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SUPERIOR COURT OF NJ
MERCER COUNTY
CIVIL DIVISION

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Attorneys for Plaintiffs

NEW JERSEY PSYCHOLOGICAL
ASSOCIATION and BARRY L.
HELFMANN, PSY. D.,

Plaintiffs,

vs.

STATE HEALTH BENEFITS
COMMISSION, HORIZON
HEALTHCARE SERVICES, INC., and
MAGELLAN
HEALTH SERVICES, INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY - CHANCERY DIVISION

Docket No.: C-128-09

Civil Action

**FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT**

Plaintiffs New Jersey Psychological Association (“NJPA”) and Barry L. Helfmann, Psy.D. (“Helfmann”), (collectively referred to as “Plaintiffs”), by and through their attorneys, file this amended Complaint against the State Health Benefits Commission (“SHBC”), Horizon Healthcare Services, Inc. (“Horizon”), and Magellan Health Services, Inc. (“Magellan”) (collectively referred to as “Defendants”), and allege the following:

NATURE OF THE ACTION

1. Plaintiffs bring this action as parties in interest pursuant to N.J.S.A. § 2A:16-53, seeking a declaration that the practice engaged in and approved by Defendants of requiring psychologists to disclose confidential patient treatment information in connection with the initial precertification process and/or the process for authorizing continuing treatment or approving payment for mental health benefits violates the confidentiality protections afforded psychologists and their patients under N.J.S.A. § 45:14B-28, the Psychology Licensing Act and that such conduct breaches the State Health Benefit Program's NJ Direct plan documents which provide that Defendants will only request the minimum necessary information when making treatment and payment decisions.

PARTIES

2. NJPA is a private, non-profit, professional association organized and existing under the laws of the State of New Jersey since 1950, with its principal place of business in West Orange, New Jersey. NJPA represents over 2100 active and retired psychologists located throughout New Jersey.

3. NJPA is dedicated to promoting the advancement of psychology and providing information and resources regarding various facets of the mental health field to its members, their patients, and the public. As part of its mission, NJPA provides information, education direction, strategies, and support to assist all members in providing relevant and meaningful professional services to the public; supports its members in both the scientific and business aspects of their practices; and represents and advocates the interests of its members before governmental authorities, in the private sector, and through formal litigation. NJPA's members and their members' patients are directly affected by pre-authorization and payment practices of the

government and insurance companies, including Defendants. As a representative of member psychologists and their patients affected by Defendants' wrongful conduct, who look to the NJPA to take corrective action on their behalf, NJPA has an interest in the manner in which the statutory provisions at issue in this case are interpreted.

4. NJPA brings this request for declaratory relief on behalf of its members and its members' patients. Defendants have engaged in a systematic policy and practice of requesting confidential communications between psychologists and patients in connection with initial and continuing treatment authorization (and consequently) payment determinations. As alleged in more detail below, these requests violate state laws protecting such information from disclosure, the State Health Benefits Program's plan documents, which represent that Defendants will comply with state and federal laws and only request the minimum necessary information to make treatment and payment decisions, and by incorporation the federal Health Insurance Portability and Accountability Act Privacy Rule. Defendants' conduct has and will continue to economically injure NJPA's member-psychologists and has and will continue to undermine their ability to provide quality mental health care.

5. The relationship between a patient and psychologist is particularly intimate and the effectiveness of treatment hinges on mutual trust between the psychologist and patient. The patients of NJPA's members place their trust in their psychologist to provide a safe environment where patients are able to reveal their innermost thoughts and often deeply-personal and traumatic experiences without fear that this information will be revealed to anyone other than the psychologist. The bond between a psychologist and patient is particularly strong due to the vulnerable state of many patients seeking treatment for mental health issues. The ability of the patients of NJPA's members to receive effective mental health treatment is severely undermined

by Defendants' practices, which seek to breach the cornerstone of the psychologist-patient relationship by requesting confidential information about the patient's treatment. Without the intervention of NJPA on behalf of its members and their patients, Defendants' impermissible conduct will be permitted to continue. The stigma associated with receiving mental health treatment and the strong desire for mental health patients to protect their privacy discourages and deters patients from pursuing their own litigation.

