

COURT CASE

Attorney Guilty of Unauthorized Disclosure of Medical Information

In January 2003, a man began meeting with a psychiatrist. He confided to his doctor that he was having homicidal thoughts about his wife. The physician determined that his patient had bipolar disorder, and treated him for this condition for the next seven months.

A month into the man's psychiatric treatment, his wife filed for divorce. The man filed a counterclaim, in which he sought legal custody of the couple's minor child. While both the divorce case and the man's psychiatric treatment were ongoing, the man allegedly assaulted his wife at their home, and criminal charges were brought against him. Shortly thereafter, his wife sought and received a civil domestic-violence protection order. The order gave her temporary custody of the couple's child and suspended the man's contact and visitation rights until a full hearing could be held.

In preparation for the hearing, the wife's attorney issued subpoenas to the psychiatrist seeking the production in court of the man's medical records. The attorney mistakenly believed that the man had waived his privilege to his medical records by filing the counterclaim for custody in the divorce action. On the date of the hearing, the wife's attorney met with the prosecutor in the criminal case against the man, and she gave the prosecutor a copy of the man's medical records that she had received from his psychiatrist.

Before the hearing, the man and his wife reached a separation agreement, and the man's medical records were therefore never admitted into evidence in the divorce/protection-order case. Likewise, the man's medical records were not admitted in the criminal matter, and the man was ultimately acquitted.

The man brought an action against his wife's attorney, his ex-wife, his psychiatrist, and his psychiatrist's employer, alleging improper disclosure of his medical records without his authorization. Charges against the defendants were dropped, but a court of appeals eventually held that the ex-wife's attorney "over-stepped her bounds as [the ex-wife's] attorney when she disseminated information regarding the man's psychiatric condition to the prosecution."

The court held that by giving the psychological records she obtained in the divorce case to the prosecutor in the criminal case against Hageman, attorney Belovich violated Hageman's rights to keep that information confidential. Allowing attorneys with such information obtained through discovery to treat the information as public would violate the policy of maintaining the confidentiality of individual medical records. The court therefore recognized that waiver of medical confidentiality for litigation purposes is limited to the specific case for which the records are sought, and that an attorney who violates this limited waiver by disclosing the records to a third party unconnected to the litigation may be held liable for these actions

CONFIDENTIAL

Source: *Hageman v. Southwest General Health Center*, 119 Ohio St. 3rd, 185, 893 N.E.2d 153 (2008).

In your opinion, was the psychiatrist in this case also guilty of a breach of confidentiality? Why or why not?

Do you believe the attorney in the above case was also guilty of a breach of ethics in disclosing the health records? Explain your answer.

and liability. Risk management is an important concept in the prevention of medical lawsuits, and is discussed further in Chapter 6.

6. Role Fidelity

All health care practitioners have a specific scope of practice, for which they are licensed, certified, or registered, and from which the law says they