

At a Mental Hygiene Part of the Supreme Court of the State of New York, County of _____, at the _____ Courthouse located at _____, New York, on the _____ day of _____ 20 ____.

PRESENT:

HON.

Justice.

----- X

In the Matter of the Application of _____ in their capacity as Director of Community Services , of the _____,

Petitioner,

**ORDER TO
SHOW CAUSE**
Index No.:

Seeking an Order Authorizing the Release of the Certified Clinical (Psychiatric) Records of _____,

Respondent.

----- X

Upon reading and filing the annexed affirmations of _____, Esq. and _____, M.D., and the Petition of _____ dated _____, 20 ____ herein;

LET the respondent, _____ show cause before this court at _____

on the ____ day of _____ 20____, at _____ a.m./p.m., or as soon thereafter as the parties may be heard,

WHY court-ordered subpoena(s) should not be signed authorizing and requiring

_____ to produce _____ certified clinical (psychiatric) records to _____, the Director of Community Services for the _____, via their designee/agent,

_____, _____ for the _____ County Assisted
Outpatient Treatment Program pursuant to NY Mental Hygiene Law §9.60;

SUFFICIENT CAUSE APPEARING THEREFORE, LET service of a copy of this
Order to Show Cause, together with copies of the papers upon which it is based, be made upon (1)
the respondent, _____, by personal service to _____,
NY _____; (2) Mental Hygiene Legal Service by personal service or
email transmission at _____, at their request; and (3) _____,
Director of the Assisted Outpatient Treatment Program for _____ County,
by personal service or facsimile transmission (_____), at their request,
to _____, NY on or before the ____ day of _____,
20____ be deemed good and sufficient service.

ENTER:

JUSTICE OF THE SUPREME COURT

This Order to Show Cause is supported by:

The Petition of _____

The Affirmation of _____

The Affirmation of _____

Respectfully submitted,

_____, Esq.
Attorney for the Petitioner

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

----- X
In the Matter of the Application of

in their capacity as Director of Community Services, of the
_____ ,

Petitioner,

ATTORNEY'S
AFFIRMATION
Index No.:

Seeking an Order Authorizing the Release of the
Certified Clinical (Psychiatric) Records of
_____ ,

Respondent.

----- X

_____, ESQ., an attorney duly admitted to practice law
in the Courts of the State of New York, affirms the following to be true under penalty of perjury:

1. I am an attorney in the _____,
attorney for the petitioner, _____, Director of Community Services for
the _____ and their assignee,

2. _____, M.D. is a physician licensed by the State
of New York with a specialty in Psychiatry employed with the New York County Assisted
Outpatient Treatment Program (AOT).

3. I make this affirmation in support of an application for a court order and so-ordered
subpoenas seeking records of mental health treatment pertaining to _____. I
am familiar with the facts and circumstances set forth herein based upon conversations, review of
the record and communication with _____, M.D.

4. As Director of Community Services for the _____,
with responsibility for the operation of the Assisted Outpatient Treatment Program, the petitioner
“shall be responsible for receiving reports of persons who may be in need of assisted outpatient

treatment” and “conducting timely investigations of such reports.” MHL § 9.47 (b)(1) and (2). The aforesaid Director of Community Services, through their designee – in this case _____ – is also responsible for providing and/or arranging, in a timely manner, for all the categories of service for the duration of the assisted outpatient’s court-ordered treatment plan. MHL § 9.47 (b)(4).

5. _____ was referred to AOT by _____ and subsequently hospitalized at _____ where they would not sign consent to release medical records to AOT voluntarily.

6. Based upon the New York State Court of Appeals holding *In the Matter of Miguel M. (Anonymous) & Charles Barron*, 2011 NY Slip Op 03886 (prohibiting the disclosure of a psychiatric records in a proceeding to compel treatment as a HIPAA violation where the respondent has neither authorized disclosure nor received notice of the request for records), _____ is now required to, and with this instrument, give _____ notice that their clinical records are being sought by the AOT Program.

7. Petitioner has no means to obtain hospital or treatment records in accordance with the *Miguel M.* decision other than via a court-ordered subpoena(s). AOT is obligated to investigate all reasonable referrals to the Program and provide for/monitor the services that Mr./Ms./Mrs./_____ would receive pursuant to any court-ordered treatment plan under MHL § 9.47 (b)(4). The sought-after hospital records are vital for the Program to be able to perform its statutory functions in this regard.