6. If Defendants' policy and practice of requiring NJPA's members to reveal confidential patient treatment information as a condition for authorizing or approving payment for treatment is allowed to continue, NJPA's members will suffer direct harm through the denial of treatment authorization or from potential liability for as a result of disclosing confidential patient information. NJPA's members' patients will also suffer injury as a result of their inability to receive medically necessary mental health treatment as provided under the State Health Benefits Program. This potentially devastating effect on its members and their patients gives NJPA a sufficient interest to maintain this action on behalf of its members. NJPA also has suffered direct harm through the expenditure of resources attempting to rectify Defendants' improper conduct and will suffer additional harm through loss of membership and membership confidence if the Defendants' improper conduct is not rectified.

7. Barry L. Helfmann, Psy.D., is a licensed psychologist under the laws of the State of New Jersey. Dr. Helfmann is a citizen of New Jersey, residing in Springfield, New Jersey, and is the managing partner at Short Hills Associates (located in Springfield, New Jersey) in Clinical Psychology. Dr. Helfmann is an active member of the NJPA as well as other organizations promoting the practice of psychology in New Jersey. At all times relevant to the matters alleged

herein, Dr. Helfmann rendered psychological treatment to patients covered by the State Health Benefits Program, which was administered through Horizon and Magellan.

8. The State Health Benefits Commission, created pursuant to N.J.S.A. § 52:14-17.27, is an agency of the State of New Jersey and has an address in Trenton, New Jersey. SHBC is entrusted to establish the State Health Benefits Program by negotiating and purchasing medical, surgical, hospital, and major medical benefits for participating public employees and their families. The State of New Jersey enacted the State Health Benefits Program to provide health insurance for state employees, retirees and their dependents. N.J.S.A. §§ 52:14-17.25 to -45. SHBC is ultimately responsible for the provision and payment of benefits under the State Health Benefits Program and has acquiesced in and/or approved all actions by Horizon and Magellan alleged herein.

9. Defendant Horizon, which does business as Horizon Blue Cross Blue Shield of New Jersey, is a not-for-profit health services corporation that was created in or around 1932. Horizon maintains its corporate headquarters at Three Penn Plaza East, Newark, New Jersey 07105. Horizon is the largest health care company operating in New Jersey, with more than three million health plan members in the New Jersey area. At all times relevant hereto, Horizon was involved in the administration and payment of mental health benefits provided under the State Health Benefits Program. At all times relevant hereto, Horizon was acting as an agent and on behalf of SHBC and the State Health Benefits Program.

10. Defendant Magellan is incorporated under the laws of the State of Delaware with its principal place of business at 55 Nod Road, Avon, Connecticut, 06001. Magellan is engaged in the specialty managed healthcare business with one of its primary business segments being its managed behavioral healthcare business, which involves the coordination and management of the

delivery of behavioral healthcare treatment services. Magellan provides such services to health plans, insurance companies, corporations, labor unions and various governmental agencies. At all times relevant hereto, Magellan was involved in the management and authorization of mental health benefits afforded to members of the State Health Benefits Program. At all times relevant hereto, Horizon was acting as an agent and on behalf of SHBC and the State Health Benefits Program.

11. At all times relevant hereto, Horizon and Magellan were acting as an agent of and on behalf of the SHBC. SHBC acquiesced in and ratified the wrongful actions of Horizon and Magellan alleged herein.

VENUE

12. Venue is proper under R. 4:3-2(a). The SHBC has an address in Trenton, New Jersey, so that Plaintiffs' cause of action should be deemed to have arisen in Mercer County for venue purposes.

FACTUAL ALLEGATIONS

13. Section 45:14B-28 of the Psychology Licensing Act provides, in pertinent part:

The confidential relations and communications between and among a licensed practicing psychologist and individuals, couples, families or groups in the course of the practice of psychology are placed on the same basis as those provided between attorney and client, and nothing in this act shall be construed to require any such privileged communications to be disclosed by any such person.

