STATE OF WASHINGTON
DEPARTMENT OF HEALTH
OFFICE OF PROFESSIONAL STANDARDS

In the Matter of the License to Practice Medicine and Surgery of:	)	OPS No. 94-01-038 MD
	)	Prog. No. 92-09-0049MD
DONALD BLISS, M.D.,	)	
	)	PREHEARING ORDER NO. 3
Respondent.	)	ORDER GRANTING PROTECTIVE ORDER
	)	

Prehearing conferences were held on the motion for a protective order before Health Law Judge Arthur E. DeBusschere, Presiding Officer for the Medical Disciplinary Board (the Board), on June 21 and 23, 1994. Present by telephone at the prehearing on the motion for the parties were Scott Easter, Attorney at Law representing Donald Bliss, M.D., (Respondent) and Pat L. DeMarco, Assistant Attorney General representing the Department of Health (Department). Also present by telephone was Barbara Jo Levy, Attorney at Law representing LJH, who is identified as Patient One in the Confidential Schedule attached to the Statement of Charges (LJH).

I. PROCEDURAL AND MOTION HISTORY

1.1 On September 20, 1993, a Statement of Charges was issued in this matter. On September 27, 1993, the Respondent filed an Answer and requested a settlement conference followed by a formal hearing if settlement was not accomplished.

1.2 On May 25, 1994, a prehearing conference was held and the Health Law Judge issued Prehearing Order No. 2, which among other orders, ordered that all motions shall be filed with the Office of Professional Standards (OPS).

1.3 On June 8, 1994, OPS received a "Request for a Protective Order" from LJH, which asked the Board to grant a protective order denying the Respondent's request for LJH's medical records.

1.4 On June 14, 1994, OPS received from the Respondent an "Objection to Request for Protective Order" (Respondent's Objections).

1.5 On June 17, 1994, OPS received from the Department the "State's Response to Request for Protective Order" (State's Response) along with Exhibit Nos. 1-12.

1.5.1 Department's Exhibit No. 1 is a letter from LJH to Board dated August 8, 1992, regarding LJH and Donald G. Bliss, M.D.

1.5.2 Department's Exhibits No. 2 - 11 are "Notice[s] of Deposition[s] of Records Custodian[s]" which requested production on June 21, 1994, for the entire medical records of LJH. The Notices were signed by Respondent's Counsel dated June 14, 1994, and were directed to the Records Custodians for the following health care providers:

a) Department's Exhibit No. 2: Rosalie Thomas, R.N., Ph.D.;

b) Department's Exhibit No. 3: R. Owen Davies, Jr., M.D.;

c) Department's Exhibit No. 4: Michael J. Boyer, M.D.;

d) Department's Exhibit No. 5: Robert L. Caulkins, M.D.;

e) Department's Exhibit No. 6: Lois Bresaw, M.D.;

f) Department's Exhibit No. 7: James Bates, M.D.;

g) Department's Exhibit No. 8: Anthony B. Huany, M.D.;

h) Department’s Exhibit No. 9: Sigvard T. Hansen, Jr., M.D., or Douglas T. Harryman, III, M.D., or Frederick A. Matsen, III, M.D.

i) Department’s Exhibit No. 10: Kitsap Physicians Service; and

j) Department’s Exhibit No. 11: Matthew E. Zamecki, M.D.

1.5.3 Department's Exhibit No. 12 is a "Notice of Deposition upon Written Questions" signed by Respondent's Counsel dated June 14, 1994, for Rosalie Thomas, R.N., Ph.D.

1.6 On June 20, 1994, OPS received the "Respondent's Reply to State's Response to Request for Protective Order" (Respondent's Reply).

1.7 Also on June 20, 1994, OPS received a copy of a letter dated June 20, 1994, from Barbara Jo Levy to Scott Easter regarding Dr. Donald G. Bliss Disciplinary Action.

1.8 Further, on June 20, 1994, OPS received a letter from Barbara Jo Levy dated June 16, 1994 regarding Disciplinary Action of Donald G. Bliss, M.D. Attached were copies of ten letters notifying the health care providers, identified in Department's Exhibits 2-11, not to send medical records of LJH and that a Motion for Protective Order was currently pending.

