

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

BEN HANSEN, INTERNATIONAL CENTER
FOR THE STUDY OF PSYCHIATRY AND
PSYCHOLOGY, INC., AND THE LAW PROJECT
FOR PSYCHIATRIC RIGHTS, INC.,

Case No. 09-759-CZ
HON. JOYCE DRAGANCHUK

Plaintiffs,

v

STATE OF MICHIGAN,
DEPARTMENT OF COMMUNITY HEALTH,

Defendant.

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**DEFENDANT'S MOTIONS TO STRIKE PLAINTIFFS' JURY DEMAND; TO DISMISS
PLAINTIFFS' COMPLAINT; AND FOR AN AWARD OF DEFENDANT'S COSTS,
EXPENSES, AND ATTORNEY FEES;
BRIEF IN SUPPORT**

Defendant, Michigan Department of Community Health (MDCH), by its attorneys,
Michael A. Cox, Attorney General of Michigan, and Thomas Quasarano, Assistant Attorney
General, files the following motions, with brief in support:

MOTIONS

MDCH brings its motions to strike Plaintiffs' jury demand; to dismiss with prejudice Plaintiffs' complaint brought under the Freedom of Information Act (FOIA);¹ and for an award of MDCH's costs, expenses, and attorney fees, stating as follows:

1. Plaintiffs' jury demand should be stricken under MCR 2.115(B) because Plaintiffs are not entitled to a jury trial in a FOIA action.²

2. Plaintiffs' complaint should be dismissed with prejudice under the law of the case doctrine. The applicable law in the instant action was reviewed previously by this Court and on appeal, and the courts adjudicated in favor of MDCH.³ Plaintiffs' claim is barred by prior judgment; Plaintiffs do not have standing to sue for the type of records alleged in their complaint nor have they alleged standing; Plaintiffs have failed to state claims under the FOIA on which the Court can grant relief; and they have not alleged genuine issues as to any material facts. Thus, MDCH is entitled to judgment in its favor as a matter of law, and Plaintiffs' complaint should be dismissed with prejudice under MCR 2.116(C)(7),⁴ (8),⁵ and (10).⁶

¹ MCL 15.231 *et seq.*

² See MDCH's brief in support, p 6.

³ See MDCH's brief in support, pp 6 *ff*

⁴ *Horace v City of Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998)—in a motion premised on MCR 2.116(C)(7), a court must consider the documentary evidence that has been filed or submitted by the parties.

⁵ *Lane v Kindercare Learning Centers, Inc.*, 231 Mich App 689, 692; 588 NW2d 715 (1998)—under MCR 2.116(C)(8), a defendant's motion to dismiss "tests the legal sufficiency of a claim by the pleadings alone [and] [t]he motion should be granted only where the claim is so clearly unenforceable as a matter of law that no factual development could justify a right to recovery."

⁶ *Residential Ratepayer Consortium v Public Service Commission*, 168 Mich App 476, 480; 425 NW2d 98 (1987)—under MCR 2.116(C)(10), a defendant's motion to dismiss should be granted if "the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact." (Citations omitted).

3. Plaintiffs' action lacks merit and has caused an unnecessary dissipation of judicial and agency resources. MDCH, therefore, is entitled to an award of its costs, expenses, and attorney fees under MCR 2.114 and MCR 2.625(A)(2).⁷

BRIEF IN SUPPORT

Statement of Facts

Contrary to MCR 2.113(C)(2)(b), Plaintiffs' complaint failed to notify the Court of the previous case of *Hansen v Michigan Dep't of Community Health*, Ingham County Circuit Court Case No. 06-1033-CZ. The applicable law in the instant case was reviewed by this Court and on appeal in the previous case, and the courts adjudicated in favor of MDCH. Copies of the trial court's and appellate courts' orders are appended as Attachment 1.

In the instant case, Plaintiffs have invoked jurisdiction under the FOIA.⁸ For the most part, Plaintiffs' complaint does not provide dates for the alleged events nor a thorough description of the nature of the records at issue.⁹ Therefore, MDCH provides the following:

1. Plaintiff Ben Hansen's (Hansen) alleged two FOIA requests:

On November 18, 2008, MDCH received Hansen's alleged November 17, 2008 FOIA request, and issued its December 10, 2008 written notice granting the request in part and denying it in part. On December 17, 2008, MDCH received Hansen's alleged December 16, 2008 FOIA request, which clarified the earlier request, and MDCH issued its March 3, 2009 written notice granting the request in part and denying it in part.¹⁰

⁷ See MDCH's brief in support, p 10.

⁸ Plaintiffs' complaint, paragraph 5.

⁹ Plaintiffs' complaint, paragraphs 13, 21, and 23.

¹⁰ Appended jointly as Attachment 2 are copies of Hansen's November 17, 2008 request and MDCH's December 10, 2008 written notice issued in response, and Hansen's December 16, 2008 request and MDCH's March 3, 2009 written notice issued in response.

MDCH granted the requests, where they provided sufficient descriptions of existing, nonexempt records in MDCH's possession falling within the scope of the requests, and denied the requests as to exempt records, with an explanation of the statutory basis for the exemption.

2. Plaintiff Law Project for Psychiatric Rights, Inc.'s (Law Project) alleged FOIA request:

On January 2, 2009, MDCH received the Law Project's alleged December 29, 2008 FOIA request, under the signature of James B. Gottstein, and issued its January 12, 2009 written notice denying the request and explaining the statutory basis for the exemption.¹¹

3. Plaintiff International Center for the Study of Psychiatry and Psychology, Inc.'s (International Center) alleged FOIA request:

On January 8, 2009, MDCH received the International Center's alleged January 7, 2009 FOIA request, under the signature of Dominick Riccio, and issued its January 12, 2009 written notice denying the request and explaining the statutory basis for the exemption.¹²

4. All three Plaintiffs sought access to Pharmacy Quality Improvement Project records.

By way of background, the Pharmacy Quality Improvement Project (PQIP) is a collaborative effort that involves the MDCH's Mental Health and Substance Abuse Administration and its Medical Services Administration, and Comprehensive NeuroScience, Inc. Eli Lilly and Company has provided funding in support of the independent program. As a three-year educational program, PQIP was established to analyze the prescribing of mental health medications for Medicaid members. When needed, physicians are provided with educational materials and client specific information as well as peer-to-peer consultation.

¹¹ Appended as Attachment 3 are copies of the Law Project's December 29, 2008 request and MDCH's January 12, 2009 written notice issued in response.

¹² Appended as Attachment 4 are copies of the International Center's January 7, 2009 request and MDCH's January 12, 2009 written notice issued in response. (In its written notice, MDCH was mistaken on the spelling of the individual's surname.)

The PQIP process begins with a review by Comprehensive NeuroScience, Inc. of Medicaid patient pharmacy claims data to identify prescribing and utilization trends for mental health and psychotropic medications. Specific pharmacy claims are identified that may be inconsistent with evidence-based best practice guidelines. Once a specific patient's claims are identified, the prescriber is sent a letter addressing the concerns. This gives the prescriber an opportunity to verify the concern and address it with the identified patient. In summary, PQIP is an educational peer review activity with oversight from physicians.

MDCH is a review entity¹³ under the Release of Information for Medical Research and Education Act, commonly referred to as Michigan's peer review immunity statute.¹⁴ MDCH determined that PQIP records are covered by the confidentiality provisions of the Act, and, therefore, are exempt from public disclosure under the FOIA.¹⁵

Finally, Plaintiffs' complaint alleges¹⁶ that MDCH invoked section 13(1)(m) of the FOIA—the deliberative process privilege.¹⁷ This exemption was not raised by MDCH. MDCH exempted, as personal information, information requested by Plaintiff Hansen that would result in the disclosure of identifiable patient information, and provided him non-exempt information.¹⁸

¹³ Section 1(2)(d) of the Release of Information for Medical Research and Education Act, MCL 331.531(2)(d), defines "review entity" to include a state department or agency whose jurisdiction encompasses the information described in subsection (1) of the Act, MCL 331.531(1).

¹⁴ MCL 331.531 *et seq.*

¹⁵ MCL 15.231 *et seq.* See MDCH's written notices appended as part of Attachments 2-4.

¹⁶ Plaintiffs' complaint, paragraph 26.

¹⁷ MCL 15.243(1)(m).

¹⁸ See affidavit of Mary Greco, MDCH FOIA coordinator, Attachment 5.

Argument

I. Plaintiffs' jury demand should be stricken under MCR 2.115(B) because Plaintiffs are not entitled to a jury trial in an action commenced under the FOIA.

The constitutional guaranty of the right to a jury trial applies to cases arising under statutes enacted subsequent to adoption of the Michigan Constitution in 1835, which are similar in character to cases in which the right to jury trial existed before the state constitution was adopted.¹⁹ Where a trial court is presented with a cause of action created by a statute that was unknown to the State of Michigan's legal system when the Constitution was adopted, a plaintiff does not have the right to a jury trial under the current Constitution.²⁰

The FOIA, 1976 PA 442, is a creation of the Legislature, with an effective date of April 13, 1977.²¹ Thus, an action commenced under the FOIA constitutes a proceeding unknown to the legal system of this State when its Constitution was adopted, and, accordingly, there is no right to a jury trial under the FOIA.

