> wrote:
Dear Jenna and Steve,

I am writing because we have concerns about your upcoming story.

We want to do everything we can to ensure the story is fair and informative to your readers. Behavioral health is a top priority of Steward and while many other providers have been reducing these services Steward is expanding them. Last week the *Globe* published a front-page story about Steward with an opening sentence that stated, "Steward Health Care System is spending millions to open new psychiatric units in Massachusetts, filling a gap in mental health care and marking a reversal from the recent years in which hospitals had little interest in expanding these services."

We are proud of that record and are steadfast in our commitment to increase care for this often ignored patient population. Unfortunately, the fact that we are unable to respond to your questions about the care provided to the patient in your story - because of his refusal to sign a waiver - will negatively impact your ability to tell the whole story and will deny us the basic fairness of being able to address questions about his care. We think our patients and this important issue deserve better.

We are very concerned that since we are not allowed to know the identity of the patient and cannot respond to his family's claims, only one side of this story will be told. This is clearly unfair, and will not allow the *Globe* to tell the whole story about this important issue. We have been very willing to work with you on this story and believe strongly in providing care to this population of patients. All we are asking for is the ability to respond based on the facts.

You have described this patient apparently diagnosed as having a bipolar disorder as being "unreliable" and "delusional" at times. Bipolar disorder is complicated and hard to understand if you are not a clinician. We find it hard to believe that you could present an accurate depiction of the patient's medical condition without that input of clinicians. The patient and his family may have presented an incomplete or inaccurate description of his care - without the ability to address the specific issues raised, there is no way to determine the accuracy of these claims.

I look forward to resolving this matter with you and your team.

Brian Carty
Chief Marketing Officer
Steward Health Care System
[\(617\) 733-3127](tel:6177333127)

--
Steven Wilmsen
Narrative Editor
The Boston Globe
o: 617-929-3005
c: 617-240-8513
@swilmsen

VERIFICATION

Joseph C. Maher, Jr., Esq., being duly sworn, says that he is the General Counsel of Steward Health Care System LLC; that he has read the foregoing Complaint and is familiar with its contents; and that the allegations set forth in the Complaint are true to the best of his knowledge, information and belief.

Signed under the pains and penalties of perjury this 20th day of August, 2014.

Joseph C. Maher, Jr., Esq.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

_____)
 STEWARD HEALTH CARE)
 SYSTEM LLC,)
)
 Plaintiff,)
)
 v.)
)
 BOSTON GLOBE MEDIA PARTNERS,)
 LLC,)
)
 Defendant,)
 And)
)
 JOHN DOE,)
)
 A Necessary Party.)
 _____)

Civil Action No.

**PLAINTIFF'S EMERGENCY MOTION FOR DECLARATORY/INJUNCTIVE
RELIEF**

A prospective news story (the "Story") to be featured in this Sunday's edition of The Boston Globe (the "Globe") aims to unfairly malign and assassinate the reputation of Plaintiff Steward Health Care System LLC ("Steward"), the highest quality provider of mental health services in Massachusetts. The Boston Globe has informed Steward that it intends to publish a story on this coming Sunday, August 24. Steward, however, is prohibited by The Health Insurance Portability and Accountability Act ("HIPAA") from rebutting these untrue allegations.

Accordingly, Steward hereby moves this Court for declaratory and injunctive relief. Specifically, Steward requests that this Court:

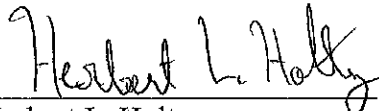
- a. Immediately find for Plaintiff on all the claims for relief in this Verified

Complaint because the Story will be published on Sunday, August 24, 2014;