1.9 On June 21, 1994, a hearing was held on the motion for a Protective Order. During the hearing, the parties agreed to allow the Presiding Officer to obtain and read the Deposition Upon Oral Examination of LJH taken April 20, 1994 in Seattle, Washington, pages 1-121 (Deposition of LJH). Attached to the deposition were exhibits.

1.9.1 Deposition Exhibit No. 1 was a letter dated August 8, 1992 from LJH to the Board regarding LJH and Donald G. Bliss, M.D.

1.9.2 Deposition Exhibit No. 2 included an Authorization to Release Confidential Records and Information signed by LJH and included a Department of Health, Medical Investigations Unit, Statement Form, signed by LJH, seven pages plus a diagram of an office.

1.10 The hearing on the Motion for a Protective Order was continued to June 23, 1994, at which time the Health Law Judge ruled on the motion.

II. ARGUMENT OF COUNSEL

2.1 LJH argued that she is a witness and not a party to the disciplinary proceedings and does not waive her doctor-patient privilege or her psychologist-patient privilege. LJH requested that protective order be issued for all the medical records requested by the Respondent and that the "Notice[s] of Deposition[s] of Records Custodian[s] be quashed. LJH further requested that "Notice of Deposition upon Written Questions" be quashed. LJH stated that some of the records requested have already been sent to the Respondent and LJH asked that they be returned to her counsel.

2.2 The Respondent presented several arguments objecting to the Request for a Protective Order. He argued that LJH is not a party to the present proceeding and does not have standing to request a protective order. Next, he argued that the Board does not have jurisdiction because the Uniform Health Care Information Act, RCW 72.02 (Uniform Act), requires that a patient obtain a protective order issued by a court of law. Further, the Respondent argued that the physician-patient and psychologist-patient privileges do not apply to an administrative proceeding. If they do apply, the

privileges have been waived and the records are necessary to impeach the testimony of LJH. Finally, the Respondent argued that the public interest in revealing the true facts outweighs the benefits of the privileges. The Respondent maintained that he is entitled to discover all the medical and mental health records of LJH and any records he has received have been properly supplied to him in accordance with the Uniform Act.

III. ANALYSIS AND CONCLUSIONS OF LAW

3.1 The physician-patient privilege is defined by RCW 5.60.060(4) and the psychologist-patient privilege is defined by RCW 18.83.110.

3.2 The Respondent argued that LJH is not a party to the present proceeding and does not have standing to request a protective order. The Respondent did not cite any authority for this position.

LJH has standing to assert her physician-patient privilege and psychologist-patient privilege in the proceeding before the Medical Disciplinary Board. The relevant statutes provide that LJH has a right to assert her privilege and to intervene. See RCW 5.60.060(4), RCW 18.83.110, RCW 70.02.060, and RCW 34.05.452(1). In State v. Clevenger, 69 Wn.2d 136, 417 P.2d 626 (1966), the court held that the privilege belongs to the patient. Further, LJH has the requisite degree of interest to assert her legal and personal right.

3.3 The Respondent next argued that the Uniform Act requires that a patient obtain a protective order from a court of law, rather than this tribunal. In RCW 70.02.060(1) and (2), the attorney seeking discovery from a health care provider, or seeking to subpoena a health care provider, must give at least 14 days notice to the provider and the patient who can then seek a protective order from a "court of competent jurisdiction forbidding compliance." The Respondent maintained that the

Board does not have jurisdiction to make a ruling regarding this Request for a Protective Order.

The Board was established to act as a disciplinary body for members of the medical profession licensed to practice medicine and surgery in this state. RCW 18.72.010(1). The Board has authority to discipline such members in accordance with the Uniform Disciplinary Act, RCW 18.130 (UDA). The Board, in addition to the powers and duties set forth under the UDA, has all the powers and duties under the Administrative Procedures Act, RCW 34.05 (APA) which governs adjudicative proceeding before agencies. RCW 18.130.100.

The authority to issue a subpoena and to take a deposition arises from the Board's disciplinary authority. RCW 18.130.050(3). The decision whether to compel enforcement or to quash such a subpoena or a deposition is most properly vested in the Board. The intent of RCW 70.02.060(1) and (2) is to provide certain procedural protections for patients when health care information has been requested. While the Board is not a court of record in this state, it is the tribunal before which the disciplinary proceedings are litigated for purposes of RCW 70.02.060(1) and (2). Therefore, this tribunal is a court of competent jurisdiction from which any protective order should be issued.