II. Under the law of the case doctrine, Plaintiffs' complaint should be dismissed with prejudice.

In the previous case of *Hansen v Michigan Dep't of Community Health*, the applicable law in the instant action was reviewed by this Court and on appeal, and the courts adjudicated in favor of MDCH.²²

Discussing the law of the case doctrine, the Michigan Court of Appeals has concluded that an appellate court ruling on a particular issue binds the appellate court and all lower

¹⁹ See *Meyer v Dep't of Treasury*, 129 Mich App 335, 338, 339; 341 NW2d 516 (1983); see also *State Conservation Dep't v Brown*, 335 Mich 343; 55 NW2d 859 (1952).

²⁰ Const 1963, art 1, section 14.

²¹ MCL 15.231 *et seq.*

²² *Hansen v Michigan Dep't of Community Health*, Ingham County Circuit Court Case No. 06-1033-CZ. Copies of the trial court's and appellate courts' orders are appended as Attachment 1. Plaintiff's application for leave to appeal denied, 482 Mich 1009 (2008).

tribunals on that issue.²³ In addition, the Michigan Court of Appeals has concluded that the law of the case doctrine applies to questions specifically decided in an earlier decision and to questions necessarily determined to arrive at that decision.²⁴

In *Hansen v Michigan Dep't of Community Health*, Plaintiff sought the same information that is at issue in the instant case. In both cases, MDCH determined that the information is confidential under the Release of Information for Medical Research and Education Act²⁵ and exempt from public disclosure under the FOIA.

Section 3 of the Release of Information for Medical Research and Education Act provides that²⁶:

Except as otherwise provided in section 2, the record of a proceeding and the reports, findings, and conclusions of a review entity and data collected by or for a review entity *are confidential, are not public records, and are not discoverable* and shall not be used as evidence in a civil action or administrative proceeding.

Section 2(a)-(c) of the Release of Information for Medical Research and Education Act provides²⁷:

The release or publication of a record of the proceedings or of the reports, findings, and conclusions of a review entity shall be for 1 or more of the following purposes:

- (a) To advance health care research or health care education.
- (b) To maintain the standards of the health care professions.

²³ See *MS Development, Inc. v Auto Plaza of Woodhaven (After Remand)*, 220 Mich App 540, 548; 560 NW2d 62 (1996); see also *Bruce Twp v Gout*, 207 Mich App 554, 557-558; 526 NW2d 40 (1994).

²⁴ See *MS Development, Inc.*, 220 Mich App at 548.

²⁵ MCL 331.531 *et seq.*

²⁶ MCL 331.533; emphasis added. See also *Feyz v Mercy Memorial Hosp*, 475 Mich 663, 681-683; 719 NW2d 1 (2006), where the Supreme Court identified the Release of Information for Medical Research and Education Act's confidentiality provision as being part of a statutory process protecting the confidentiality of the class of records identified in the Act.

²⁷ MCL 331.532(a)-(c).

(c) To protect the financial integrity of any governmentally funded program.

In *Hansen*, the Court of Appeals properly began its analysis by examining the interaction between the FOIA and the Release of Information for Medical Research and Education Act.²⁸ Citing *Dye v St John Hosp & Medical Ctr*,²⁹ the Court of Appeals determined that Plaintiff Hansen misconstrued the interaction between sections 2 and 3 of the Release of Information for Medical Research and Education Act. Reading sections 2 and 3 together, the Court of Appeals stated³⁰:

[I]t is evident that a review entity can release or publish reports if a proper purpose is established under § 2, and upon doing so, the provisions in § 3 that dictate that the records are confidential, are not public records, and are not discoverable become inoperable. Thus, plaintiff's claim that review entity reports are subject to release if plaintiff shows a proper purpose for him or others to have access to the documents under § 2 fails because it is defendant, i.e., the review entity, which must first decide whether to release or publish the reports under § 2. In other words, the documents remain confidential, not discoverable, and they are not public under § 3 until the review entity chooses to release the documents. Here, defendant has not chosen to release or publish the relevant documents under § 2; therefore, taking into consideration the FOIA exemptions, the documents sought by plaintiff are "specifically described and exempted from disclosure by statute." MCL 15.243(1)(d). Moreover, the FOIA in general pertains to requests for "public records," MCL 15.233, and MCL 331.533 dictates that the records at issue here are not public as defendant has not decided to release the materials.

In *Hansen*, the Court of Appeals determined that Plaintiff's claim of entitlement under the FOIA to PQIP records "was not sustainable under established case law," and affirmed the Ingham County Circuit Court's granting MDCH's dispositive motion and sustaining the award of

²⁸ *Hansen v Michigan Dep't of Community Health*, unpublished opinion per curiam, issued March 13, 2008 (Docket No. 278074), p 4; copy appended as part of Attachment 1.

²⁹ *Dye v St John Hosp & Med Ctr*, 230 Mich App 661, 672, n 10; 584 NW2d 747 (1998).

³⁰ *Hansen v Michigan Dep't of Community Health*, unpublished opinion per curiam, issued March 13, 2008 (Docket No. 278074), p 6; copy appended as part of Attachment 1.

MDCH's costs and attorney fees.³¹ The Court of Appeals correctly determined that Plaintiffs' request under the FOIA must fail because the MDCH properly invoked section 13(1)(d) of the FOIA, which provides for the exemption of public disclosure of "[r]ecords or information specifically described and exempted from disclosure by statute"³²

In the present action, Plaintiffs do not allege in their complaint nor can they demonstrate that they are entitled recipients of PQIP information under the Release of Information for Medical Research and Education Act. Assuming, *arguendo*, that Plaintiffs had standing by showing a proper purpose for them to have access to PQIP records under section 2 of the Release of Information for Medical Research and Education Act, MDCH, as the review entity, is not required to release or publish the records. It bears emphasizing that the Court of Appeals in *Hansen* noted that nothing within section 2 of the Release of Information for Medical Research and Education Act—the permissible exceptions to the Act's confidentiality provision—"mandates the release of information within a category excepted from the confidentiality protection. It is one thing to exempt information from guaranteed confidentiality but quite another to require disclosure of that information."³³

³¹ *Hansen v Michigan Dep't of Community Health*, unpublished opinion per curiam of the Court of Appeals, issued March 13, 2008 (Docket No. 278074), p 6, copy appended as part of Attachment 1.

³² MCL 15.243(1)(d). See also Greco affidavit, Attachment 5.

³³ *Hansen v Michigan Dep't of Community Health*, unpublished opinion per curiam, issued March 13, 2008 (Docket No. 278074), p 6, quoting *Dye v St John Hosp & Med Ctr*, 230 Mich App 661, 672, n 10; 584 NW2d 747 (1998), copy appended as part of Attachment 1.

As in the previous case, MDCH properly invoked section 13(1)(d) of the FOIA³⁴ in responding to Plaintiffs' FOIA requests in the instant case. MDCH deemed the PQIP records confidential, non-public records, and not subject to disclosure under the FOIA.³⁵

Therefore, since the Court of Appeals in *Hansen* already has ruled that the type of claim of entitlement under the FOIA to PQIP records made by Plaintiffs is not sustainable under established case law, this Court should adopt the Court of Appeals' March 13, 2008 opinion and not make a different ruling in this case, and dismiss with prejudice Plaintiffs' complaint.

III. Plaintiffs' action lacks merit and has caused an unnecessary dissipation of judicial and agency resources, and MDCH, therefore, is entitled to an award of its costs, expenses, and attorney fees.

Under the law of the case doctrine, Plaintiffs knew or should have known that their action lacks merit. It is provided under MCR 2.113(A) that rules on the verifying of pleadings apply to all papers provided for by the court rules.

The signature of an attorney or party on a pleading is a certification by the signer that³⁶:

- (1) he or she has read the document;
- (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
- (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The court rule further provides³⁷:

If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of

³⁴ MCL 15.243(1)(d).

³⁵ See Greco affidavit, Attachment 5.

³⁶ MCR 2.114(D)(1), (2), and (3).

³⁷ MCR 2.114(E).

the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

Under MCR 2.114(E), MDCH is entitled to an award of its costs, expenses, and attorney fees, as well as to the remedies provided for under MCR 2.114(F) which, in conjunction with MCR 2.625(A)(2) and MCL 600.2591, allows for costs, expenses, and attorney fees.

Relief Sought

WHEREFORE, MDCH respectfully requests that this Honorable Court grant the MDCH's motions to strike Plaintiffs' jury demand; to dismiss with prejudice Plaintiffs' complaint; and for an award of the MDCH's costs, expenses, and attorney fees in an amount to be determined by the Court.

Respectfully submitted,

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Dated: July 2, 2009

EXHIBIT 1

STATE OF MICHIGAN

IN THE 30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM

BEN HANSEN

Plaintiff,

v

STATE OF MICHIGAN, DEPARTMENT OF
COMMUNITY HEALTH

Defendants.

ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS

DOCKET NO. 06-1033-CZ

HON. NETTLES-NICKERSON

PRESENT: HONORABLE BEVERLEY NETTLES-NICKERSON
Circuit Court Judge

This Court, having reviewed Defendant's Motion to Dismiss per MCR 2.116(C)(7), MCR 2.116(C)(8), and MCR. 2.116(C)(10); brief in support thereof; Plaintiff's Response and Brief in Opposition thereto; all supporting correspondence documentation; having heard oral argument March 21, 2007, and being fully apprised of the issues, states the following:

FINDINGS OF FACT

Essentially, this case involves three requests submitted by Ben Hansen ("Plaintiff") to the Michigan Department of Community Health ("Defendant") pursuant to the Freedom of Information Act ("FOIA"), MCL 15.231 *et seq.*

Plaintiff's **first** FOIA Request to Defendant, submitted November 14, 2005, was granted on December 7, 2005. Plaintiff's **second** FOIA request, submitted December 14, 2005, was granted in part and denied in part by Defendant on January 11, 2006, accompanied by Defendant's explanation of the statutory reason for the partial denial. Plaintiff's **third** FOIA request, submitted February 2, 2006, was granted in part and denied in part on February 23, 2006, and Defendant again included the basis for the denial.

Defendant supports their Motion to Dismiss by arguing that Plaintiff's claims are barred by the statute of limitations, Section 10(1)(b), MCL 15.240(1)(b), and that Plaintiff has failed to state any claims upon which relief can be granted. Additionally, Defendant maintains that Plaintiff has failed to state genuine issues of material fact.

Plaintiff asserts that his claim is not time-barred because the 3 FOIA requests are related, and as such, Plaintiff's complaint filed on August 11, 2006, is within 180 days from Defendant's "final" determination of Plaintiff's third "related" FOIA request. Thus, Plaintiff contends that his complaint was filed timely and is not barred by the statute of limitations.

In addition, Plaintiff maintains that the FOIA requests and complaint are in accordance with MCR 2.111(A)(1), and it is Defendant's burden to prove that the partial denials of Plaintiff's FOIA requests for certain records are statutorily exempt. Finally, Plaintiff states that Defendant's replies to Plaintiff's FOIA requests have been incomplete, and that Plaintiff was entitled to receive the information that was not provided by Defendant.

CONCLUSIONS OF LAW

MCR 2.116(C)(7) tests whether a claim is barred because of immunity granted by law and requires consideration of all documentary evidence filed or submitted by the parties. In determining whether a party is entitled to judgment as a matter of law under MCR 2.116(C)(7), a

court “must accept as true a plaintiff’s well-pleaded factual allegations, affidavits, or other documentary evidence and construe them in plaintiff’s favor.” *Wilson v Alpena County Rd Comm’n*, 263 Mich App 141, 145 (2004).

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint and permits dismissal of a claim if the opposing party has failed to state a claim on which relief can be granted. Only the pleadings are examined; documentary evidence is not considered. If the claim is clearly unenforceable as a matter of law and no factual development could lead to recovery, a motion under MCR 2.116(C)(8) should be granted *Rorke v Savoy Energy, LP*, 260 Mich App 251, 253 (2003).

A motion under MCR 2.116(C)(10) requires this Court to test the factual sufficiency of the complaint. The trial court must consider the affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Nastal v Henderson & Associates Investigations, Inc*, 471 Mich 712, 721 (2005).

OPINION

This Court finds that Plaintiff has failed to state a claim upon which relief can be granted, and there are no genuine issues of material fact per MCR 2.116(C)(10).

In this Court’s opinion, Defendant’s written notices partially denying Plaintiff’s FOIA requests, dated January 11 and February 23, 2006, are in compliance with the statutory notice requirements pursuant to section 5(4)(a), MCL 15.235(4)(a). This Court holds that Defendant timely provided Plaintiff a written explanation for the basis of the denials, including why the

requested public record is exempt from disclosure and whether or not the public record exists.
(See Affidavit of Mary Greco, Defendant's Coordinator of FOIA Requests).

Therefore, based on the reasons stated in this Opinion, Defendant's Motion to Dismiss is granted. This Court will not address any further issues.

Further; per MCR 2.114(E) and (F) and MCL 600.2591, this Court may not award Defendant punitive damages for Plaintiff's filing a complaint clearly barred by the statute of limitations; however, Defendant is entitled to an award of costs, expenses, and attorney fees for having to respond.

ORDER

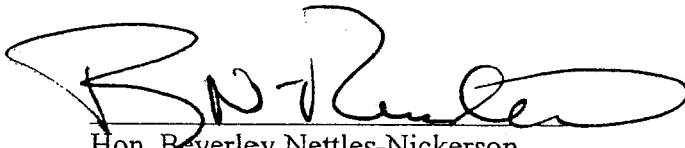
NOW, THEREFORE Defendant's Motion to Dismiss pursuant to MCR 2.116(C)(7) , MCR 2.116(C)(8) and MCR 2.116(C)(10) is **GRANTED**.

IT IS FURTHER ORDERED that Defendant is awarded costs, expenses, and attorney fees pursuant to MCR 2.114(E) and (F) and MCL 600.2591 in the sum of \$3,500.00.

IT IS SO ORDERED.

In compliance with MCR 2.602(A)(3), this Court finds that this decision resolves the last pending claim and closes the case.

Dated: 4/30/ 2007


Hon. Beverley Nettles-Nickerson
Circuit Court Judge

PROOF OF SERVICE

I hereby certify that I served a copy of the above Order upon the attorneys/parties of record by placing said Order in an envelope addressed to each and placing same for mailing with the United States Mail at Lansing, Michigan, on May 1, 2007.

Trinidad Morales
Trinidad Morales
Judicial Assistant

cc: Alan Kellman
Thomas Quasarano

STATE OF MICHIGAN
COURT OF APPEALS

MAR 14 2008

State Operations Division
RECEIVED

BEN HANSEN,

Plaintiff-Appellant,

v

DEPARTMENT OF COMMUNITY HEALTH,

Defendant-Appellee.

UNPUBLISHED

March 13, 2008

No. 278074

Ingham Circuit Court

LC No. 06-001033-CZ

Before: Saad, C.J., and Murphy and Donofrio, JJ.

PER CURIAM.

Plaintiff submitted three requests under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, to defendant Michigan Department of Community Health (MDCH) in 2005 and early 2006. Defendant responded to plaintiff's requests on December 7, 2005, January 11, 2006, and February 23, 2006, respectively. Not satisfied with defendant's responses, plaintiff filed an action in the trial court, seeking copies of records that defendant stated were exempt from disclosure and more complete records on requests that had been granted. The three counts contained in the complaint correlated, chronologically, to the three FOIA requests. Defendant brought a motion for summary disposition, and it sought sanctions. The trial court granted defendant's motion for summary disposition, and the court awarded defendant costs, expenses, and attorney fees. Plaintiff appeals as of right. We affirm.

This case arises out of plaintiff's attempt to obtain documents regarding the Pharmacy Quality Improvement Project (PQIP) that was designed and intended to be a program that analyzed the prescribing patterns of psychiatric drugs for Medicaid members. Eli Lilly and Company (Lilly), Comprehensive NeuroScience, Inc. (CNS), and MDCH entered into an agreement that set forth program initiatives. Under the agreement, Lilly was obligated to provide certain funding that would be paid to CNS to carry out the program's initiatives on behalf of Michigan Medicaid, which is operated by MDCH. The agreement further provided:

A fundamental goal of Lilly's business is to promote excellence in patient healthcare. Similarly, Michigan Medicaid also believes in this goal. Lilly and Michigan Medicaid believe that the Program Initiatives should further this mutual goal by helping to ensure that patients obtain the most appropriate medicines that such patients may need based on the medical judgment of such patients' physicians. Therefore, this Agreement is being entered into solely for the purpose of attempting to further this aligned goal of the parties and has nothing to do with

nor is it intended to obligate Michigan Medicaid in any way to provide Lilly with any form of preferential treatment for any Lilly product.

The language in the agreement also indicated that medical cost reductions could result from the program.

The trial court granted summary disposition in favor of defendant pursuant to MCR 2.116(C)(7), (8), and (10). The court found that defendant, in denying requests, complied with the statutory notice requirements by timely providing plaintiff with appropriate written explanations for the denials in the form of claiming either an exemption or nonexistence.¹ This, however, did not answer the basic question whether the denials were proper under the law. But the trial court proceeded to award defendant costs, expenses, and attorney fees under MCR 2.114(E) and (F) and MCL 600.2591, indicating that plaintiff had filed "a complaint clearly barred by the statute of limitations." Considering this language with the fact that the order provided for summary dismissal, in part, under MCR 2.116(C)(7), we can presume that the court was also of the opinion that the statute of limitations supported dismissal of the entire action.