- b. Pursuant to G.L. c. 231A, declare Steward's right to disclose Doe's personal health information to the Globe pursuant to 45 C.F.R. § 164.512(e)(1)(i) (permitting covered entity to disclose protected health information without patient's written consent if pursuant to a Court Order), to the extent such disclosure is necessary to answer the allegations of inadequate care at Steward facilities advanced in the prospective Story; and issue an Order permitting such disclosure.
- c. Pursuant to G.L. c. 231A, declare Steward's right to disclose Doe's protected health information to the Globe for its own health care operations pursuant to 45 C.F.R. § 164.506 (permitting covered entity to disclose protected health information for its own "Health Care Operations"); and issue an Order permitting such disclosure.
- d. Issue an Order requiring the Globe to identify and/or produce to Steward and this Honorable Court those portions of Doe's medical record that Doe has either permitted the Globe to review or authorized it to publish by August 21st at 4:00pm EST, so that, if the above-requested relief is granted, Steward may appropriately measure the scope of its own disclosures to the Globe, in accordance with HIPAA's "minimum necessary" requirement. See 45 C.F.R. §§ 164.502(b) and 164.514(d).
- e. Enter such other and additional relief to Steward as the Court deems just and proper.
- f. Award Plaintiffs their costs and attorney fees pursuant to G.L. c. 231, § 7.

Certificate of Service

I, Herbert Holtz, certify that on this date, August 20th, 2014, I served a true copy of the above document on each other party by the appointed process server in this case, The Constables Office, Mark P. Weisberg and/or Associates, pursuant to Superior Court Rule 9A.



Herbert L. Holtz

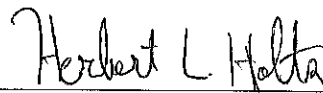
The reasons for Steward's motion are set forth in the accompanying Memorandum filed herewith.

WHEREFORE, Steward respectfully moves this Court for the above-described declaratory and injunctive relief.

Respectfully submitted,

STEWARD HEALTH CARE SYSTEM
LLC,

By its attorneys,



Herbert L. Holtz, BBO#554843

hlh@holtzandreed.com

Patrick H. Foley, BBO#679019

pfoley@holtzandreed.com

HOLTZ & REED, LLP

225 Friend Street

Boston, MA 02114

(617) 720-0501 (telephone)

(617) 720-0502 (facsimile)

Dated: August 20, 2014

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

_____)
 STEWARD HEALTH CARE)
 SYSTEM LLC,)
)
 Plaintiff,)
)
 v.)
)
 BOSTON GLOBE MEDIA PARTNERS,)
 LLC,)
)
 Defendant,)
 And)
)
 JOHN DOE,)
)
 A Necessary Party.)
 _____)

Civil Action No.

**MEMORANDUM IN SUPPORT OF
PLAINTIFF’S EMERGENCY MOTION FOR DECLARATORY/INJUNCTIVE RELIEF**

INTRODUCTION

As detailed in the Verified Complaint, Defendant Boston Globe Media Partners, LLC (“the Globe”) has informed Steward Health Care System LLC (“Steward”) that it intends to publish a story on this coming Sunday, August 24. In this story, the Globe will highlight a series of claims against Steward relating to Steward’s treatment of a patient with mental illness at its facilities. These claims are untrue. The Globe’s primary source is a former patient of Steward’s, John Doe (“Doe”) described, in the Globe’s own words, as “...delusional.” The Globe has purportedly sought the input of Steward regarding these allegations — however, with the full knowledge that Steward is prohibited by law from rebutting these untrue allegations and/or providing material facts relating to this patient’s care. The Globe story will thus be based on an

incomplete record because the patient, John Doe, has only provided the Globe with *selected* portions of his medical records.

Denied the opportunity to respond to these scurrilous allegations and to provide the Globe with all of the relevant facts, Steward is faced with the certain and immediate specter of an irreparably damaging, one sided attack on its delivery of healthcare to its patients. Further, such an untrue and incomplete story can only result in a severely chilling effect on the willingness of this vulnerable population – those with mental illness – to utilize the needed services of Boston’s leading provider of behavioral health care.¹

In its Emergency Motion for Declaratory/Injunctive Relief, Steward seeks (a) a declaration of right to disclose Doe’s personal health information to the Globe pursuant to 45 C.F.R. § 164.512(e)(1)(i), to the extent such disclosure is necessary to answer the allegations of inadequate care at Steward facilities advanced in the prospective Story; and an Order permitting such disclosure; (b) a declaration of right to disclose Doe’s protected health information to the Globe for its own health care operations pursuant to 45 C.F.R. § 164.506; and an Order permitting such disclosure; and (c) an Order requiring the Globe to identify and/or produce to the Court and to Steward those portions of Doe’s medical record that Doe has either permitted the Globe to review or authorized it to publish, so that the relief requested can be appropriately tailored by the Court (in accordance with HIPAA’s “minimum necessary” requirement, see 45 C.F.R. §§ 164.502(b) and 164.514(d)).