3.4 The Respondent argued that the physician-patient privilege refers only to "civil actions," therefore RCW 5.60.060(4) does not apply to an administrative proceeding. Further, the Respondent argued that the privilege is statutorily created and therefore, strict statutory construction applies. In pertinent part the statute states:

> A physician or surgeon or osteopathic physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient,

> which was necessary to enable him or her to prescribe or act for the patient.

RCW 5.60.060(4) (emphasis added).

The APA addressed evidentiary matters and stated that "[t]he presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state." RCW 34.05.452(1). This statute establishes authority for the presiding officer to rule on and, if necessary, to exclude privileged information, including the physician-patient privilege, RCW 5.60.060(4), and psychologist-patient privilege, RCW 18.83.110. The physician-patient and the psychologist-patient privilege statutes do apply to this disciplinary proceeding.

3.5 If the privileges do apply, then the Respondent argued that they have been waived. The Respondent cited the automatic waiver provision for personal injury actions where the statute states:

> (b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege.

RCW 5.60.060(4)(b).

The analysis by the Respondent acknowledges that there is a distinction between this disciplinary proceeding and that of a personal injury action for damages. The Respondent stated that since LJH has retained independent counsel, a civil action will almost definitely be brought against Dr. Bliss and, therefore, he is entitled to depose all of the patient's physicians. See Respondent's Objection page 5-6. This tribunal cannot address whether a civil action will be brought and cannot make such an assumption, nor can this tribunal make evidentiary rulings that would be binding to a personal injury action.

The parties, as well as counsel for LJH, have taken the position that LJH is a witness and not a party in this proceeding. See Respondent's Objections, page 1; Request for Protective Order, page 1; State's Response, page 7. It would then follow that LJH, in her own rights, has not filed an action for personal injuries or for medical malpractice action and has not chosen physicians to testify concerning a mental or physical condition. Therefore, the waiver clause in physician-patient privilege statute, RCW 5.60.060(4)(b), would not apply because LJH has not filed "an action for personal injuries or wrongful death." The action by the Department is an action to enforce the Board's statutory disciplinary authority and is not an action by the patient.

3.6 The Respondent next argued that the privileges are automatically waived in an action against a physician or psychologist. By bringing an action against a physician, the Respondent maintained that the patient raises the issue of his or her treatment. The "present proceeding constitutes an action against a physician. The issue of Dr. Bliss' treatment of the Complaining Witness is clearly at issue." See Respondent's Objections, page 4. Citing State v. Tradewell, 9 Wn. App. 821, 824, 515 P.2d 172 (1973), the Respondent stated: "A patient is not permitted to introduce medical testimony relating to his or her injury and, at the same time, prevent the other side from reviewing and introducing medical evidence tending to impeach or contradict that testimony." Respondent's Objections, page 5.

Even assuming the Respondent's position that the Department's disciplinary action is in fact an action by a patient, neither the Department nor LJH has placed her mental or physical condition at issue. At the prehearing conference held on May 25, 1994, the Department agreed to strike paragraph 5 in the Department's Contention of Facts, which stated, "Respondent's conduct toward LJH caused her mental and emotional distress." Significantly, the Respondent moved to strike this

paragraph as being unduly prejudicial and irrelevant to the present proceeding. See Prehearing Order No. 2, pages 2-3, paragraph 2.2.

The Department's action against the Respondent is for unprofessional conduct under RCW 18.130.180(1) and (24). The alleged unprofessional conduct involves sexual contact with the patient after the Respondent examined the patient's shoulder. See Statement of Charges, page 1, paragraph III. LJH was being treated by the Respondent for her shoulder condition. See Deposition of LJH p. 86 line 16 to p. 92 line 10. The medical treatment of LJH's shoulder is not an issue in this disciplinary proceeding. The presiding officer adopts the Department's statement:

> The state notes that the complaint filed by the patient against Respondent in this action does not challenge the competence of the medical treatment which the Respondent provided. Instead, the complaint alleges conduct by the Respondent which is outside the area of treatment and beyond the scope of the doctor-patient relationship.