Defendant argued that plaintiff's claims were barred by the statute of limitations pursuant to MCR 2.116(C)(7). When a public body makes a final determination to deny all or a portion of a particular request, the requesting person may "[c]ommence an action in the circuit court to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request." MCL 15.240(1)(b). Plaintiff's first two FOIA requests garnered final responses from defendant that were more than 180 days before plaintiff filed his complaint. In plaintiff's appellate brief, the failure of the first two counts in the complaint, which pertained to the first two FOIA requests, is essentially conceded because of the statute of limitations. Plaintiff focuses instead on count III. Plaintiff's third FOIA request, as addressed in count III, received a response from defendant on February 23, 2006, and plaintiff filed a complaint on August 11, 2006, which was within 180 days of defendant's response. See MCR 2.101(B) ("A civil action is commenced by filing a complaint with a court"). However, the record is somewhat unclear regarding the filing of a complaint. As indicated, the record contains a complaint that is date stamped August 11, 2006, but that complaint is immediately followed in the record by another complaint, not titled an amended complaint, which is date stamped August 30, 2006. The complaints are identical, and the sole summons was issued August 30, 2006. Defendant, referencing the August 30, 2006, date, argues that all three counts were time-barred,

¹ The trial court cited MCL 15.235 in its ruling. MCL 15.235(2) indicates that a public body must reply in some form to a FOIA request within 5 business days after receipt of the request. MCL 15.235(4) addresses full or partial denials of FOIA requests, and it requires the public body to send a written notice to the requesting individual that explains the basis for the denial, such as the record is exempt from disclosure or the requested record does not exist. Interestingly, a review of plaintiff's complaint reveals that plaintiff never even claimed that defendant had failed to timely submit a response to the requests, nor that defendant had failed to give an explanation why some requests were denied. Rather, plaintiff alleged that either documents were not fully provided despite the granting of a request, or that a denial predicated on a claimed exemption was improper.

and it is true that if August 30, 2006, is the point of demarcation, the complaint would be untimely (189 days). We note, however, that at the hearing on the summary disposition motion, counsel for defendant stated, "This third FOIA request[] was just under the wire, just within 169 days." But then this statement conflicts with defendant's own argument in its summary disposition brief that all three counts were time-barred based on a complaint filing date of August 30, 2006. We conclude that, because the record contains a complaint that was filed on August 11, 2006, and because an action is commenced with the filing of a complaint, the third count was timely, and the court erred in dismissing it pursuant to the statute of limitations.² The statute of limitations, however, dictated the dismissal of the first two counts. Accordingly, the remainder of this opinion will solely address count III.

Plaintiff has narrowed his demands relative to count III, seeking only PQIP documents pertaining to psychiatric drugs prescribed to Michigan children under the age of 5 years old and psychiatric drugs prescribed to patients who were using five or more of these drugs concurrently.³ Plaintiff did not seek the names of the patients taking the drugs, acknowledging that such information would be properly redacted. Pursuant to an order for private review of records, plaintiff and plaintiff's counsel were given the opportunity to review the documents at issue, which were then returned to defendant. The parties do not agree, however, on whether the documents can or should be formally released.

Plaintiff first argues that the trial court failed to conduct a *de novo* review as required by the FOIA. "The court shall determine [whether a public record is exempt from disclosure] *de novo* and the burden is on the public body to sustain its denial." MCL 15.240(4). "The trial court's review of these records is to be a *de novo* review which connotes a strict standard of review." *The Evening News Ass'n v Troy*, 417 Mich 481, 501 n 17; 339 NW2d 421 (1983). Although the trial court did not reach the question whether the documents at issue were exempt, which constituted error on the court's part with respect to count III, the issues that were determined by the court were certainly addressed and reviewed *de novo*. We note that, in the judicial process of determining whether a FOIA request was properly denied by the public body on the basis of a claimed exemption, the court should receive information from the public body showing a complete particularized justification for the denial, or the court should conduct an *in camera* hearing to determine whether there was justification, or the court can allow a plaintiff's attorney to have access to contested documents *in camera*. *Id.* at 516. MCL 15.240(4) provides

² We note that, to some extent, we are giving plaintiff the benefit of the doubt on this issue considering our final resolution in favor of defendant. We further note that, in general, a statute of limitations is tolled "[a]t the time the complaint is filed, if a copy of the summons and complaint are served on the defendant within the time set forth in the supreme court rules." MCL 600.5856(a). Here, the summons and complaint were served on defendant before the summons's expiration date. The summons does not differentiate between the two complaints.

³ More specifically, plaintiff had requested: "1. (Monthly) Michigan Under 5 Detail by Drug and Quality Indicator in 2005; and 2. (Monthly) Patients on 5 or More Concurrent Behavioral Drugs in 2005." In response, defendant stated that the request had been reviewed "and it has been determined that the above records, in their entirety, are protected from disclosure pursuant to MCL 331.533."

that "[t]he court, on its own motion, may view the public record in controversy in private before reaching a decision." Here, plaintiff and plaintiff's counsel were permitted to review the requested documents. To the extent that plaintiff complains that the court did not personally review documents associated with plaintiff's third request, it was not required, nor necessary, and ultimately it has no bearing on proper resolution of this case.

Turning to the issue of whether the third request was properly denied and whether the requested documents were exempt, we first acknowledge our standards of review. In *Herald Co, Inc v Eastern Michigan Univ Bd of Regents*, 475 Mich 463, 471-472; 719 NW2d 19 (2006), our Supreme Court enunciated the various standards relative to FOIA actions:

First, we continue to hold that legal determinations are reviewed under a de novo standard. Second, we also hold that the clear error standard of review is appropriate in FOIA cases where a party challenges the underlying facts that support the trial court's decision. In that case, the appellate court must defer to the trial court's view of the facts unless the appellate court is left with the definite and firm conviction that a mistake has been made by the trial court. Finally, when an appellate court reviews a decision committed to the trial court's discretion, such as the balancing test at issue in this case, we hold that the appellate court must review the discretionary determination for an abuse of discretion and cannot disturb the trial court's decision unless it falls outside the principled range of outcomes.

The application of an exemption that involves a legal determination is reviewed de novo. *Federated Publications, Inc v Lansing*, 467 Mich 98, 106; 649 NW2d 383 (2002), mod on other grounds in *Herald Co, supra*. Again, the trial court failed to reach the issue of whether the materials were exempt, but instead of remanding the matter for resolution, we shall directly address the issue for purposes of judicial expediency because, as reflected in our analysis below, the issue ultimately constitutes a pure legal question.

Defendant claims that the documents are exempt under MCL 331.531 *et seq.*, commonly referred to as Michigan's peer review immunity statute, while plaintiff maintains that the documents are subject to release under the same statutory scheme, although patient names must be redacted. Defendant specifically claimed that the documents were exempt under MCL 331.532 and MCL 331.533. The FOIA is a "prodisclosure statute," *Swickard v Wayne Co Medical Examiner*, 438 Mich 536, 558; 475 NW2d 304 (1991), under which a defendant bears the burden of establishing an exemption, MCL 15.240(4). In a circuit court action to compel a public body's disclosure of public records, "a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record." MCL 15.240(4). The FOIA exempts from disclosure any documents that are "specifically described and exempted from disclosure by statute." MCL 15.243(1)(d). The exemptions, however, are to be "narrowly construed." *Swickard, supra* at 558.

MCL 331.531(1) provides:

A person, organization, or entity may provide to a review entity information or data relating to the physical or psychological condition of a person,

the necessity, appropriateness, or quality of health care rendered to a person, or the qualifications, competence, or performance of a health care provider.

"A person, organization, or entity is not civilly or criminally liable" for providing information or data under the statute, or for, in general, releasing or publishing records and reports. MCL 331.531(3). A "review entity" includes "[a] state department or agency whose jurisdiction encompasses the information described in subsection (1)." MCL 331.531(2)(d). Both parties proceed on the basis that defendant is a "review entity" under the statute, and given the lack of any dispute on the matter and the nature of the PQIP and the MDCH, we shall treat defendant as a "review entity" for purposes of our analysis. Defendant argues that plaintiff is not a "review entity," and we agree with this assessment. Regardless, plaintiff makes no claim that he is a "review entity." MCL 331.533 provides:

The identity of a person whose condition or treatment has been studied under this act is confidential and a review entity shall remove the person's name and address from the record before the review entity releases or publishes a record of its proceedings, or its reports, findings, and conclusions. Except as otherwise provided in section 2 [MCL 331.532], the record of a proceeding and the reports, findings, and conclusions of a review entity and data collected by or for a review entity under this act are confidential, are not public records, and are not discoverable and shall not be used as evidence in a civil action or administrative proceeding.

Plaintiff cites MCL 331.532(a)-(c) as establishing the relevant exceptions in this case to MCL 331.533. MCL 331.532(a)-(c) provide:

The release or publication of a record of the proceedings or of the reports, findings, and conclusions of a review entity shall be for 1 or more of the following purposes:

- (a) To advance health care research or health care education.
- (b) To maintain the standards of the health care professions.
- (c) To protect the financial integrity of any governmentally funded program.

In his attempt to establish the applicability of the exceptions, plaintiff relies on the affidavit of Bertram P. Karon, Ph.D., a professor of clinical psychology at Michigan State University, who averred that he fully supports plaintiff's document request as the documents "contain information of useful educational value to researchers . . . who are eager to study the changing prescribing patterns of psychiatric drugs to young children in our state's Medicaid system, as well as the changing prescribing patterns of psychiatric drug cocktails to patients of all ages." Karon further averred that "[t]here is no justifiable reason this information should remain secret from the citizens and taxpayers of our state." Finally, Karon stated that "[h]aving this data will not only advance healthcare research and thus . . . education[,] but help ensure that appropriate standards among healthcare providers are maintained." We note that plaintiff

alleged that he "sits as a member of the [MDCH] Recipient Rights Advisory Committee having been appointed by the Director of the Department."