14. The confidentiality protection afforded under N.J.S.A. § 45:14B-28 is akin to the protection against disclosure of communications between an attorney and client, and thus, provides broad protection to confidential communications between psychologists and their patients. The psychologist-patient privilege establishes a comprehensive privacy protection of

patients' innermost thoughts and feelings. Under N.J.S.A. § 45:14B-42, monetary fines are imposed for disclosure of confidential information in violation of N.J.S.A. § 45:14B-28.

15. Absent written authorization from the patient detailing the specific confidential mental health records to be disclosed and the specific purpose for the disclosure, treating psychologists are prohibited by the plain language of N.J.S.A. § 45:14B-28 from disclosing confidential communications, including treatment notes and records to anyone for any purpose.

16. N.J.S.A. § 45:14B-32, contained in New Jersey's Peer Review Law, establishes a limited exception to the strict confidentiality provisions of N.J.S.A. § 45:14B-28 and allows a treating psychologist to disclose and a third-party payor to request and receive narrowly circumscribed types of information relating to a patient's mental health treatment if the patient has executed a written authorization, which, among other things, must specify the precise purpose for the disclosure. Under N.J.S.A. § 45:14B-28, private insurers may request the following information from psychologists: administrative information, diagnostic information,¹ the status of the patient (voluntary or involuntary; inpatient or outpatient), the reason for continuing psychological services, limited to an assessment of the patient's current level of functioning and level of distress (both described by the terms mild, moderate, severe or extreme); and a prognosis, limited to the estimated minimal time during which treatment might continue.

17. Read together, N.J.S.A. §§ 45:14B-28 and 45:14B-32, define the categories of otherwise confidential information that a third-party payor may request and a treating psychologist may disclose, with appropriate written authorization, in order for the insurance plans to make determinations authorizing payment or reimbursement of initial treatment or a

¹ Section 45:14B-31b defines "diagnostic information" as "therapeutic characterizations which are of the types that are found in the Diagnostic and Statistical Manual of Mental Disorders (DSM III), of the American Psychiatric Association, or other professionally recognized diagnostic manual."

continuing course of treatment rendered by a psychologist to covered members of the plan. Defendants claim that they are not subject to the requirements of the Peer Review Law because the SHBP is a governmental entity. However, when N.J.S.A. §45:14B-32 is read *in pari materia* with § 45:14B-28, as required by New Jersey law, the statutes define the applicable contour and scope of the privileged communications that may be permissibly disclosed to Defendants for coverage and treatment determinations without violating the psychologist-patient privilege. Indeed, without application of the limited exception to disclosure of otherwise confidential information provided by N.J.S.A. §45:14B-32, in the Peer Review Law, Defendants must comply fully with the protections afforded mental health records and treatment information under N.J.S.A. § 45:14B-28.

18. Defendant Magellan and Horizon in connection with their administration of private insurance plans are able to make treatment determinations based upon the information allowed by the Peer Review Law.

19. In addition to the foregoing statutes protecting the confidentiality of communications between psychologists and their patients, the plan documents provided to members of the State Health Benefits Program specifically acknowledge that the State Health Benefits Program is subject to state and federal privacy laws designed to protect the use and disclosure of patient health information. *See* NJ Direct Member Handbook, App. V. The plan documents further represent to the members, as well as participating and non-participating psychologists, that when using or disclosing protected health information, the State Health Benefits Program will “limit the use or disclosure of that information to the *minimum extent necessary* to accomplish the intended purpose.” *Id.* (emphasis added). Horizon and Magellan

are responsible for administering the State Health Benefits Program consistent with state law and plan documents.

20. The plan documents represent that Defendants will comply with state and federal law, including the Health Insurance Portability and Accountability Act (HIPAA) and its regulations. HIPAA's Privacy Rule regulation specifically provides heightened protection from disclosure for a psychologist's "psychotherapy notes" documenting or analyzing the contents of patient communications during therapy sessions absent patient authorization. The Privacy Rule regulations provides further guidance on the minimum necessary information necessary to make treatment authorization and payment decisions by excepting from the definition of psychotherapy notes the following types of mental health information that may be appropriate for disclosing to insurers: the modalities and frequencies of treatment furnished, results of clinical tests, counseling start and stop times, medication prescriptions and monitoring, and a summary of a patient's diagnosis; functional status; the treatment plan; symptoms; prognosis and progress to date.

