

**LOUISIANA STATE BOARD
OF SOCIAL WORK
EXAMINERS**

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NO. 2002-CA-0608

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COURT OF APPEAL

VERSUS

*

FOURTH CIRCUIT

**SUZANNE PAURATORE,
LCSW**

*

STATE OF LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2001-16188, DIVISION "J"
Honorable Nadine M. Ramsey, Judge

**Charles R. Jones
Judge**

(Court composed of Chief Judge William H. Byrnes III, Judge Charles R. Jones, and Judge Patricia Rivet Murray)

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APPEAL CONVERTED TO A WRIT;

WRIT DENIED

On the showing made, the writ application filed by the Relators, Suzanne Pauratore, a licensed clinical social worker, and B.R., Ms. Pauratore's client, seeking review of the judgment of the district court ordering her to produce documents in response to a subpoena duces tecum issued by the Respondent, The Louisiana State Board of Social Work Examiners (hereinafter the "Board"), is hereby denied.

This case arises from the filing of a complaint against Ms. Pauratore with the Board on May 29, 2001, precipitating an investigation by the Board concerning Ms. Pauratore's treatment of B.R. B.R. represents that the complaint was filed by her former lover. B.R. further alleges that her former lover was jealous of the therapy relationship between she and Ms. Pauratore.

On October 3, 2001, the Board filed a petition in Civil District Court seeking judicial enforcement of a subpoena duces tecum issued to Ms. Pauratore. The petition sought, among other things, "telephone records and other forms of communications including documentation of e-mails sent to and received from the client identified in the complaint as B.R." Ms. Pauratore resisted in producing these documents.

On November 6, 2001, B.R. filed what was styled as a "motion" to intervene in the proceeding, claiming that she was a necessary and

indispensable party as the material sought belonged to her, that she was then in therapy with Ms. Pauratore, and that she was unwilling to waive her client-therapist privilege. The district court allowed the intervention.

The matter came for hearing on November 9, 2001 and was taken under advisement. The district court rendered judgment on December 10, 2001, ordering Ms. Pauratore to produce a copy of all e-mails “sent” to B.R. between November 2000 and the “present.” The Judgment further ordered Ms. Pauratore to produce “telephone records of cell phones used by [defendant’s] office, office telephones at all of [defendant’s] offices, [defendant’s] home telephones and telephone logs between November, 2000 to the present.”

Both Ms. Pauratore and B.R. sought suspensive appeals, which were granted on January 10, 2002. Shortly thereafter the Board filed an opposition to the granting of the motions for appeal after the motions had been granted and after the district court had been divested of jurisdiction over the matter. On April 3, 2002, the Board filed a Motion to Dismiss the appeal on the ground that the judgment was interlocutory in nature and there was no showing of irreparable injury. We granted the Motion to Dismiss filed by the Board and converted the appeal into an application for supervisory writs, ordering the “Appellant/Relator” to file a writ application

within fifteen days of the date of the order. Both Ms. Pauratore and B.R. timely filed writ applications and the Board filed an opposition.

The legislative purpose in instituting the Louisiana Social Work Practice Act, La. R.S. 37:2701, et seq., is to safeguard the public health, safety and welfare of the people of the state against, among other things, the improper practice of social work. The Board has the power to discipline a social worker for a number of reasons, including practicing in a manner detrimental or potentially detrimental to the client by an intentional or negligent act or omission. La. R.S. 37:2717(A)(7). The Board shall have the right to issue subpoenas where needed and, if not honored, petition a court of competent jurisdiction to have its subpoena honored. La. R.S. 37:2717(E). The Board is also empowered under the Administrative Procedure Act, La. R.S. 49:950, et seq., to sign and issue subpoenas for the production of documentary evidence. La. R.S. 49:956(5).

La. R.S. 37:2718 sets forth a privilege for communications made to social workers. La. R.S. 37:2718(B) states that “[n]o social worker may disclose any information he may have acquired from persons consulting him in his professional capacity that was necessary to enable him to render services to those persons except” in limited circumstances, none of which are applicable in the instant case. La. R.S. 37:2718(A) states that “[t]

testimonial privileges, exceptions, and waiver with respect to communications between a social worker and his client are governed by the Louisiana Code of Evidence.”

La. C.E. art. 510 sets forth the health care provider-patient privilege. La. C.E. art. 510(A)(2) defines a health care provider as a psychotherapist. La. C.E. art. 510(A)(4)(c) defines a psychotherapist as a person licensed as a social worker under the laws of any state. La. C.E. art. 510(B)(1) sets forth the general rule of privilege in a non-criminal proceeding—that a patient has a privilege to prevent another person from disclosing a confidential communication made for the purpose of advice, diagnosis or treatment of his health condition, between or among himself or his health care provider. However, La. C.E. art. 510(B)(1)(h) provides that there is no privilege under the article when the communication is relevant in proceedings held by peer review committees and other disciplinary bodies to determine whether a particular health care provider has deviated from applicable professional standards.