¹ As this Story will undoubtedly contribute to, if not steer the public debate surrounding the quality and availability of mental health services, the public interest weighs heavily in favor of including all sides to the Story.

DISCUSSION²

I. The Court Should Declare Steward’s Right to Disclose Doe’s Protected Health Information to the Globe Pursuant to 45 C.F.R. § 164.512(e)(1)(i).

A. HIPAA Regulations Allow Disclosure of Patient Information Where Such Disclosure is made Pursuant to a Court Order.

The Health Insurance Portability and Accountability Act (“HIPAA”), and its related regulations, govern the dissemination of protected health information. See In re New England Compounding Pharmacy, Inc. Products Liability Litigation, 2013 WL 6058483, *12 (D. Mass. 2013). “Congress enacted HIPAA, in part, to protect the security and privacy of [health information]” and “delegated to the Secretary of Health and Human Services broad authority to promulgate rules and regulations protecting the privacy of patient health information.” Id. at *12 quoting Wade v. Vabnick–Wener, 922 F.Supp.2d 679, 685 (W.D. Tenn. 2010) (quotations omitted). “The regulations place strict limitations on the ability of certain healthcare providers to release a patient’s medical records or discuss the patients’ medical history without the express consent of the patient.” Id. at *12.

The regulations also provide, however, certain exceptions to the general rule against disclosure of patient health information without the patient’s prior written consent. Among other exceptions, the HIPAA regulations allow a covered entity to disclose protected patient information where such disclosure is made pursuant to a court order, provided that the covered

² The *Packaging Industries* standard is familiar to this Court and consideration permeates this memorandum and all accompanying pleadings. The standard for a preliminary injunction is familiar. A court may issue an preliminary injunction where the Plaintiff can show that: (1) it has a probability of success on the merits; (2) it will be irreparably harmed if the injunction is denied; and (3) the balance of interest as between the parties (i.e., whether the harm to the movant if the injunction is denied outweighs the harm to the non-movant if the injunction is granted); and, in cases touching the public interest, (4) that the public interest supports, or does not contradict, the issuance of an order. Packaging Indus. Group, Inc. v. Cheney, 380 Mass 609, 617 (1980). It is clear from the facts alleged in the Verified Complaint and discussed herein that Steward satisfies each element of this standard.

entity discloses only the protected health information expressly authorized by such order. 45 C.F.R. § 164.512(e)(1)(i).

The Court's power to issue a disclosure order under this exception is not contingent upon additional conditions, such as notice to the individual who is the subject of the information to be disclosed. See Brigham v. Colyer, 2010 WL 2131967, *2 (D. Kan. 2010) (distinguishing "two kinds of orders" contemplated under 45 C.F.R. § 164.512(e)). See also 45 C.F.R. § 164.512(e)(1)(i)-(ii). Rather, "a covered entity may disclose protected health information identified in the disclosure order upon receipt of the disclosure order."³

Courts routinely issue such disclosure orders and have long recognized that "[p]rivacy rights in medical records are neither fundamental nor absolute." See Whalen v. Roe, 429 U.S. 589, 603-604 (1977). See also Seaton v. Mayberg, 610, F.3d 530, 537 (9th Cir. 2010) (clarifying that the Supreme Court has not established Constitutional right to privacy in medical records). The courts have also clarified that HIPAA is not "an Act of Congress that creates a privilege." See Northwestern Memorial Hosp. v. Ashcroft, 362 F.3d 923, 926 (7th Cir. 2004). Rather, "the HIPAA standard for disclosure of medical information in judicial or administrative proceedings" is "purely procedural." See id. at 925-926. That is, through the subsections of 45 C.F.R. § 164.512(e), "HIPAA outlines the steps to follow in order to obtain protected health information during a judicial proceeding." Holman v. Rasak, 761 N.W.2d 391, 394 (Mich. App. 2008).