Plaintiff misconstrues the interaction between MCL 331.532 and MCL 331.533. In *Dye v St John Hosp & Med Ctr*, 230 Mich App 661, 672 n 10; 584 NW2d 747 (1998), this Court observed:

[W]e find nothing within § 2 [MCL 331.532] or 3 [MCL 331.533] that places a duty on a review entity to release information. Instead, § 3 provides confidentiality protection. That protection is subject to exceptions listed in § 2. Thus, a disclosure falling within one of [the] specified purposes of § 2 does not run afoul of the confidentiality provisions of § 3. Nothing within these sections, however, mandates the release of information within a category excepted from the confidentiality protection. It is one thing to exempt information from guaranteed confidentiality but quite another to require disclosure of that information.

Reading MCL 331.532 and MCL 331.533 together, it is evident that a review entity can release or publish reports if a proper purpose is established under § 2, and upon doing so, the provisions in § 3 that dictate that the records are confidential, are not public records, and are not discoverable become inoperable. Thus, plaintiff's claim that review entity reports are subject to release if plaintiff shows a proper purpose for him or others to have access to the documents under § 2 fails because it is defendant, i.e., the review entity, which must first decide whether to release or publish the reports under § 2. In other words, the documents remain confidential, not discoverable, and not public under § 3 until the review entity chooses to release the documents. Here, defendant has not chosen to release or publish the relevant documents under § 2; therefore, they remain confidential, not discoverable, and they are not public records. Therefore, taking into consideration the FOIA exemptions, the documents sought by plaintiff are "specifically described and exempted from disclosure by statute." MCL 15.243(1)(d). Moreover, the FOIA in general pertains to requests for "public records," MCL 15.233, and MCL 331.533 dictates that the records at issue here are not public as defendant has not decided to release the materials. Accordingly, the trial court did not err in dismissing plaintiff's complaint as to count III, albeit for the wrong reasons. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Finally, on the issue of sanctions pursuant to MCR 2.114(E) and (F), as well as MCL 600.2591, which concern frivolous complaints or pleadings not well grounded in fact nor warranted by existing law, our review is under the clearly erroneous standard. *Kitchen v Kitchen*, 465 Mich 654, 661-662; 641 NW2d 245 (2002); *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 266; 548 NW2d 698 (1996). Given that the first two counts were clearly time-barred and that the third count was not sustainable under established case law issued in 1998, i.e., *Dye, supra*, reversal is unwarranted.

Affirmed.

/s/ Henry William Saad
/s/ William B. Murphy
/s/ Pat M. Donofrio

Order

Michigan Supreme Court
Lansing, Michigan

October 3, 2008

136283

BEN HANSEN,
Plaintiff-Appellant,

v

DEPARTMENT OF COMMUNITY HEALTH,
Defendant-Appellee.

Clifford W. Taylor,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

SC: 136283
COA: 278074
Ingham CC: 06-001033-CZ

On order of the Court, the application for leave to appeal the March 13, 2008 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

CAVANAGH and KELLY, JJ., would grant leave to appeal.

MARKMAN, J. (*dissenting*).

I would reverse in part the judgment of the Court of Appeals and remand this case to the trial court for an evidentiary hearing concerning the appropriate amount of sanctions with respect to Counts I and II only. In my judgment, sanctions for Count III were inappropriate because that count was not barred by the statute of limitations and plaintiff's legal position on this count was not "devoid of arguable legal merit." MCL 600.2591(3)(a)(iii).

YOUNG, J., joins the statement of MARKMAN, J.



p0930

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 3, 2008

Corbin R. Davis

Clerk

EXHIBIT 2

From: Bernard L. Hansen <drbonkers@gmail.com>
Date: Mon, Nov 17, 2008 at 3:42 PM
Subject: FOIA request to Michigan Dept. of Community Health
To: Mary Greco <GrecoM@michigan.gov>
Cc: bhsfoia@michigan.gov

to:
Mary Greco, Legal Affairs Coordinator
Michigan Department of Community Health
Health Policy, Regulation & Professions Administration
Office of Legal Affairs

Dear Ms. Greco,

Under the Freedom of Information Act, I request a copy of the following documents related to Michigan Medicaid and/or the Michigan Pharmacy Quality Improvement Project (PQIP):

1. Behavioral Pharmacy Management Reports issued monthly by Comprehensive NeuroScience Inc., from July 2007 to the present time.
2. All records of PQIP Workgroup activity in 2008, including but not limited to agendas, sign-in sheets, minutes, notes, and email correspondence.
3. All Michigan "Children Under Age 5 Detail by Drug Name" reports issued monthly by Comprehensive NeuroScience Inc. during the life of the PQIP program, listing Prescriber Name, Prescriber ID, and Drug Name. It is understood that Patient Name and Patient ID shall be redacted from these reports before they are released.
4. All Michigan "Patients on 5 or more Concurrent Behavioral Drugs" reports issued monthly by Comprehensive NeuroScience Inc. during the life of the PQIP program, listing Prescriber Name, Prescriber ID, and Drug Name. It is understood that Patient Name and Patient ID shall be redacted from these reports before they are released.
5. An electronic copy of Michigan Medicaid data, listing all fields available on children under age 18 in Medicaid, prescribed atypical antipsychotic medication (drug class including brand names Abilify, Geodon, Risperdal, Seroquel and Zyprexa) in the years 2006 and 2007, including but not limited to: Label Name (such as "Seroquel 20 MG tablet"), Approved Amount (dollars), Provider Name and License Number.

I may be contacted by email or telephone, if necessary, to discuss any aspect of my request.

Thank you for your attention to this request.

Sincerely,

Bernard L. Hansen
926 E. State St.
Traverse City, MI 49686

phone: 231-946-0414



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
LANSING

JANET OLSZEW
DIRECTOR

December 10, 2008

Mr. Bernard Hansen
926 E. State Street
Traverse City, MI 49686

Dear Mr. Hansen:

Your November 17, 2008, request for records under the FOIA, MCL 15.231 *et seq.*, was received by this office on November 18, 2008, with an extension taken pursuant to MCL 15.238 through December 11, 2008, for records that you described as follows:

"I request a copy of the following documents related to Michigan Medicaid and/or the Michigan Pharmacy Quality Improvement Project (PQIP):

1. Behavioral Pharmacy Management Reports issued monthly by Comprehensive NeuroScience Inc., from July 2007 to the present time.
2. All records of PQIP Workgroup activity in 2008, including but not limited to agendas, sign-in sheets, minutes, notes, and email correspondence.
3. All Michigan "Children Under Age 5 Detail by Drug Name" reports issued monthly by Comprehensive NeuroScience Inc. during the life of the PQIP program, listing Prescriber Name, Prescriber ID, and Drug Name. It is understood that Patient Name and Patient ID shall be redacted from these reports before they are released.
4. All Michigan "Patients on 5 or more Concurrent Behavioral Drugs" reports issued monthly by Comprehensive NeuroScience Inc. during the life of the PQIP program, listing Prescriber Name, Prescriber ID, and Drug Name. It is understood that Patient Name and Patient ID shall be redacted from these reports before they are released.
5. An electronic copy of Michigan Medicaid data, listing all fields available on children under age 18 in Medicaid, prescribed atypical antipsychotic medication (drug class including brand names Abilify, Geodon, Risperdal, Seroquel and Zyprexa) in the years 2006 and 2007, including but not limited to: Label Name (such as "Seroquel 20 MG tablet"), Approved Amount (dollars), Provider Name and License Number."

Your request is granted in part and denied in part as follows:

1. Your request is granted in part as we have attached the Adult and Child Behavioral Pharmacy Management Reports from June 2007 through July 2008. Your request is denied in part as there are no existing reports beyond July 2008 as Medicaid has not sent data to CNS since that date.
2. Your request is granted in part as we have attached documentation related to PQIP Workgroups dated 05/27/08 and 09/08/08. Your request is denied in part as there are no existing documents regarding the workgroups scheduled for 03/03/08 or 12/01/08 as they were cancelled.
3. Your request is denied as the information you are requesting is exempt from disclosure pursuant to section 13(1)(a) and (d) of the FOIA. Specifically, the information is exempt pursuant to MCL 333.533.
4. Your request is denied as the information you are requesting is exempt from disclosure pursuant to section 13(1)(a) and (d) of the FOIA. Specifically, the information is exempt pursuant to MCL 333.533.
5. Your request is denied as the request is too vague and information does not exist. Specifically, Please provide the following additional information concerning your request:
 - Define "all fields:
 - With regard to "children under age 18 in Medicaid" would this children under 18 on the claim service date or another particular calendar date?
 - Please provide a National Drug Code (NDC) list for al products requested.
 - With regard to "in the years 2006 and 2007" which date of reference are you referring to? Claim service date or claim adjudication date?

As to the partial denial of your request, under section 10 of the FOIA, the following remedies are available:

1. Appeal the partial denial determination in writing addressed to the Director, 201 Townsend, Lansing, MI 48909. The writing must specifically state the word "appeal" and must identify the reasons you believe the denial determination must be reversed. As head of the Department, the Director, or her designee, must respond to your appeal within ten business days of its receipt. Under unusual circumstances, the time for response to your appeal may be extended by ten business days.