State's Response, page 6. Therefore, even assuming the medical disciplinary action is similar to a personal injury action, the witness (LJH) has not placed her medical or mental condition at issue and has not waived her right to assert her physician-patient and psychologist-patient privileges.

3.7 The Respondent, however, analogized this disciplinary proceeding to a personal injury action and argued that the privileges have been waived by the listing of Donald Bliss, M.D., and Rosalie Thomas, R.N., Ph.D. as potential witnesses. A case cited by the Respondent was Phipps v. Sasser, 74 Wn.2d 439, 445 P.2d 624 (1968). This tribunal, taking guidance from the Phipps ruling, determines that at this stage of the proceeding there has been no waiver of LJH's privileges.

In Phipps, the Court addressed when and to what extent a personal injury plaintiff may have been held to waive this statutory privilege before actual trial, thereby

entitling defendant to pretrial discovery as to medical experts otherwise covered by that privilege. Id. at 440-441. The Court acknowledged that at some stage of the proceeding, the plaintiff must decide whether to call his or her treating physician(s). If so, then the defendant is entitled to take the depositions of such physician(s). The determination of waiver should be done on a case by case basis to allow the trial court to exercise its broad discretion. In Phipps, the Court stated that the presence of the plaintiff's treating physician on the plaintiff's witness list is regarded as evidence of his intent to waive the privilege. Id. at 447-448.

At this stage of the proceedings, the witness lists of the parties have not been finalized. See Prehearing Order No. 2, paragraph 2.6, page 3. In the State's Prehearing Statement, the Department indicated that "Dr. Bliss, M.D. may be called as an adverse party witness" and that "Rosalie Thomas, R.N., Ph.D., may be called to testify by either party depending upon the information acquired during discovery." See State's Prehearing Statement, page 4, paragraphs 5 and 7. In this proceeding, LJH's medical or mental condition is not at issue and the Department has not identified any physician to testify about her mental or medical condition.

3.8 The Respondent asserted that LJH has already provided the Department a written release to obtain medical records from Dr. Bliss and Rosalie Thomas, R.N., Ph.D., and this action by LJH demonstrated an intent to offer privileged information at the hearing. See Respondent's Objections, page 9. The Respondent cited an amended section to the physician-patient privilege statute which stated in pertinent part:

> Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court my impose pursuant to court rules.

RCW 5.60.060(4)(b). This statute, however, only applies to claimants who have filed "an action for personal injuries or wrongful death." RCW 5.60.060(4)(b). Therefore, this amended section of the privilege statute does not apply in this proceeding. This is not an action by LJH for personal injury.

Additionally, LJH did not waive her privilege when she complied with the Department's investigation and signed a release for medical records. Provisions under the Uniform Act do state instances when the health care provider is obligated to disclose information without the patient's authorization:

> (2) A health care provider shall disclose health care information about a patient without the patient's authorization if the disclosure is:
>
> (a) To federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal licensure, certification or registration rules or laws; or when needed to protect the public health.

RCW 70.02.050(2)(a) (emphasis added). Under this statute the Department had access to this information without LJH's authorization for purposes of determining compliance with licensure rules or laws.

The Respondent also cited, State v. Tradewell, 9 Wash. App. at 824, to support his position. In Tradewell, the defendant entered a plea of guilty by reason of insanity and called a treating physician who testified concerning the plaintiff's mental condition. The prosecution called the psychiatrist who consulted with the treating physician, as a rebuttal witness. The defendant argued that the physician-patient privilege was violated. The Court of Appeals disagreed. The defendant called a physician to support the defense of insanity and entered into evidence his medical

history and examination records. The court weighed two varying public policies in adopting a rule that when the plaintiff waives the privilege to one treating physician, that plaintiff waives the privilege to other treating physicians. On the one side, there are the reasons in support of the physician-patient privilege. On the other side, "if a patient is allowed to pick and choose between physician witnesses and can, by claim of privilege, prevent impeaching testimony from being disclosed to the court, a mockery might be made of justice." Id. at 824. In this disciplinary proceeding, the Respondent is not being prevented from disclosing to the court impeaching testimony. LJH has not introduced through medical testimony her treatment or diagnosis. She is not picking or choosing between physicians and then preventing disclosure by claim of privilege of other physicians.

