

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

LAW PROJECT FOR PSYCHIATRIC )  
RIGHTS, Inc., an Alaskan non-profit )  
corporation, )  
Plaintiff, )  
vs. )  
STATE OF ALASKA, *et al.*, )  
Defendants, )

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Clerk of the Courts

Case No. 3AN 08-10115CI

**REPLY TO OPPOSITION TO  
MOTION FOR ENTRY OF HIPAA QUALIFIED PROTECTIVE  
ORDER**

In opposing the motion by plaintiff, Law Project for Psychiatric Rights (PsychRights<sup>®</sup>), for a HIPAA Qualified Protective Order (Motion), the defendants, State of Alaska, *et al.* (State) assert (1) the Motion is premature because no formal discovery has yet been sought, and (2) HIPAA<sup>1</sup> is not the only possible legal basis which might warrant a protective order. The State is simply wrong about the Motion being premature, and with respect to other possible legal bases for a protective order, as set forth in the Motion, the HIPAA qualified protective order does not preclude the assertion of any such bases.

**1. The Motion is Not Premature**

As set forth in the Motion, under HIPAA, a "covered entity may disclose protected health information . . . if . . . the party seeking the protected health information has requested a qualified protective order from such court."<sup>2</sup> Thus, the request for the

<sup>1</sup> Health Insurance Portability and Accountability Act of 1996, Pub.L. No. 104-191, §264, 110 Stat. 1936.

<sup>2</sup> 45 CFR 164.512(e)(1)(iv)(B)

qualified protective order must be made prior to the discovery request.<sup>3</sup> This is what PsychRights has done.<sup>4</sup>

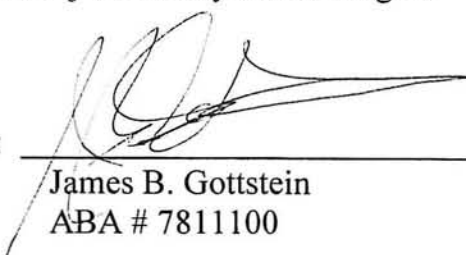
**2. The Motion Does Not Prevent the Assertion of Any Other Grounds to Resist Discovery.**

The request for the Qualified Protective Order merely removes HIPAA's prohibition from releasing the information. Issuing the Qualified Protective Order does not prevent any deponent from objecting to a subpoena under Civil Rule 45(d)(1), nor seeking an appropriate protective order under Civil Rule 26(c). PsychRights made this point in the Motion, where it stated that issuing the Qualified Protective Order "will not prevent any deponent from objecting to the subpoena or seeking additional protection, or both, as provided in the Civil Rules." Such a sentence could be added to the Qualified Protective Order should the Court finds doing so desirable or necessary. However, the State did not object to the form of qualified protective order proposed by PsychRights.

DATED: February 9<sup>th</sup>, 2009.

Law Project for Psychiatric Rights

By: \_\_\_\_\_

  
James B. Gottstein  
ABA # 7811100

<sup>3</sup> The regulation does not require the court to have granted the protective order.

<sup>4</sup> The State seems to assume discovery will only be sought from it, but this is not the case. PsychRights intends to also take the deposition of providers and contractors. Perhaps the failure to appreciate this is why the State believes the Motion is premature.