Mr. Bernard Hansen
FOIA 2008/655
December 10, 2008
Page 3

2. File an action in circuit court to compel disclosure of the records. This action must be filed within 180 days after the date of final determination to deny the request. If you prevail in such an action, the court is to award reasonable attorney fees, costs, and disbursements. Further, if the court finds the denial to be arbitrary and capricious, you may receive punitive damages of \$500.00.

Sincerely,

Mary A. Greco, Legal Affairs Specialist
Office of Legal Affairs

Enclosures

STATEMENT OF FEES FOR FREEDOM OF INFORMATION ACT REQUESTS

Michigan Department of Community Health

Date of Statement 12/10/2008	FOIA Request No. 2008/655
Statement: <input checked="" type="checkbox"/> FIRST <input type="checkbox"/> FINAL	
FOIA Requester Name Hansen	

IMPORTANT:

This statement shows the fees, which will be charged to you because of your request under the Freedom of Information Act. See the transaction checked below.

- Arrangements for personal inspection have been made. Photocopies are enclosed. Please send the fee (shown in item #6 below) **at this time.**
- Photocopies or Diskettes are enclosed. Please send the fee (shown in item #6 below) **at this time.**
- This Department requires a DEPOSIT **before** this request can be processed.
 - Please send the deposit (shown in item #7 below) **at this time.**
 - You will be billed for any remaining costs **PRIOR** to the materials being sent to you.
- You have already made a deposit of \$ _____, and this is the **REMAINDER** of the final cost.
 - Please send the amount (shown in item #8 below) **at this time.**
 - You will be sent the documents **AFTER** the remainder of the fee has been sent.

INSTRUCTIONS:

- Please make your check payable to: **"STATE OF MICHIGAN"**
- Mail a copy of this form and your check to:

**ACCOUNTING DIVISION - FOIA
MICHIGAN DEPARTMENT OF COMMUNITY HEALTH
PO BOX 30437
LANSING MI 48909-7937**

CHARGES: **Actual Amount** **Estimated Amount**

1. LABOR charges for searching for, examining of, and separation of exempt materials from non-exempt materials:	\$66.45
2. DUPLICATION costs for photocopying documents or providing computer diskettes:	\$29.25
3. SHIPPING and HANDLING charges:	\$3.00
4. SUB-TOTAL CHARGE: (Sum of Lines 1 through 3)	\$98.70
5. Indigent Waiver Credit (minus \$20.00 if applicable)	\$
6. NET TOTAL CHARGE: (Line 4 minus Line 5)	\$98.70
7. DEPOSIT REQUIRED NOW (if any):.....	\$
8. REMAINDER REQUIRED NOW: (Line 6 minus Line 7)	\$98.70

For Department of Community Health Office Use Only

Agency Code 391		Index 09031	Name of FOIA Coordinator or Representative Mary A. Greco FOIA 2008/655
PCA 97240	Object Code 7612	Amount \$	Return To: Department of Community Health 320 S. Walnut - Cashiering Div Lansing, Michigan 48933
PCA	Object Code	Amount \$	

The Department of Community Health is an equal opportunity employer, services, and programs provider.

From: "Bernard L. Hansen" <drbonkers@gmail.com>
To: bhsfoia@michigan.gov; GrecoM@michigan.gov
Date: Tue, Dec 16, 2008 4:48 PM
Subject: MDCH FOIA 2008/655

Dear Ms. Greco,

I have received your letter dated Dec. 10, 2008, in response to my FOIA request 2008/655, and I am now writing to answer your questions concerning item #5 of my request. I asked for:

An electronic copy of Michigan Medicaid data, listing all fields available on children under age 18 in Medicaid, prescribed atypical antipsychotic medication (drug class including brand names Abilify, Geodon, Risperdal, Seroquel and Zyprexa) in the years 2006 and 2007, including but not limited to: Label Name (such as "Seroquel 20 MG tablet"), Approved Amount (dollars), Provider Name and License Number.

Here are my answers to the four issues raised by you:

1. "Define all fields." I will be satisfied with information collected from all four fields named in my request: Label Name, Approved (dollar) Amount, Provider Name, and License Number.
2. "Children under age 18 on the claim service date or another particular calendar date?" Claim service date.
3. "Provide National Drug Code list for all products requested." See attached National Drug Code list of atypical antipsychotics, also known as second-generation antipsychotics, therapeutic class consisting of seven drugs: aripiprazole (Abilify), clozapine (Clozaril), olanzapine (Zyprexa), paliperidone (Invega), quetiapine (Seroquel), risperidone (Risperdal), and ziprasidone (Geodon). All seven drugs are sold in a variety of dosage forms, each of which is listed as a distinct 9-digit code number in the attached document. These various dosage forms are dispensed in a wide variety of quantities per package or bottle, with a 2-digit identifier added to the 9-digit code, resulting in a full 11-digit code number for each product. I am requesting data on ALL dosage and packaging forms of ALL drugs in the atypical antipsychotic class, prescribed in 2006 and 2007 to Michigan Medicaid patients under age 18.
4. "2006 and 2007 claim service date or claim adjudication date?" Claim service date.

I hope the above sufficiently answers your questions. Please contact me if you have any additional questions regarding any aspect of my request.

Sincerely,

Bernard L. Hansen
926 E. State St.
Traverse City, MI 49686
phone 231-946-0414
email drbonkers@gmail.com

----- Original message -----

RESPONSE TO REQUEST FOR PUBLIC RECORDS -
FREEDOM OF INFORMATION ACT

Michigan Department of Community Health

Date of Response 3/3/2009	FOIA Request 2008/719
Request Type: <input checked="" type="checkbox"/> Original <input type="checkbox"/> Additional Info.	

Dear Mr. Hansen,

This letter is in response to your request dated 12/16/2009, received in this office on 12/17/2009 for COPIES INSPECTION of the following record(s):

An electronic copy of Michigan Medicaid data, listing all fields available on children under age 18 in Medicaid, prescribed atypical antipsychotic medication (drug class including brand names Abilify, Geodon, Risperdal, Seroquel and Zyprexa) in the years 2006 and 2007, including but not limited to: Label Name (such as "Seroquel 20 MG tablet"), Approved Amount (dollars), Provider Name and License Number.

Here are my answers to the four issues raised by you:

1. "Define all fields." I will be satisfied with information collected from all four fields named in my request: Label Name, Approved (dollar) Amount, Provider Name, and License Number.
2. "Children under age 18 on the claim service date or another particular calendar date?" Claim service date.

Your request for public records has been reviewed and the following action(s) has been taken in compliance with the provisions of the State of Michigan's Freedom of Information Act.

1. REQUEST GRANTED:

This request involves too many documents to be processed within standard time frames. Your request will be processed as soon as staff have completed the copying. MDCH STAFF: If this box is checked, you must provide another copy of this form when the documents are forwarded to the requestor. Also, check either box 2 or 3.

2. REQUEST GRANTED AS TO EXISTING NON-EXEMPT RECORDS: Your requested documents are enclosed.

3. REQUEST GRANTED IN PART and DENIED IN PART: (See comments on next page).

4. REQUEST DENIED:

This agency has determined that the record(s) you have requested are exempt from disclosure based on the provisions of the Freedom of Information Act. (See comments on next page).

5. REQUEST DENIED:

To the best of our understanding, knowledge and belief, the record(s) you have requested do NOT exist within this agency.

6. REQUEST DENIED:

Your request does NOT describe the record(s) sufficiently, or by another name reasonably known, to enable us to determine what record(s) you are seeking. Please submit a new request describing the record(s) in greater detail.

7. The specific nature of your request involves a circumstance which requires an additional **10 business days** to properly process your request as provided by Sec. 6(5) of the Freedom of Information Act.

The extension due date is . The reason for this extension is:

UNDER SECTION 10 OF THE FREEDOM OF INFORMATION ACT, IF A PUBLIC BODY MAKES A FINAL DETERMINATION TO DENY ALL OR A PORTION OF YOUR REQUEST, YOU MAY DO ONE OF THE FOLLOWING:

- (1) Submit to the head of the public body, a written letter that states the word "APPEAL" and identifies the reason or reasons for reversal of denial.
- (2) Commence an action in the circuit court to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.
- (3) Pursuant to MCL 15.235(5)(4)(e) this serves as notice of the right to receive attorneys' fees and damages as provided in Section 10, if after judicial review, the circuit court were to order disclosure of all or a portion of the document(s) requested.