21. Despite the prohibition against disclosure of confidential mental health treatment records under N.J.S.A. §§ 45:14B-28 and 45:14B-32 and Defendants' obligation to seek only the minimum patient information necessary to make coverage, benefit, and payment determinations, Defendants systematically demand disclosure of protected confidential mental health records as a prerequisite for initial or continuing treatment of members covered under the State Health Benefits Program.

22. Magellan's own authorization forms and representations demonstrate that, absent any indication of fraud or other improper conduct, treatment authorization decisions can be (and in the past were) made by Defendants based upon the minimum necessary information, such as

the dates of requested service, the primary diagnostic code and the Current Procedural Terminology code to describe the services to be rendered. None of this information seeks confidential psychologist-patient communications revealing the innermost thoughts and feelings that N.J.S.A. § 45:14B-28 is designed to protect.

23. In contravention of their own representations and contractual obligations and in violation of N.J.S.A. §§ 45:14B-28 and 45:14B-32, Horizon and Magellan, with SHBC's acquiescence and approval, systematically and wrongfully condition the approval and payment of mental health treatment for members of the State Health Benefits Program on the treating psychologist's disclosure of protected mental health treatment records. For example, Magellan has medical necessity guidelines that seek excessive information unnecessary for making treatment decisions. The criteria imposed by Defendants exceed the requirement under the NJ Direct Plan and federal law to request health information to the minimal extent necessary for making authorization and payment decisions. In addition, the criteria seek protected confidential communications between a patient and psychologist, including a psychologist's treatment notes regarding a patient's information as to the presence of familial support or reasons for the lack of familial support, and details regarding a patient's specific symptoms and issues.

24. Defendants' insistence on obtaining treatment plans or other information which would reveal confidential information exchanged between members and their treating psychologists violates N.J.S.A. §§ 45:14B-28 and 45:14B-32 and breaches Defendants' obligation under the plan documents representing that Defendants will use only request information to the minimal extent necessary to make treatment authorization and payment decisions.

25. Dr. Helfmann and members of the NJPA have been subjected to one or more of the following demands for confidential psychologist-patient communications as part of the process for authorizing initial, continuing, and/or payment for mental health treatment of members of the State Health Benefits Program:

- a. Requests for detailed information about the underlying cause or causes of the particular patient's mental health condition, including treatment notes revealing patient thoughts and feelings revealed during therapy, and the treating psychologist's specific guidance and counseling;
- b. Requests for comprehensive patient treatment plans, which would reveal protected confidential information, such as the underlying cause or causes of the patient's mental illness;
- c. Requests for completion of detailed treatment request forms justifying continued treatment, which similarly call for disclosure of protected confidential treatment records beyond what is necessary to make an informed decision as to authorization for continuing treatment and/or payment; and
- d. Absent any evidence of fraud or other misconduct, as part of the authorization process, targeting psychologists for extensive clinical review of confidential patient treatment records and regularly conducting telephonic reviews or audits with psychologists of their confidential patient treatment records.

26. NJPA members, such as Plaintiff Helfmann, and their patients have been harmed by and will continue to be harmed by Defendants' wrongful conduct by having to spend time and resources responding to the increased scrutiny; being hampered in their ability to provide adequate and quality mental health treatment to State Health Benefit Program members due to Defendants' denial or reduction of approval and payment for mental health benefits; and being faced with potential liability for improper disclosure of confidential mental health records.

27. Defendants' demands and/or acquiescence and ratification of such demands for the unauthorized disclosure of confidential information such as the information described herein

violate the provisions of N.J.S.A. §§ 45:14B-28 and 45:14B-32 and the plan documents. Defendants make these improper demands without any legitimate justification; their true motive is to discourage State Health Benefit Program members from seeking psychological treatment or to reduce or deny outright mental health benefits afforded under the State Health Benefit Program. Defendants' systematic campaign targeting psychologists and their patients for increased scrutiny absent any evidence of fraud or other misconduct is unjustified and in direct contravention of New Jersey law, the State Health Benefits Program plan documents, and federal law.

**COUNT I – DECLARATORY JUDGMENT REGARDING DEFENDANTS'
VIOLATION OF N.J.S.A. § 45-14B-28**

28. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 27 as if fully set forth herein.