³ Through the subsections of 45 C.F.R. § 164.512(e), "HIPAA outlines the steps to follow in order to obtain protected health information during a judicial proceeding." Holman v. Rasak, 761 N.W.2d 391, 394 (Mich. App. 2008).

B. The Court Should Issue an Order Permitting Steward to Disclose Doe's Protected Health Information Where Doe Seeks to Use HIPAA as a Sword Instead of a Shield.

In the present matter, Doe has, according to representations received from the Globe, advanced numerous allegations of mistreatment and inadequate care by Steward's facilities. According to the Globe, Doe has provided its reporters with *portions* of his medical record, but refuses to sign a waiver that would provide Steward the fair opportunity to answer the allegations. The Globe maintains that it intends to publish the Story, as written, without comment from Steward – a one-sided exposé based on a sole source that the Globe, itself, describes as bi-polar, mentally ill, and delusional.

Doe, thus, wields HIPAA as a sword instead of a shield – and courts routinely exercise their broad authority to correct and prevent such behavior. See, e.g., In re von Bulow, 828 F.2d 94, 102 (2nd Cir. 1987) (finding it would be unfair to permit defendant to make selective disclosure while using privilege to prevent adversary from gaining access to the complete communication); Vanderbilt v. Town of Chilmark, 174 F.R.D. 225, 229-230 (D. Mass. 1997) quoting Sarko v. Penn-Del Directory Company, 170 F.R.D. 127, 130 (E.D. Pa. 1997). (“allowing a plaintiff ‘to hide ... behind a claim of privilege when that condition is placed directly at issue in a case would simply be contrary to the most basic sense of fairness and justice’”); Kronenberg v. Baker & Mackenzie LLP, 747 F. Supp. 2d 983 (N.D. Ill. 2010) (where a party selectively discloses communications between the party and his psychotherapist, that privilege is waived). Such relief is often granted in the context of HIPAA, pursuant to the Court's power under 45 C.F.R. § 164.512(e)(1)(i). See, e.g., Bertram v. Sizelove, 2012 WL 273083, *3-4 (E.D. Cal. 2012) (ordering plaintiff execute medical records release and observing

“where an individual institutes a law suit in which his health and medical records are at issue, release of the records would likely be ordered, even over objection, during discovery”).

Doe engages in closely analogous conduct here. In this respect, the balance of harm weighs heavily in favor of permitting disclosure – Doe, himself, has chosen to put that information in the public sphere – an effective waiver – and plus he is not harmed by this request. Again, basic fairness dictates that Steward be relieved of its obligations under HIPAA to continue to maintain the privacy of Doe’s already disclosed care and treatment at Steward. See Vanderbilt v. Town of Chilmark, 174 F.R.D. 225, 229-230 (D. Mass. 1997).

Through this action, Steward asks, simply, that the Court order this routinely granted relief.⁴

C. The Packaging Industry Factors

As noted above, the Packaging Industry factors are readily met in this instance. Steward’s likelihood of success on the merits is clear, as is the irreparable harm that Steward will suffer if precluded from the allegations that are to be published in *this Sunday’s edition of the Globe*.

The irreparable harm to Steward’s patients if Steward is not afforded the requested relief cannot be overstated. This reporting would serve only to intimidate and alienate one of the community’s most vulnerable and at-risk patient-populations – those suffering from mental illness – and would dissuade them from seeking care. The loss of services created by such reporting would be to the public detriment.

⁴ This action is about fairness – Steward requests only that its hands be untied *and in an untimely fashion* – so all relevant and material facts will be provided to the Globe in time for the Story.

The balance of the interests also weighs heavily in favor allowing the requested relief. It is clear that Doe seeks to publicize his own medical records and would not be legitimately harmed by the requested relief. As the Globe's interest in publishing a well-informed story is aligned with that of Steward, the Globe stands only to gain from this outcome. For the same reason, permitting Steward the opportunity to reasonably address the allegations benefits the public interest. Accordingly, immediately granting Steward's request for declaratory relief will serve the public interest and not harm either Doe or the Globe in this matter.