Signature of FOIA Coordinator or Representative

Name of Responding Office
Mary Greco, FOIA Coordinator
Office of Legal Affairs

See Reverse Side for Non-discrimination Information

DENIAL OF RECORDS:

Denial is based on the following provision(s) of the Freedom of Information Act. MCL 15.243, Sec. 13(1). (Check ALL that apply)

- (a) Information of a personal nature where the public disclosure of the information would constitute unwarranted invasion of an individual's privacy.
- (c) A public record that, if disclosed, would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of mental disability, unless the public interest in disclosure under this act outweighs the public interest in disclosure.
- (d) Records or information specifically described and exempted from disclosure by statute.
[Cite:] Explain in comments below.
- (e) A public record described in this section that is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally given rise to the exempt nature of the public record remain applicable.
- (g) Information or records subject to attorney-client privilege.
- (h) Information or records subject to the physician-patient privilege, psychologist-patient privilege, the minister, priest or Christian Science practitioner privilege, or other privilege recognized by statute or court rule.
- (i) A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has expired.
- (l) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by disclosure of those facts or evaluation.
- (m) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in a particular instance the public interest in encouraging frank communications between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under the state law for purposes of section 8(h) of the open meetings act, 1976 PA 267, MCL 15.268. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under 1947 PA 336, MCL 423.201 to 423.217.
- (p) Testing data developed by a public body in determining whether bidders' products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only one bidder has met the specifications. This subdivision does not apply after 1 year has elapsed from the time the public body completes the testing.
- (t) Except as otherwise provided in this subdivision, records and information to an investigation or a compliance conference conducted by the department of community health under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before a complaint is issued. This subdivision does not apply to records and information pertaining to 1 or more of the following:
 - (i) The fact that an allegation has been received and an investigation is being conducted, and the date the allegation was received.
 - (ii) The fact that an allegation was received by the department of community health; the fact that the department community health did not issue a complaint for the allegation; and the fact that the allegation was dismissed.
- (u) Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body.
- (v) Records or information relating to a civil action in which the requesting party and the public body are parties.
- (w) Information or records that would disclose the social security number of any individual.

Comments:

Your request is granted in part as we have provided you with a CD as described above. Your request is denied in part as the prescriber name and license number have been redacted pursuant to Sections 13(1) (a) and (l) of the FOIA. Specifically, the disclosure of the Prescriber Name and License Number could be used with other public data to produce identifiable information.

Description of Information Deleted or Separated from the Public Record Requested:

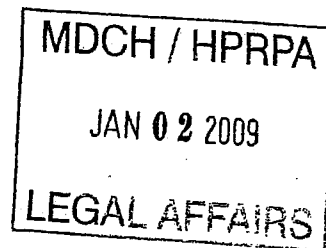
Exemption Not Listed Above:

The Department of Community Health will not discriminate against any individual or group because of race, sex, religion, age, national origin, marital status, political beliefs, or disability.

EXHIBIT 3

PsychRights™

Law Project for
Psychiatric Rights, Inc.



December 29, 2008

Mary Greco, Legal Affairs Specialist
Michigan Department of Community Health
Office of Legal Affairs
201 Townsend
Lansing, Michigan 48913

Dear Ms. Greco,

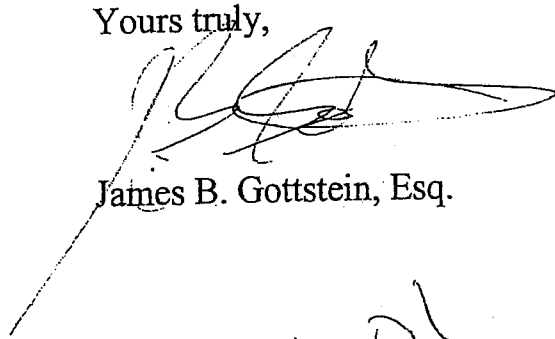
Under the Michigan Freedom of Information Act, I request an electronic copy of the following records related to the Michigan Pharmacy Quality Improvement Project (PQIP):

1. All Michigan "Children Under Age 5 Detail by Drug Name" reports issued in 2005 by Comprehensive NeuroScience Inc., listing Prescriber Name, Prescriber ID, and Drug Name.
2. All Michigan "Patients on 5 or more Concurrent Behavioral Drugs" reports issued in 2005 through 2008 by Comprehensive NeuroScience Inc., listing Prescriber Name, Prescriber ID, and Drug Name.

I request notice of an estimate for the cost of redacting exempt information (such as Patient Name and Patient ID) from the above-named records.

Thank you in advance for your assistance.

Yours truly,



James B. Gottstein, Esq.

2009/001



STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

JANET OLSZEW
DIRECTOR

January 12, 2009

Mr. James B. Gottstein, Esq.
PsychRights
406 G. Street, Suite 206
Anchorage, Alaska 99501

Dear Mr. Gottstein

Your December 29, 2008, request for records under the FOIA, MCL 15.231 *et seq*, was received by this office on January 2, 2009, for records that you described as follows:

"Under the Michigan Freedom of Information Act, I request an electronic copy of the following records related to the Michigan Pharmacy Quality Improvement Project (PQIP):

1. All Michigan "Children Under Age 5 Detail by Drug Name" reports issued in 2005 by Comprehensive NeuroScience Inc., listing Prescriber Name, Prescriber ID, and Drug Name.
2. All Michigan "Patients on 5 or more Concurrent Behavioral Drugs" reports issued in 2005 through 2008 by Comprehensive NeuroScience Inc., listing Prescriber Name, Prescriber ID, and Drug Name."

Your request is denied as the above records, in their entirety, are exempt from disclosure pursuant to sections 13(1)(a) and (d) [MCL 331.533] of the FOIA. Specifically:

"the identify of a person whose condition or treatment has been studied under this Act is confidential and a review entity shall remove the person's name and address from the record before the review entity releases or publishes a record of its proceedings, or its reports, findings, and conclusions. Except as otherwise permitted in section 2, the record of a proceeding and the reports, findings, and conclusions of a review entity and data collected by or for a review entity under this Act are confidential, are not public records, and are not discoverable and shall not be used as evidence in a civil action or administrative proceeding." (MCL 331.533).

The requested records contain identifying information about individuals whose condition and treatment are being studied. Additionally, the requested records are reports, finding, and conclusions of a review entity, and contain data collected by or for a review entity under 1967 PA 270, MCL 331.531 *et seq*. Therefore, both the information contained in the reports and the reports in their entirety, are confidential, are not public records, and are not subject to the Freedom of Information Act.

Mr. James B. Gottstein, Esq.

FOIA 2009/001

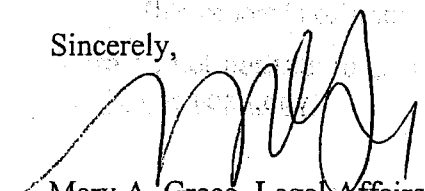
January 12, 2009

Page 2

As to the denial of your request, under section 10 of the FOIA, the following remedies are available:

1. Appeal the partial denial determination in writing addressed to the Director, 201 Townsend, Lansing, MI 48909. The writing must specifically state the word "appeal" and must identify the reasons you believe the denial determination must be reversed. As head of the Department, the Director, or her designee, must respond to your appeal within ten business days of its receipt. Under unusual circumstances, the time for response to your appeal may be extended by ten business days.
2. File an action in circuit court to compel disclosure of the records. This action must be filed within 180 days after the date of final determination to deny the request. If you prevail in such an action, the court is to award reasonable attorney fees, costs, and disbursements. Further, if the court finds the denial to be arbitrary and capricious, you may receive punitive damages of \$500.00.

Sincerely,



Mary A. Greco, Legal Affairs Specialist
Office of Legal Affairs

Enclosures

Quasarano, Thomas

From: Oxford University Press [oxfordpromotion@oup.com]
Sent: Thursday, July 02, 2009 10:03 AM
To: Quasarano, Thomas
Subject: Garner's Usage Tip of the Day - Native American.



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Garner's Usage Tip of the Day



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Native American.

The term "Native American" proliferated in the 1970s to denote groups served by the federal Bureau of Indian Affairs: American Indians as well as the Eskimos and Aleuts of Alaska. Later, the term was interpreted as including Native Hawaiians and Pacific Islanders, and it fell into disfavor among some Indian and Alaskan groups, who came to prefer "American Indian" and "Alaska Native." Yet views are unpredictable: some consider "Native American" more respectful than "American Indian."

As an equivalent to "American Indian," the phrase "Native American" was long thought to be a 20th-century innovation. In fact, the phrase dates back to at least 1737 in this sense. And it made literal sense then, since most people who had been born in the New World were indigenous -- not of European descent.

By the 19th century, when the term "Native American" was fairly common, it had become ambiguous, since it often referred to any person born in the United States, whether of indigenous or of European descent. Here, in a mid-20th-century passage, it refers to place of birth: "Dr. Fleisch . . . was born in Vienna, but writes more like a native American than do most native Americans." Gorham Munson, *The Written Word* 196 (rev. ed. 1949).

The phrase "indigenous American," which is more logically and etymologically correct, does have some support -- e.g.: "He alleged he and other American Indians were being illegally excluded from serving as jurors in San Juan County, where more than half the residents are descended from indigenous Americans." Dawn House, "Jury Still Out on Navajos' Role in Utah Courts," *Salt Lake Trib.*, 7 Feb. 2001, at D2.

Meanwhile, the synonymous phrase "autochthonous American" hasn't ever caught on. No surprise there.

Quotation of the Day: "Poetry. I like to think of it as statements made on the way to the grave." Dylan Thomas (as quoted in Harvey Breit, *The Writer Observed* 233 (1956)).
=====

Looking for more information on **Bryan Garner's books**? Check them out [here](#).

For information on Bryan Garner's seminars, visit: www.lawprose.org.

To send a message to Bryan Garner, email him at: bgarner@lawprose.org.

