

CIRCUIT COURT FOR THE STATE OF MICHIGAN
INGHAM COUNTY CIRCUIT COURT
THIRTIETH JUDICIAL DISTRICT

BEN HANSEN,

Plaintiff

v,

STATE OF MICHIGAN, DEPARTMENT OF
COMMUNITY HEALTH

Defendant.

06-1033 CZ

Case No. ~~06-1033-4~~ NICKERSON

Freedom of Information Act
Complaint

ALAN KELLMAN (P15826)
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COMPLAINT

Now comes Ben Hansen, through his counsel undersigned, and files Complaint seeking to compel the Michigan Department of Community Health to make available the documents, statements etc., pursuant to the Michigan Freedom of Information Act, as detailed herein:

THE PARTIES

1. Ben Hansen is an individual, residing in the State of Michigan. He sits as a member of the Michigan Department of Community Health Recipient Rights Advisory Committee having been appointed by the Director of the Department.
2. Defendant is the State of Michigan's Department of Community Health ("MDCH").

JURISDICTION AND VENUE

3. This Court has jurisdiction over this proceeding and venue is proper pursuant to M.C.L.A. ¶ 15.241, Sec. 11 (5): M.S.A. ¶ 1801 (11).

FACTUAL BACKGROUND

4. In 2004, MDCH created the Pharmacy Quality Improvement Project (PQIP).

5. PQIP stated purposes include improving the “effectiveness” of the taxpayer’s dollars spent on psychotropic drugs, “patient adherence to medication plans” and the “quality of psychotropic prescribing practices based on evidence based guidelines.”

6. Comprehensive Neuroscience (CNS), of White Plains, New York, has received a grant from Eli Lilly and Company to partner with MDCH with regard to PQIP. Its role is to receive, sort and analyze data.

7. A three-way agreement between MDCH, CNS and Eli Lilly and Company was entered into. The agreement limits Eli Lilly and Company’s role in the program; Lilly’s sole responsibility under the agreement is to “provide certain funding.”

8. While the PQIP program was in its formative stages information regarding “Michigan Prescribing Patterns” was available. This included “Total Pharmacy Spending -vs- Spending on Psychotropic Drugs” (which was \$373,178,712.00, 41% of the total medicaid pharmacy spending), the number of medicaid recipients being prescribed psychotropic drugs (a monthly average of 248,029), and more.

9. PQIP is operational and receiving data from CNS.

10. Based on information and belief Eli Lilly and Company representatives have participated in PQIP meetings and have repeatedly viewed confidential data provided by CNS.

11. Plaintiff, Ben Hansen has made three (3) Freedom of Information Act (“FOIA”) Requests pursuant to and in accordance with M.C.L. ¶ 15.231, et seq.; M.S.A. ¶ 4.1801 (1) et seq.

12. The replies to these requests have been incomplete and information which Mr. Hansen was entitled to receive was not provided.

COUNT I

13. Plaintiff realleges and incorporates by reference paragraphs 1-12 above.

14. On or about November 14, 2005, the first FOIA request was made.

15. While the request theoretically were “approved” not all available documents were provided. Specifically, not all of the memos, reports and other working papers of the PQIP workgroup were provided.

16. A waiver of fees was requested.

Wherefore it is prayed that the MDCH publish and make available all the requested documents and that attorneys’ fees and costs be awarded as provided for in M.C.L.A. ¶ 15.240; M.S.A. ¶ 4.1801 (10).

COUNT II

17. Plaintiff hereby realleges and incorporates by reference paragraphs 1-12 above.

18. On or about December 14, 2005, Plaintiff, as a “follow-up” to his previous request, submitted second a FOIA request covering similar materials. This request incorporated omitted or overlooked data from the prior request. The request was “granted in part and denied in part.”

19. Minutes of all PQIP Workgroup meetings were not provided. No letters nor emails between any Eli Lilly representative and any MDCH employee were provided.

20. A fee waiver was requested and improperly denied.

Wherefore it is prayed that the MDCH publish and make available all the requested documents and that attorneys' fees and costs be awarded as provided for in M.C.L.A. ¶ 15.240; M.S.A. ¶ 4.1801 (10).

COUNT III

21. Plaintiff realleges and incorporates paragraph 1-12 above.

22. Plaintiff made his third FOIA request on or about February 2, 2006, which sought additional information relating to the first two requests.

23. On or about February 23, 2006, the request was "granted in part and denied in part."

24. Denials were premised on Section 13 (1) (M) of FOIA as well as M.C.L. 331.533. These denials were improper.

Wherefore it is prayed that the MDCH publish and make available all the requested documents and all documents of a like kind and nature in existence today which were generated since Plaintiff's last FOIA request and that attorneys' fees and costs be awarded as provided for in M.C.L.A. ¶ 15.240, M.S.A. ¶ 4.1801 (10).

Respectfully submitted,



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Dated: August 10, 2006