II. The Court Should Declare Steward's Right to Disclose Doe's Protected Health Information to the Globe For Its Own Health Care Operations Pursuant to 45 C.F.R. § 164.506.

Under 45 C.F.R. § 164.506(c)(1), "[a] covered entity may use or disclose protected health information for its own treatment, payment, or *health care operations*" (emphasis supplied). 45 C.F.R. § 164.501 provides that:

Health care operations means any of the following activities of the covered entity to the extent that the activities are related to covered functions:

...

(6) Business management and general administrative activities of the entity

45 C.F.R. § 164.501.

In light of the sweeping and irreparable harm Steward will suffer if the Story is published as written, disclosing Doe's protected health information to prevent or minimize that harm, and to provide the Globe with all relevant, material facts, would undoubtedly be a disclosure made for Steward's own business management; it falls within the "Health Care Operations" exception under HIPAA. See 45 C.F.R. § 164.506(c)(1).

The Court should, therefore, immediately declare Steward's right, under 45 C.F.R. § 164.506, to disclose Doe's protected health information to the Globe for its necessary Health Care Operations.

III. The Court Should Order The Globe to Identify and Produce to Steward Those Portions of Doe's Medical Record That Doe Has Either Permitted The Globe To Review or Authorized It To Publish.

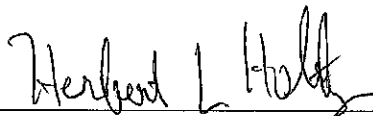
Steward's right to disclose Doe's protected health information to the Globe, under either 45 C.F.R. § 164.512(e)(1)(i) or 45 C.F.R. § 164.506, will be predicated on the extent or scope of information Doe disclosed to the Globe. In either case of declaratory relief, Steward will be bound by HIPAA's "minimum necessary" rule, which provides that it must make reasonable efforts to use and disclose only the amount of protected health information needed to accomplish the intended purpose of the use or disclosure. See 45 C.F.R. §§ 164.502(b) and 164.514(d). In order to comment on the selected and partial information submitted to the Globe, Steward and this Court must be informed of same; it stands to reason that Steward must first be informed what, in fact was submitted. Accordingly, the Court should issue an Order requiring the Globe to identify forthwith (*by 4:00 on Thursday August 21, 2014*) to the Court and to Steward those portions of Doe's medical record that Doe has either permitted it to review or authorized it to publish; so that the Court can fashion a reasonably informed and tailored Order allowing Steward accurately to respond.

IV. Conclusion

For the reasons stated above, the Court should grant Steward the requested declaratory and injunctive relief.

STEWARD HEALTH CARE SYSTEM LLC

By its attorneys,



Herbert L. Holtz, BBO#554843

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Patrick H. Foley, BBO#679019

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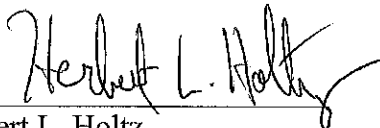
(617) 720-0501 (telephone)

(617) 720-0502 (facsimile)

Dated: August 20, 2014

Certificate of Service

I, Herbert Holtz, certify that on this date, August 20th, 2014, I served a true copy of the above document on each other party by the appointed process server in this case, The Constables Office, Mark P. Weisberg and/or Associates, pursuant to Superior Court Rule 9A.



Herbert L. Holtz

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

STEWARD HEALTH CARE
SYSTEM LLC,

Plaintiff,

v.

BOSTON GLOBE MEDIA PARTNERS,
LLC,

Defendant,

And

JOHN DOE,

A Necessary Party.

Civil Action No.

