SHERI NEWCOMER	*	**NO. 2005-C-1242**
VERSUS	*	**COURT OF APPEAL**
AMERICAN HOME ASSURANCE COMPANY, ET AL.	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
	*	

*** * * * * * ***

ON APPLICATION FOR WRITS DIRECTED TO
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 01-21151, DIVISION "N"
Honorable Ethel Simms Julien, Judge
* * * * * *

Judge Patricia R. Murray
* * * * * *

(Court composed of Judge Patricia Rivet Murray, Judge Michael E. Kirby, Judge Terri F. Love, Judge Max N. Tobias Jr., Judge Roland L. Belsome)

LOVE, J. DISSENTS AND ASSIGNS REASONS
BELSOME, J., DISSENTS WITH REASONS

PETER A. FERINGA, JR.
DOUGLAS L. GRUNDMEYER
SCOTT C. BARNEY
KEITH C. ARMSTRONG
CHAFFE MCALL, L.L.P.
1100 POYDRAS STREET, SUITE 2300
NEW ORLEANS, LA 70163-2300
(ATTORNEYS FOR TYCO HEALTHCARE GROUP, LP, AMERICAN HOME ASSURANCE COMPANY AND CURTIS AMANN)

LAWRENCE D. WIEDEMANN
WIEDEMANN & WIEDEMANN
821 BARONNE STREET
NEW ORLEANS, LOUISIANA 70113
(ATTORNEY FOR SHERI NEWCOMER)

WRIT GRANTED

The issue presented is whether the trial court abused its discretion in finding Curtis Amann's initial interview record pertaining to his treatment at Addiction Recovery Resources of New Orleans, Inc. ("ARRNO") discoverable. Relators contend that the initial interview record is not discoverable for the following three reasons: (i) it is privileged under Louisiana law, La. C.E. art. 510, which codifies the health care provider-patient privilege; (ii) it is also privileged under federal law, 42 U.S.C. § 290dd-2, which provides a privilege for certain substance abuse records; and (iii) it is irrelevant. Because we find these arguments persuasive, we grant Relators' writ application and reverse the trial court's order finding the initial interview record discoverable.

First, the Louisiana health care provider-patient privilege covers

communications relating to treatment for "a condition induced by alcohol, drugs, or other substance." La. C.E. art. 510A(9)(defining the term "health condition"). The privilege thus applies to the initial interview record at issue. Although there are numerous exceptions to the privilege, none of the pertinent exceptions applies.

Second, as Relators contend, the initial interview record in question is also protected by an overriding federal privilege under 42 U.S.C. §290dd-2, which provides:

> Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance-abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

42 U.S.C. §290dd-2(a). The purpose of this statute is to encourage people to seek drug abuse treatment. "Congress felt 'the strictest adherence' to the confidentiality provision was needed, lest individuals in need of drug abuse treatment be dissuaded from seeking help." *Fannon v. Johnston*, 88 F.Supp.2d 753, 757 (E.D. Mich. 2000)(quoting *Ellison v. Cocke County, Tennessee*, 63 F.3d 467, 470 (6th Cir. 1995)).

The federal substance abuse privilege is very broad in scope. It covers

"any information (including information on referral or intake) about . . . drug abuse patients" obtained by a "federally assisted" program. 42 C.F.R. §2.12 (e)(1). The privilege thus includes the initial interview record at issue here. For purposes of this privilege, a "federally assisted" program is defined as including a nonprofit entity that qualifies for federal tax-exempt status under §501(c)(3) of the Internal Revenue Code. 42 C.F.R. §2.12(b)(4). In the trial court, ARRNO presented an affidavit from its director who attested that ARRNO is a tax-exempt entity under §503(c)(3). The ARRNO record at issue is thus covered by the substance abuse privilege.

In order to overcome the substance abuse privilege, the party seeking production, absent the patient's consent, has the burden of establishing "good cause," which includes "the need to avert a substantial risk of death or serious bodily harm." 42 U.S.C. §290dd-2(b)(2)(C). Simply because a substance abuse record may be relevant to the litigation is not "good cause." *Mosier v. American Home Patient, Inc.*, 170 F.Supp.2d 1211, 1214 (N.D. Fla. 2001). As the court in *Mosier* explained,"[t]he public interest in protecting the confidentiality of these records, absent some compelling need in litigation, is great." 170 F.Supp.2d at 1215. Indeed, "it will be the exceptional case that meets the good cause requirements of 42 U.S.C. § 290dd-2(b)(2)(C) and 42 C.F.R. § 2.64(d)." *Fannon*, 88 F.Supp.2d at 766.

This is not such a case.

Finally, the relevance of the initial interview record to the punitive damage claim the plaintiff is asserting is questionable. The trial court alluded to the questionable relevance of this record in its judgment by noting that "the treatment occurred several months after the accident" and that the initial interview record "may have probative value." Given the questionable relevance of the initial interview record coupled with the highly confidential and privileged nature of a substance abuse record, we find that the trial court abused its discretion in finding this record discoverable.

WRIT GRANTED