

July 31, 2010

New Jersey Psychological Association
c/o Andy Bernstein, Ph.D., C.P.R.P.
106 Valley Street
South Orange, NJ 07079

Dear Dr. Bernstein:

The National Association of Social Workers, New Jersey Chapter (NASW-NJ) writes in support of the declaratory judgment action initiated by the New Jersey Psychological Association (NJPA) against the State Health Benefits Commission, Horizon Healthcare Services, Inc. and Magellan Health Services, Inc. (Superior Court of New Jersey, Chancery Division: Mercer County, Docket No. C-128-09). NASW-NJ has received complaints from social workers that these defendants have engaged in conduct similar to that identified in the complaint by requesting detailed confidential mental health information in excess of that permitted by the statutes applicable to social workers licensed in New Jersey.

Social workers are obligated to adhere to state privacy requirements as well as HIPAA and in instances where the two conflict, to follow the provision that is more protective of the client's privacy. New Jersey's confidentiality standard for social workers, N.J.S.A. 45:15BB-13(a), requires the protection of confidential information with limited exceptions, while N.J.A.C. 13:44G-12.4(b) permits the disclosure of specific information to health insurers. These standards are similar, although not identical, to the provisions for protecting confidential information applicable to New Jersey psychologists. The defendants' requests for detailed personal information far exceed the disclosures permitted by the New Jersey laws and regulations for clinical social work practice.

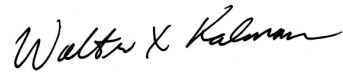
NASW-NJ has a continuing interest in the outcome of the NJPA litigation and fully supports the pursuit of these matters.

Established in 1955, the National Association of Social Workers (NASW) is the largest association of professional social workers in the world with 145,000 members and 56 chapters. The New Jersey Chapter of NASW has over 7,500 member social workers. With the purpose of developing and disseminating standards of social work practice while strengthening and unifying the social work profession as a whole, NASW provides continuing education, publishes and enforces the *NASW Code of Ethics*, conducts research, publishes books and studies, promulgates professional criteria, and develops policy statements on issues of importance to the social work profession. NASW's members are highly trained and experienced professionals who counsel individuals, families, and communities in a variety of settings, including schools, hospitals, mental health clinics, senior centers, and private practices and who receive reimbursement from health plans for providing clinical services.

NASW's policy statement, *Confidentiality and Information Utilization*, states that social workers are expected to fully inform clients "about the implications of sharing personal information, including the ethical and legal obligations of the social workers to respect privacy and protect the confidentiality and legal constraints and limitations that impinge on both the client and the social worker." NASW, *SOCIAL WORK SPEAKS* 59, 63 (2009). Uncertainty about the status of New Jersey law makes it difficult for New Jersey social workers to meet this professional expectation.

New Jersey-licensed social workers face the conundrum that obeying state privacy laws and protecting clients' privacy interests places the social workers at risk of being denied insurance reimbursement for services provided. The NJPA lawsuit will benefit a large class of mental health clients and the providers who serve them by clarifying the applicability of New Jersey privacy laws to health insurers that operate within the state and by providing guidance as to their proper interpretation.

Sincerely,

A handwritten signature in cursive script that reads "Walter X. Kalman".

Walter X. Kalman
Executive Director, NASW-NJ

Cc: Carolyn I. Polowy, NASW General Counsel