8. If this Court chooses to grant this application it will only be making a limited disclosure of the respondent’s psychiatric history. Indeed, the applicant – in this case the _____ County AOT Program - shares the treatment provider’s obligation to keep the respondent’s records confidential. See MHL § 33.13(13)(d)(ii). The information sought will become part of the Assisted Outpatient Treatment file, along with other information. The entire

file is confidential. When the information in the record becomes the subject of testimony in Court, that record may only be released to a treatment provider or upon order of the Court. See MHL § 9.31(f). In addition, the medical records will be shared with respondent's attorneys, the Mental Hygiene Legal Service.

9. As noted, respondent did not cooperate with an AOT investigation. Considering this, the Petitioner has no means to obtain hospital records in accordance with the *Miguel M.* decision other than via a court-ordered subpoena(s). AOT is obligated to perform an investigation to determine respondent's eligibility for the Program under MHL § 9.47 (b)(1) and (2).

10. Upon information and belief, no prior application requesting the release of respondent's medical records by subpoena for AOT has been granted by this or any Court. Further, no prior orders for assisted outpatient treatment have been granted by this or any Court.

WHEREFORE, it is respectfully requested that the application to subpoena records relating to psychiatric treatment of _____ be granted in all respects.

Dated: _____, New York
_____, 20____

_____, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

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In the Matter of the Application of

_____,
in their capacity as Director of Community Services, of the
Department of Health and Mental Hygiene,

Petitioner,

**Physician's Affirmation in
Support of Application for
Certified Psychiatric
Records**

Index No:

Seeking an Order Authorizing the Release of the
Certified Clinical (Psychiatric) Records of _____,

Respondent.

----- X

_____, M.D., affirms to be true the following under penalty

of perjury:

1. I am a physician licensed by the State of New York with a specialty in Psychiatry and I make this affirmation in support of the petition by _____, Director of Community Services, _____ County, seeking the certified psychiatric records for _____ (herein after, the "respondent"), in accordance with §9.47 and §9.60 of the Mental Hygiene Law.

2. _____ is over the age of 18 (DOB _____) and currently resides at _____, creating an appropriate jurisdiction for this application.

3. _____ reportedly suffers from _____ and:

When asked by a provider at _____ to release their medical records to County AOT, _____ refused.

4. Considering the above, the Petitioner has no means to obtain hospital records in accordance with the *Miguel M.* decision other than via a court-ordered subpoena(s). AOT is obligated to perform an investigation to determine respondent's eligibility for the Program under MHL § 9.47 (b)(1) and (2).

5. Upon information and belief, no prior application requesting the release of respondent's medical records by subpoena for AOT has been granted by this or any Court. Further, no prior orders for assisted outpatient treatment have been granted by this or any Court.

WHEREFORE, your affirmant respectfully requests that the Court sign the attached court order and subpoena(s) requiring the clinical records be released to the Director of Community Services for purposes of an AOT investigation.

Dated: _____, New York
_____, 20_____

_____, M.D.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

----- X

In the Matter of the Application of _____,
in their capacity as Director of Community Services, of the Department
of Health and Mental Hygiene,

PETITION

Petitioner,

Seeking an Order Authorizing the Release of the
Certified Clinical (Psychiatric) Records of _____,

Respondent.

----- X

_____, in their capacity as Director of Community
Services, County of _____, by their attorney,
_____, ESQ., respectfully alleges as follows upon
information and belief and pursuant to penalties of perjury:

1. _____ is, the Director of Community Services for _____.
2. As Director of Community Services for the New York City Department of Health and Mental Hygiene, with responsibility for the operation of the Assisted Outpatient Treatment Program, the petitioner “shall be responsible for receiving reports of persons who may be in need of assisted outpatient treatment” and “conducting timely investigations of such reports.” MHL § 9.47 (b)(1) and (2). The undersigned, through designee _____, is also responsible for providing and/or arranging, in a timely manner, for all the categories of service for the duration of the assisted outpatient’s court-ordered treatment plan. MHL § 9.47 (b)(4).
3. According to _____, respondent, was referred to the AOT Program by _____, but _____ would not consent to the release of their medical records.