3.9 In his reply brief, the Respondent argued that the privilege was waived when LJH failed to assert her privilege at her deposition. The Respondent cited Williams v. Spokane Falls & N. Ry. Co., 39 Wash. 77, 80 Pac. 1100, rev. 42 Wash. 597, 84 Pac. 1129, reh. den. 44 Wash. 363, 87 Pac. 491 (1906) and Carson v. Fine, 123 Wn.2d 206, 867 P.2d 610 (1994) for authority to hold that the holder waives the privilege when there is an opportunity to object, but fails to do so.

In Carson, the Court concluded that a plaintiff's waiver extends to all knowledge possessed by the plaintiff's physician, be it fact or opinion. Id. at 216. In that case, the plaintiff, after entering into an agreed order waiving the physician-patient privilege and allowing ex parte contact with the treating physicians, attempted to exclude the opinion testimony of a treating physician contending that the physician-patient relationship and the fiduciary relationship prohibited such opinion testimony. The plaintiff also argued the opinion testimony was cumulative under ER 403 and that the defendant violated the then recent decision in Louden v. Mhyre, 110 Wn.2d 675,

756 P.2d 138 (1988). The facts in this proceeding before the Board is not like the facts in the Carson case. LJH has not waived her privilege by an agreed order and then attempted to exclude the treating physician's opinion testimony.

In the Williams case, the plaintiff in an action for damages for personal injuries allowed the physician to testify without objection. The physician testified to the condition and provided an opinion. The Court held that the plaintiff/patient waived the privilege when he permitted the physician to testify without objecting. Williams, 42 Wash. at 600-601. Likewise, the facts in this proceeding before the Board are not like the facts in the Williams case. LJH has not filed a personal injury action where she allowed a physician to testify without objecting and then has attempted to assert her privilege.

3.10 The Board is not bound by a decision from a foreign jurisdiction, however such a case decision of a factually similar situation can be instructive. In an administrative disciplinary hearing, where the only aspect of the treatment placed at issue was the alleged sexual relationship with the psychiatrist, the limited disclosure by the patient does not open the door to disclosure of records of all prior mental health and medical treatment. Such testimony by the patient does not constitute an implied waiver of the patient's privilege. Goldberg v. Davis, 575 N.E. 2d 1273, 1280, 1284-85 (Ill. App. 1 Dist. 1991).

3.11 Finally, the Respondent argued that the public's interest in revealing the true facts outweighs the benefits of the patient's right to privacy and nondisclosure of privileged information. The Respondent discussed the case State v. Boehme, 71 Wn.2d 621, 430 P.2d 527 (1967) to argue that the privilege may not be asserted when the public interest concerns outweighs the benefits of the privilege. See also, Petersen v. State, 100 Wn.2d 421, 671 P.2d 230 (1983).

In Boehme, the defendant was criminally charged with poisoning his wife, Mrs. Boehme. The prosecution sought to introduce into evidence the treatment records of the wife. Mrs. Boehme, acting through her husband's criminal defense counsel, in a separate civil proceedings, asserted her privilege and obtained a protective order of those treatment records. She then attempted to use this protective order to assert her physician-patient privilege in the defendant's criminal proceeding. Boehme, 71 Wn.2d at 632-634. The Court denied the defendant from asserting the privilege and then addressed the issue of Mrs. Boehme asserting her privilege to preclude this damaging evidence in the criminal trial. Id. at 634-636.

Addressing this issue, the Court balanced the patient's right to privacy against the public interest concerns. The Court in Boehme stated that the purpose of the privilege statute "is to surround communications between patient and physician with the cloak of confidence, and thus allow complete freedom in the exchange of information between them to the end that the patient's ailments may be properly treated." Id. at 635 citing State v. Miller, 105 Wash. 475, 178 Pac. 459 (1919).

> A further purpose has also been occasionally noted - that of protecting the patient from embarrassment, scandal and incrimination which might flow from the revelation of intimate details in connection with the medical treatment of physical ills. These purposes are benevolent and wholesome. They full warrant and justify the privilege in appropriate cases.

Boehme 71 Wn.2d at 636.

