

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

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

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 Plaintiff
645 Griswold, Ste. 1370
Detroit, MI 48226-4116
(313) 961-1080**

_____ /

JOYCE DRAGANCHUK

Case No. **09-759-CZ**

**Freedom of Information Act
Complaint**

COMPLAINT AND DEMAND FOR TRIAL BY JURY

NOW COMES Ben Hansen, the International Center for the Study of Psychiatry and Psychology, Inc., and The Law Project for Psychiatric Rights, Inc. through their counsel undersigned, and file this Complaint seeking to compel the Michigan Department of Community Health to make available the documents, statements and other designated materials identified herein, 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.
2. The International Center for the Study of Psychiatry and Psychology, Inc. (ICPPS) is a non-profit 501(c)(3) research and educational entity. Its purposes include research and education in the mental health field and to inform the public and media about the potential dangers of drugs. Its Board of Directors consists of licensed members of the mental health profession.
3. The Law Project for Psychiatric Rights, Inc. is a non-profit 501(c)(3) public interest law firm whose purposes include informing the public and the courts about psychiatric drugs.
4. Defendant is the State of Michigan's Department of Community Health ("MDCH").

JURISDICTION AND VENUE

5. 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

6. In 2004, MDCH created the Pharmacy Quality Improvement Project (PQIP).
7. 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."
8. 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.
9. 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.”

10. PQIP has been operational and receiving data from CNS.

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

12. Plaintiff, Ben Hansen made a Freedom of Information Act

(“FOIA”) Request pursuant to and in accordance with M.C.L. ¶ 15.231, et seq.; M.S.A. ¶ 4.1801 (1)

et seq, which was received in the Defendant’s office on November 18, 2008.

13. The FOIA request of Plaintiff, Ben Hansen sought, in part:

All Michigan “Children Under Age 5 Detail by Drug Name” reports issued monthly by Comprehensive NeuroScience Inc. during the life of 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.

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.

14. The Department denied the requests set forth in paragraph 12, as follows:

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.

15. The FOIA request of Plaintiff, Ben Hansen also sought:

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: Lable Name (such as “Seroquel 20 MG tablet”), Approved Amount (dollars), Provider Name and License Number.”

16. The Department replied to this request, as follows:

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 all 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?

17. Plaintiff, Hansen provided the requested information and the Department replied on December 20, 2008, as follows:

REQUEST GRANTED AS TO EXISTING NON-EXEMPT RECORDS:
Your request is approved-please send deposit.

18. Plaintiff Hansen, pursuant to this response sent the requested deposit.

19. The Department then reneged on its approval and refused to produce the requested information claiming "the disclosure of Prescriber Name and License Number could be used with other public data to produce identifiable information."

20. The Department has a one at least one prior occasion released prescriber names and license numbers.

21. The FOIA request of the International Center for the Study of Psychiatry and Psychology, Inc. sought:

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.

22. The request was denied, as follows:

“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 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).

23. The Law Project for Psychiatric Rights, Inc. filed a FOIA requesting

1. All Michigan “Children Under Age 5 Detail by Drug Name” reports issued in 2005 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.”

24. The Department denied the request stating that the records sought “in their entirety, are exempt from disclosure pursuant to Sections 13(1)(a)(d) [MCL 331.533.] of the FOIA.” The Department stated specifically:

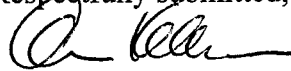
“The identity of a person whose condition or treatment has been studied under this Act is confidential and a review entity shall remove the person’s name and address from the record before the review entity releases or publishes a record of its proceedings, or its reports, findings, and conclusions. Except as otherwise 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.)

COUNT I

25. Plaintiffs reallege and incorporate by reference paragraphs 1-24 above.
26. The denials were premised on Section 13(1)(M) of FOIA as well as MCL 333.533. These denials were improper under the Freedom of Information Act.

Wherefore it is prayed that the MDCH publish and make available all the requested documents and that all attorneys' fees and costs be awarded as provided for in MCLA ¶ 15.240, MSA ¶ 4.1801(10).

Respectfully submitted,



ALAN KELLMAN (P15826)
TIMOTHY A. SWAFFORD (P70654)
THE JAQUES ADMIRALTY LAW FIRM, P.C.
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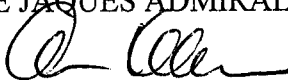
Dated: May 29, 2009

DEMAND FOR TRIAL BY JURY

Plaintiffs, Ben Hansen, The International Center for the Study of Psychiatry and Psychology, Inc. and The Law Project for Psychiatric Rights, Inc. by their attorneys, The Jaques Admiralty Law Firm, P.C., hereby demands trial by jury of all counts triable by a jury in this matter.

Respectfully submitted,

THE JAQUES ADMIRALTY LAW FIRM, P.C.



ALAN KELLMAN (P15826)
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THE JAQUES ADMIRALTY LAW FIRM, P.C.
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645 Griswold, Ste. 1570
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(313) 961-1080

Dated: May 29, 2009

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_____/

CERTIFICATE OF SERVICE

Krystle Melquiades, being first duly sworn, deposes and says that on the 5th day of June, 2009, she served *Summons, Complaint and Demand for Trial by Jury* and this *Certificate of Service* in the above matter by certified mail, by placing same in an envelope with adequate postage thereupon and depositing in the United States Post Office box at Detroit, Michigan::

Janet Olszewski, Director
State of Michigan
Department of Community Health
201 Townsend St.
Lansing, MI 48913

Subscribed and sworn to me
this 5th day of June, 2009


NOTARY PUBLIC


KRYSTLE MELQUIADES

JAMES P. ANDERZAK
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Apr 14, 2011
ACTING IN COUNTY OF