29. An actual controversy exists between Plaintiffs and Defendants as to whether Defendants must adhere to the requirements of N.J.S.A. § 45:14B-28 and if so, whether Defendants' conduct described herein violates that statutory provision.

30. To protect their rights and interests, Plaintiffs require a declaration that Defendants are subject to the confidentiality provisions of N.J.S.A. § 45:14B-28 and that, absent fraud, evidence of misconduct, or other specialized, case-specific circumstances, requesting information beyond administrative information, diagnostic information found in recognized diagnostic reference manuals, the status of the patient (voluntary or involuntary; inpatient or outpatient), the reason for continuing psychological services, limited to an assessment of the patient's current level of functioning and level of distress (both described by the terms mild,

moderate, severe or extreme); and a prognosis, limited to the estimated minimal time during which treatment might continue violates N.J.S.A. § 45:14B-28 and is prohibited.

**COUNT II – DECLARATORY JUDGMENT REGARDING DEFENDANTS’
BREACH OF CONTRACT**

31. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 27 as if fully set forth herein.

32. An actual controversy exists between Plaintiffs and Defendants as to whether Defendants have breached their obligations under the Defendants’ plan documents representing that Defendants will only request health information to the minimum extent necessary.

33. To protect their own rights and interests and those of the NJPA members and plan members Plaintiffs seek a declaration that Defendants’ refusal to authorize medically necessary treatment based on the refusal of treating psychologists to disclose confidential information improperly requested by Defendants in violation of N.J.S.A. §§ 45:14B-28 and 45:14B-32 breaches the plan documents prohibiting Defendants from requesting patient health information beyond that which is minimally necessary for coverage and treatment determinations.

WHEREFORE, Plaintiffs request that this Court render judgment as follows:

1. Determine and declare that Defendants are subject to the confidentiality provisions of N.J.S.A. § 45:14B-28 which, read *in pari materia* with N.J.S.A. § 45:14B-32 prohibits Defendants from requesting information beyond administrative information, diagnostic information found in recognized diagnostic reference manuals, the status of the patient (voluntary or involuntary; inpatient or outpatient), the reason for continuing psychological services, limited to an assessment of the patient's current level of functioning and level of distress (both described

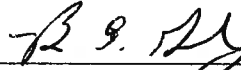
by the terms mild, moderate, severe or extreme); and a prognosis, limited to the estimated minimal time during which treatment might continue;

2. Determine and declare that Defendants' refusal to authorize medically necessary treatment based the refusal of treating psychologists to disclose confidential also violates the terms of the applicable plan documents prohibiting Defendants from requesting patient health information by that which is minimally necessary; and

3. Grant such other and further relief as may be just and proper, including any applicable award of Plaintiffs' reasonable attorneys' fees and costs incurred herein.

Dated: October 29, 2010

LITE DEPALMA GREENBERG, LLC



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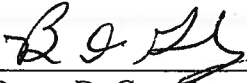
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CERTIFICATION PURSUANT TO R. 4:5-1(b)(2)

Plaintiffs, by their attorneys, hereby certify that the matter in controversy is not the subject of any other pending or contemplated judicial or arbitration proceedings. Plaintiffs are not currently aware of any other parties that should be joined in this action.

LITE DEPALMA GREENBERG, LLC



Bruce D. Greenberg

CERTIFICATION PURSUANT TO R. 4:5-1(b)(3)

I certify that confidential personal identifiers, if any, have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

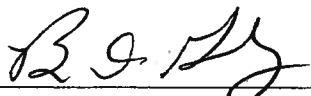
LITE DEPALMA GREENBERG, LLC



Bruce D. Greenberg

CERTIFICATE OF SERVICE

I hereby certify that on this the 29th day of October I caused the original of the foregoing **FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT** to be served via hand delivery to James P. Flynn of Epstein Baker & Green, One Gateway Center, Newark, New Jersey 07102 and Jeff Ignatowitz, Deputy Attorney General of New Jersey, R.J. Hughes Justice Complex, 25 Market Street, Trenton, New Jersey 08625.



Bruce D. Greenberg