4. Based upon the New York State Court of Appeals holding *In the Matter of Miguel M. (Anonymous) & Charles Barron*, 2011 NY Slip Op 03886 (prohibiting the disclosure of a psychiatric records in a proceeding to compel treatment as a HIPAA violation where the respondent has neither authorized disclosure nor received notice of the request for records), _____ is now required to, and with this instrument, give _____ notice that their clinical records are being sought by the AOT Program.
5. In the absence of the patient's consent, AOT has no means to obtain hospital or treatment records in accordance with the *Miguel M.* decision other than via a court-ordered subpoena(s). AOT is obligated to investigate all reasonable referrals to the Program and provide for/monitor the services that _____ would receive pursuant to any court-ordered treatment plan under MHL § 9.47 (b)(4). The sought-after hospital records are vital for the Program to be able to perform its statutory functions in this regard.
6. Upon information and belief, no prior application requesting the release of respondent's medical records by subpoena for AOT has been granted by this or any Court. Further, no prior orders for assisted outpatient treatment have been granted by this or any Court.

WHEREFORE, it is respectfully requested that the application to subpoena records relating to psychiatric treatment of _____ be granted in all respects.

Dated: _____, New York
_____, 20____

_____, Esq.

At the Mental Hygiene Part of the Supreme Court of the State of New York, County of _____, at the Courthouse located at _____, _____, New York, on the _____ day of _____

PRESENT:

HON.

Justice.

----- X

In the Matter of the Application of

_____,
in their capacity as Director of Community Services, of the

Petitioner,

**FINAL ORDER
AND JUDGMENT**

Index No.:

Seeking an Order Authorizing the Release of the Certified Clinical (Psychiatric) Records of _____,

Respondent.

----- X

Petitioner's request for the records for _____ from

_____ is hereby

granted. Accordingly, the Court will "so order" Petitioner's subpoena(s) with respect to these records.

ENTER:

JUSTICE OF THE SUPREME COURT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

----- X

In the Matter of the Application of _____,
in their capacity as Director of Community Services for the
_____,

Subpoena
and
Subpoena Duces Tecum

Petitioner,

Seeking an Order Authorizing the Release of the
Certified Clinical (Psychiatric) Records of _____,

----- X

TO: _____
Medical Records Department

The interest of justice significantly outweighs the need for confidentiality of the records requested below.

GREETINGS: WE COMMAND YOU that all business and excuses being laid aside; that the Director of Medical Records appear at the Supreme Court located at _____ on the _____ day of _____ 20____, at _____ a.m./p.m., and on any subsequent adjourned date, to give evidence in the above-captioned matter, and that you bring with you **CERTIFIED** records,

OR in lieu of your appearance you produce the following **CERTIFIED** records directly to:

_____ **County AOT Program**

Attn: _____, Esq.

NO LATER THAN _____, **20**____, for the following patient:

Date of Birth: _____

Psychiatric treatment records for: all hospital admissions during the period of _____ to _____, as well as any psychiatric emergency room treatment and outpatient treatment records. The documents that should be included per admission are as follows:

- a. EMS/PD Report
- b. CPEP/Psychiatric Evaluation
- c. Psychosocial Summary
- d. Laboratory Report
- e. Last Physical Examination from the latest admission
- f. Discharge Summary

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to pay all losses and damages sustained thereby to the party aggrieved and forfeit \$50.00 in addition thereto.

A copy of this subpoena has been served upon the respondent, _____ by personal service and a copy has been sent to MHLS by email transmission.

Dated: _____, 20____
_____, New York

_____, Esq.
Attorney for Petitioner
Office of the General Counsel

SO ORDERED: _____ **J.S.C.**

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____**

**In the Matter of the Application of
_____,
in their capacity as Director of Community Services, of the
_____,**

Petitioner,

**Seeking an Order Authorizing the Release of the
Certified Clinical (Psychiatric) Records of
_____,**

Respondent.

ORDER TO SHOW CAUSE

_____, New York _____

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____**

**In the Matter of the Application of
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in their capacity as Director of Community Services of
_____ ,**

Petitioner,

**Seeking an Order Authorizing the Release of the
Certified Clinical (Psychiatric) Records of
_____ ,**

Respondent.

FINAL ORDER AND JUDGMENT

_____, New York _____

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____**

**In the Matter of the Application of
_____,
in their capacity as Director of Community Services, of the
_____,**

Petitioner,

**Seeking an Order Authorizing the Release of the
Certified Clinical (Psychiatric) Records of
_____,**

Respondent.

SUBPOENA AND SUBPOENA DUCES TECUM

_____, New York _____