For a profile of Bryan Garner, check out the [Dallas Observer](#).

EXHIBIT 4

From: <DJRICCIO@aol.com>
To: GrecoM@michigan.gov
Date: 1/7/09 12:05:26 PM
Subject: (no subject)

Email to: _GrecoM@michigan.gov_ (mailto:GrecoM@michigan.gov)

Subject: FOIA request to Mich. Dept. of Community Health

to:
Mary Greco, Legal Affairs Specialist
Michigan Department of Community Health
Office of Legal Affairs
201 Townsend
Lansing, Michigan 48913

Dear Ms. Greco,

Under the Freedom of Information Act, I request an electronic copy of the following Michigan Dept. of Community Health documents related to the Michigan Pharmacy Quality Improvement Project (PQIP):

1. Any and all Michigan "Children Under Age 5 Detail by Drug Name" reports issued by Comprehensive NeuroScience Inc., listing Prescriber Name, Prescriber ID, and Drug Name.
2. Any and all Michigan "Patients on 5 or more Concurrent Behavioral Drugs" reports issued by Comprehensive NeuroScience Inc., listing Prescriber Name, Prescriber ID, and Drug Name.

I request notice of an estimate for the cost of redacting exempt information (Patient Name and Patient ID) from these reports before they are released.

Sincerely,

Dominick Riccio, Ph.D.
Executive Director
ICSP
1036 PARK AVE. SUITE 1B
NEW YORK, NY 10028
212 861-7400
FAX 212 861-2801

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STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

JANET OLSZEW
DIRECTOR

January 12, 2009

Mr. Dominick Ricchi, Ph.D.
ICSPP
1036 Park Avenue, Suite 1B
New York, NY 10028

Dear Mr. Ricchi:

Your January 7, 2009, request for records under the FOIA, MCL 15.231 *et seq*, was received by this office on January 8, 2009, for records that you described as follows:

"Under the Freedom of Information Act, I request an electronic copy of the following Michigan Dept. of Community Health documents related to the Michigan Pharmacy Quality Improvement Project (PQIP):

1. Any and all Michigan "Children Under Age 5 Detail by Drug Name" reports issued by Comprehensive NeuroScience Inc., listing Prescriber Name, Prescriber ID, and Drug Name.
2. Any and all Michigan "Patients on 5 or more Concurrent Behavioral Drugs" reports issued by Comprehensive NeuroScience Inc., listing Prescriber Name, Prescriber ID, and Drug Name."

Your request is denied as the above records, in their entirety, exempt from disclosure pursuant to sections 13(1)(a) and (d) (MCL 331.533) of the FOIA. Specifically:

"the identify of a person whose condition or treatment has been studied under this Act is confidential and a review entity shall remove the person's name and address from the record before the review entity releases or publishes a record of its proceedings, or its reports, findings, and conclusions. Except as otherwise permitted in section 2, the record of a proceeding and the reports, findings, and conclusions of a review entity and data collected by or for a review entity under this Act are confidential, are not public records, and are not discoverable and shall not be used as evidence in a civil action or administrative proceeding." (MCL 331.533).

The requested records contain identifying information about individuals whose condition and treatment are being studied. Additionally, the requested records are reports, finding, and conclusions of a review entity, and contain data collected by or for a review entity under 1967 PA 270, MCL 331.531 *et seq*. Therefore, both the information contained in the reports, and the reports in their entirety, are confidential, are not public records, and are not subject to the Freedom of Information Act.

Mr. Dominick Ricchi. Ph.D.
FOIA 2009/005
January 12, 2009
Page 2

As to the denial of your request, under section 10 of the FOIA, the following remedies are available:

1. Appeal the partial denial determination in writing addressed to the Director, 201 Townsend, Lansing, MI 48909. The writing must specifically state the word "appeal" and must identify the reasons you believe the denial determination must be reversed. As head of the Department, the Director, or her designee, must respond to your appeal within ten business days of its receipt. Under unusual circumstances, the time for response to your appeal may be extended by ten business days.
2. File an action in circuit court to compel disclosure of the records. This action must be filed within 180 days after the date of final determination to deny the request. If you prevail in such an action, the court is to award reasonable attorney fees, costs, and disbursements. Further, if the court finds the denial to be arbitrary and capricious, you may receive punitive damages of \$500.00.

Sincerely,

Mary A. Greco, Legal Affairs Specialist
Office of Legal Affairs

Enclosures

EXHIBIT 5

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

BEN HANSEN, INTERNATIONAL CENTER
FOR THE STUDY OF PSYCHIATRY AND
PSYCHOLOGY, INC., AND THE LAW PROJECT
FOR PSYCHIATRIC RIGHTS, INC.,

Case No. 09-759-CZ
HON. JOYCE DRAGANCHUK

Plaintiffs,

v

STATE OF MICHIGAN,
DEPARTMENT OF COMMUNITY HEALTH,

Defendant.

Alan Kellman (P15826)
Timothy A. Swafford (P70654)
Jaques Admiralty Law Firm, P.C.
Attorney for Plaintiffs
645 Griswold, Suite 1370
Detroit, MI 48226-4116
(313) 961-1080

Thomas Quasarano (P27982)
Assistant Attorney General
Attorney for Defendant
P.O. Box 30754
Lansing, MI 48909
(517) 373-1162

AFFIDAVIT OF MARY GRECO

STATE OF MICHIGAN)

) SS.:

COUNTY OF INGHAM)

I, Mary Greco, being duly sworn, state as follows:

1. I am employed with the Michigan Department of Community Health (MDCH), and have held my job position at all times relevant to the instant action. My job responsibilities include that of coordinating Freedom of Information Act requests.

2. I make this affidavit in support of the MDCH's dispositive and related motions filed in this action. I am personally familiar with the facts stated in this affidavit, and, if sworn as a witness, I can testify competently to those facts.

3. I received and processed Plaintiff Hansen's November 17, 2008 and December 16, 2008 requests for information, which he submitted to MDCH under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.* The second request clarified the first. MDCH issued written notices in response, respectively, on December 10, 2008 and March 3, 2009, granting the requests in part and denying them in part, with an explanation of the statutory basis for the partial denial.

4. I received and processed the December 29, 2008 request for information of Plaintiff, Law Project for Psychiatric Rights, Inc., submitted by James B. Gottstein to MDCH under the FOIA. MDCH issued its January 12, 2009 written notice in response, denying the request and explaining the statutory basis for the exemption.

5. I received and processed the January 7, 2009 request for information of Plaintiff, International Center for the Study of Psychiatry and Psychology, Inc., submitted by Dominick Riccio to MDCH under the FOIA. MDCH issued its January 12, 2009 written notice in response, denying the request and explaining the statutory basis for the exemption.

6. All three Plaintiffs requested information that constitutes Pharmacy Quality Improvement Project (PQIP) records, which fall within the confidentiality provisions of the Release of Information for Medical Research and Education Act, MCL 331.531 *et seq.*

7. Under section 3 of the Release of Information for Medical Research and Education Act, MCL 331.533, PQIP records are non-public, non-discoverable, confidential records, and MDCH's written notices informed Plaintiffs of this statutory basis for the exemption of the records under the FOIA.

8. Plaintiffs have not shown a proper purpose in their requests or pleading to have access to the documents under section 2 of the Release of Information for Medical Research and Education Act, MCL 331.532. Nevertheless, MDCH decided not to release the documents; thus, under the Release of Information for Medical Research and Education Act, the documents are not public records subject to the FOIA. MDCH notified Plaintiffs in writing that section 13(1)(d) of the FOIA, MCL 15.243(1)(d), recognizes other statutes that provide for the exemption from disclosure of records or information specifically described in those statutes, and that MDCH's non-disclosure determination made under the FOIA in this particular instance was based on the Release of Information for Medical Research and Education Act.

9. Plaintiffs' complaint alleges that MDCH invoked section 13(1)(m) of the FOIA as a basis to exempt information from public disclosure. This exemption was not raised by MDCH in its written notices issued in response to Plaintiffs' requests.

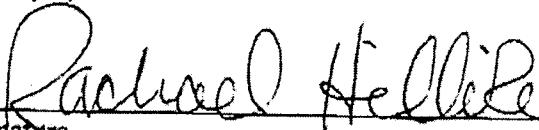
10. As to Plaintiff Hansen's requests, MDCH exempted, as personal, information that would result in the disclosure of identifiable patient information. Sections 13(1)(a) and (l) of the FOIA, MCL 15.243(1)(a) and (l), provide for the non-disclosure of information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy, and medical information if an individual's identity would be revealed by a disclosure of the information. Records and information composed of Medicaid patient identities and beneficiary information and other patient and prescriber identifiers are exempt

from public disclosure under the privacy and confidentiality provisions of both the FOIA and the Release of Information for Medical Research and Education Act.

12. To the best of my knowledge, information, and belief, at the time the MDCH issued its above-described written notices in response to the requests, there were no other nonexempt MDCH records beyond those provided.


Mary Greco

Subscribed and sworn to before me
on July 2, 2009.


Signature

Rachael Hilliker
Print name exactly as it appears on application for commission as a notary public

Notary Public, State of Michigan, County of Ingham

My Commission Expires 3-14-2016

Acting in the County of Ingham