**PLAINTIFF STEWARD HEALTH CARE SYSTEM'S EX PARTE EMERGENCY
MOTION FOR SHORT ORDER OF NOTICE ON EMERGENCY MOTION FOR
DECLARATORY/INJUNCTIVE RELIEF**

Plaintiff Steward Health Care System LLC ("Steward") respectfully moves *ex parte* on an emergency basis for a Short Order of Notice on its Motion for a Declaratory Judgment. In support of this Motion, Steward states that the Defendant, John Doe ("Doe"), has made allegations concerning Steward Health Care's hospitals and hospital staff to *The Boston Globe* which Steward, due to privacy issues, is unable to respond and, in the interests of fairness, refute. Specifically, Doe reportedly claims to have been clinically treated, and received discourteous handling, at three Steward facilities. See Verified Complaint, *passim*. Due to The Health Insurance Portability and Accountability Act ("HIPAA"), Steward cannot confirm nor deny Doe's residence or services from any of Steward's hospitals or otherwise provide any comment

on the Story. Despite the one-sided nature of the reporting, *The Boston Globe* intends to publish Doe's story on August 24, 2014 in its "Sunday edition." Steward has legitimate concerns regarding the business implications of the Story's release without *The Boston Globe* obtaining the full story.¹

A Short Order of Notice on the Motion for a Declaratory Judgment is necessary to prevent Defendant from disclosing information without providing Steward an opportunity to respond. Steward employs 17,000 employees throughout New England, operating 11 hospitals, and helping the nation's most at-risk population. However, due to HIPAA, the Story will have the effect of shooting arrows at a defenseless target who will suffer reputational and business loss without any recourse. Therefore, Steward requests that it be heard on its Emergency Motion for Declaratory/Injunctive Relief, so Steward may disclose Doe's personal health information to *The Boston Globe* to the extent such disclosure is necessary to answer allegations of inadequate care at Steward facilities, which have been made the subject of the prospective news story; and requiring *The Boston Globe* to identify and/or produce to Steward and this Court those portions of Doe's medical record that Doe has either permitted it to review or authorized it to publish by **4:00pm EST on August 21, 2014.**

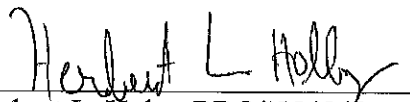
WHEREFORE, Steward respectfully moves this Court to issue a Short Order of Notice for a hearing on its Motion for Declaratory Judgment as soon as the Court's schedule allows.

¹ Jenna Russell, an award-winning reporter with *The Boston Globe*, and Steven Wilmsen, her editor, have indicated the Newspaper's goal of a commitment to fairness and trustworthy reporting. *The Boston Globe* is New England's premier newspaper founded in 1872 and the winner of 21 Pulitzer Prizes; Steward simply wants to ensure that the reporting is fair and Steward is afforded the opportunity to respond to Doe's allegations.

Respectfully submitted,

STEWARD HEALTH CARE SYSTEM LLC,

By its attorneys,



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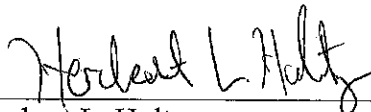
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Herbert L. Holtz

COMMONWEALTH OF MASSACHUSETTS

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SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

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Plaintiff,)
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v.)
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LLC,)
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Defendant,)
And)
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JOHN DOE,)
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A Necessary Party.)
_____)

Civil Action No.

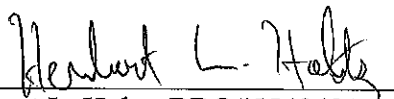
**PLAINTIFF STEWARD HEALTH CARE SYSTEM'S
MOTION TO APPOINT A SPECIAL PROCESS SERVER**

Pursuant to Mass. R. Civ. P. 4(c), Plaintiff Steward Health Care System LLC ("Steward") requests this Court to authorize The Constables Office, Mark P. Weisberg and/ or Associates or any other Massachusetts Constable, as a special process server in the above case. The undersigned swears that to the best of his knowledge and belief, the person to be appointed Special Process Server is at least 18 years of age and not a party to this action.

Respectfully submitted,

STEWARD HEALTH CARE SYSTEM LLC,

By its attorneys,

A handwritten signature in black ink, appearing to read "Herbert L. Holtz", written over a horizontal line.

Herbert L. Holtz, BBO#554843

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Dated: August 20, 2014