

# Protect Mental Health Records as Required by Law

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It is well known that health care providers have a duty to comply with HIPAA when providing medical records upon request. Don't forget health care providers in Illinois also have a duty to comply with the Mental Health Developmental Disabilities Confidentiality Act. *740 ILCS 110/1*.

In *Stuckey v. Renaissance at Midway*, 2015 IL App (1st) 143111-U, the First District in an unpublished opinion addressed whether disclosure of mental health and disability records is prohibited by a statutory discovery privilege. The Court held that production of any mental health records is protected by the Confidentiality Act. In *Stuckey*, the plaintiff requested that the trial court compel the defendant nursing home to produce records regarding a resident who was not a party to the lawsuit. The defendant nursing home objected to producing the records claiming that they were protected by the Mental Health Developmental Disabilities Confidentiality Act and that the production would violate the physician-patient privilege. The trial court compelled the production of partially redacted records to the plaintiff, and the defendant nursing home refused to comply with the trial court's order. As a result, the trial court held the defendant nursing home in contempt of court. Defendant immediately appealed the trial court's issuance of sanctions as permitted by Illinois rules. Normally discovery orders are not appealable in Illinois, but when an individual appeals a contempt sanction, it is subject to review by the appellate court. The First District analyzed the non-party resident's records and held that the resident clearly received mental health or disability services; therefore, the resident's records were protected by the Act.

The takeaways from this case are: (1) if a resident received services for mental health or disability, the Confidentiality Act applies; (2) a health care provider cannot produce protected mental health and disability records unless a court finds that an exception to the Confidentiality Act applies; and (3) consider whether it is appropriate to violate a court order and appeal a discovery sanction to obtain an appellate decision on the issue.

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