La. R.S. 13:3715.1(J), which specifically applies to, among other boards, the Louisiana State Board of Social Work Examiners, provides in pertinent part that:

Notwithstanding any privilege of confidentiality recognized by law, no health care provider or health care institution with which such health care

provider is affiliated shall, acting under any such privilege, fail or refuse to respond to a lawfully issued subpoena of such board for any medical information, testimony, records, data, reports or other documents, tangible items, or information relative to any patient treated by such individual under investigation; however, the identity of any patient identified in or by such records or information shall be maintained in confidence by such board and shall be deemed a privilege of confidentiality existing in favor of any such patient. For the purpose of maintaining such confidentiality of patient identity, such board shall cause any such medical records or the transcript of any such testimony to be altered so as to prevent the disclosure of the identity of the patient to whom such records or testimony relates.

In her writ application, Ms. Pauratore simply adopts the argument set forth by her client B.R. B.R. cites no legal authority at all for her position. Rather, she asserts that the district court abused its discretion in ordering the production of the material for several reasons: (1) that the investigation of Ms. Pauratore has been completed at the Board level and has been turned over to the Assistant Attorney General for prosecution; (2) that the e-mails and telephone records are not part of the therapy file; (3) that the therapy client, B.R., opposes the release of these items and the therapist-client privilege belongs to the therapy client; and (4) that the release of Ms. Pauratore's telephone records "additionally invades the privacy of her family and other therapy clients, all of whom have no relevance to the instant

ethical matter.”

Initially, it can be noted that B.R.’s argument insofar as e-mails refers to both e-mails from B.R. to Ms. Pauratore, and e-mails from Ms. Pauratore to B.R. However, the Judgment of the district court directed the production only of e-mails “sent” by Ms. Pauratore to B.R.

B.R.’s first argument refers to a November 13, 2001 letter sent to the district court by Assistant Attorney General Melinda Tucker after the hearing, while the district court had the matter under advisement. In the letter, Ms. Tucker stated that “generally,” when a case is sent to her for prosecution by the Board the investigation has been completed. Ms. Tucker stated that after she reviewed the entire investigative file she determined that “the e-mails in question” were not necessary for the prosecution of the matter, and so advised the Board, through its counsel. However, Ms. Tucker conceded that the reason she did not need the e-mails at that time was because she was then in negotiation with Ms. Pauratore in an attempt to resolve the matter through a consent order. Ms. Tucker further conceded that if it appeared a consent order could not be reached, “then the e-mails in question may become necessary.” Ms. Tucker noted that at that time she viewed “the attempt to invade B.R.’s privacy as a public protection issue,” noting that B.R. had not filed the complaint, and that B.R. did not want “her

personal e-mails read by strangers.” We determine that it is obvious that Ms. Tucker’s letter and cautionary comments therein referred only to B.R.’s e-mails sent to Ms. Pauratore, which are not covered by the Judgment of the district court.

B.R. further argues that the e-mails and telephone records “are not part [sic] of the therapy file,” suggesting that the e-mails might not be covered by the therapist-client privilege. In any case, the statutory provisions, La. C.E. art. 510(B)(2)(h) and La. R.S. 13:3715.1(J), make it clear that B.R. does not have any privilege she can assert to defeat the production of the documents sought under the subpoena and ordered produced by the district court. While La. R.S. 13:3715.1(J) states that even when the Board obtains the documents there exists a privilege of confidentiality in favor of B.R., the Judgment of the district court does not infringe upon that privilege.

B.R. and Ms. Pauratore suggest that any telephone records of calls made from Ms. Pauratore’s telephones to persons other than B.R. would be irrelevant to the investigation. While there might be some merit to this argument, it is obvious to this Court that the Board believes it needs to examine the records in total in order to discover what it is looking for, presumably telephone numbers evidencing all telephone calls from Ms.

Pauratore to B.R. during the period of time at issue. The Board's only alternative would be to rely on Ms. Pauratore, the person being investigated, to accurately report these telephone calls, which presumably tend to prove improper professional activity on her part.

B.R. and Ms. Pauratore also assert that permitting the Board access to the telephone records violates the right to privacy of Ms. Pauratore's family and her other clients—persons she may have telephoned besides B.R. However, neither B.R. nor Ms. Pauratore cite any authority for the proposition that, under the peculiar facts of this case, they have standing to assert the rights of privacy of these persons. Further, any privacy concern of Ms. Pauratore's family members insofar as her telephone records evidencing that she telephoned them is minimal. As to any other clients, their privacy interests are protected under La. R.S. 13:3715.1(J), which states that “the identity of any patient identified in or by such records or information shall be maintained in confidence by such board and shall be deemed a privilege of confidentiality existing in favor of any such patient.”

This essentially is a discovery matter. Louisiana trial courts have broad discretion when regulating pre-trial discovery, which discretion will not be disturbed absent a clear showing of abuse. *Moak v. Illinois Central R.R. Co.*, 93-0783, p. 9 (La. 1/14/94), 631 So. 2d 401, 406; *Cacammo v.*

Liberty Mutual Fire Ins. Co., 99-1903, p. 4 (La. App. 4 Cir. 10/10/01), 798 So.2d 1210, 1214, *writ not considered*, 2001-3087 (La. 1/25/02), 806 So. 2d 665. Neither Ms. Pauratore nor B.R. have shown that the district court abused its discretion in ordering Ms. Pauratore to comply with the subpoena issued by the Board.

For the reasons stated herein, the writ application of Ms. Pauratore and B.R. is hereby denied. The district court did not abuse its discretion.