Reviewing the public policy concerns, the Court in Boehme declared that the maintenance of an orderly society and the circumvention of criminal activities are functions of the government which should not be subject to casual suppression. The Court reasoned that the Mrs. Boehme should not be able to assert the privilege when

that assertion of the privilege is used to undermine the criminal proceeding. The Court further stated that there would be little additional embarrassment or humiliation upon Mrs. Boehme than that already placed upon her by the bringing of the charges in the first instance. Based upon the narrow facts of the Boehme case, the Court then concluded that Mrs. Boehme's treatment records should be admitted in the criminal proceeding. Id. at 637.

The balancing test as applied in the case in Boehme can be utilize here to determine if there is an overriding public interest that outweighs the benefits of the privilege.

The Board is sensitive to the public's interest in disclosing all the truth and to the Respondent's right to have his discovery opportunities in the preparation of his case. LJH was deposed by the Respondent. She stated that she was a victim of rape when she was 12 or 13 years old, Deposition of LJH, p. 50, line 7; that the offender plea bargained the case and served a sentence on work release, Deposition of LJH, p. 52, line 1; that she received psychological treatment and counseling for this assault, Deposition of LJH, p. 55, lines 9-12; that she continues to experience flashbacks about this rape, Deposition of LJH, p. 61, line 15, p. 63 lines 10-16, p. 65, lines 17-23 and p. 65 line 25 to p. 66 line 2; and that she has seen Rosalie Thomas, R.N., Ph.D. Deposition of LJH, p. 61, line 1. In the Deposition, LJH testified that she had a "nervous breakdown in school" a month or two after the rapes occurred at which time she reported the rapes to her school counselor. Deposition of LJH, p. 55 line 17 to p. 56 line 10. During the discovery deposition, LJH appeared to fully answer the questions presented to her.

By asserting her physician-patient and psychologist-patient privileges, LJH is not preventing the truth from being revealed and impeaching testimony from being

disclosed to the court. This tribunal does not see the necessity for LJH to disclose all of her past medical records because of her statements made at the deposition. To allow the unnecessary disclosure of all of a complaining patients medical records would create a deterrence to any patient to come forward and to report to the Board any alleged unprofessional conduct. Clearly such a deterrence is contrary to the legislative intent of the UDA, RCW 18.130.010, and the purpose of the Board, RCW 18.72.010.

Further, the nature of the Respondent's request to review of all medical and mental health records of LJH was too general. In camera review of the records was considered, however, there was no guidance provided by the Respondent to conduct an inquiry into the privileged medical and mental health records of LJH. The Respondent requested that he be allowed to review all of the patient's medical and mental health records in order to gather any nonprivileged evidence is still too general in nature. To ask that a judicial officer make so general in nature an in camera review in the hope that a mental condition or personality trait affecting her credibility could be disclosed is not warranted.

In contrast, the Board is also sensitive to the patient's right to privacy. Protecting the patient from embarrassment and humiliation which might flow from the revelation of intimate details in connection with the disclosure of medical and mental health records is of vital concern. Here, there is very much the risk of embarrassment and humiliation which might occur from the revelation of intimate details of LJH's treatment.

Further, another purpose of the privilege statute is to protect the cloak of confidence that surrounds the communications between patient and physician which allows complete freedom in the exchange of information between them so that the patient may be properly treated. To allow an unnecessary and an unqualified disclosure

of LJH's medical and mental health records would undermine this purpose. Therefore, the facts in this case dictate that the privilege rights asserted by LJH outweigh the public interest concerns.

3.12 Counsel for LJH reported that the Respondent has already received some of the medical or mental health records in response to the Notice[s] of Deposition[s] of Records Custodian[s], Department's Exhibits 2-11. Counsel asked that they be returned to LJH, and the Respondent has objected.

The Uniform Act supplements the traditional physician-patient privilege found in RCW 5.60.060. RCW 70.02.005(3). The discovery request or compulsory process in the Act allows for timely procedural protection for both the attorney seeking discovery and for the patient to seek a protective order in order to prevent improper disclosure. RCW 70.02.060. Any information obtained improperly by an attorney when a protective order has been issued would be in violation of the protections provided for in the Uniform Act. Health care information obtained in violation of this process should be returned to the proper source.

IV. DECISION AND ORDER

Based on the above Procedural and Motion History, the arguments of counsel, the briefing, Exhibits and Deposition of LJH presented for the motion along with the records and documents submitted for this disciplinary action, and the above Analysis and Conclusions of Law, the presiding officer hereby issues the following DECISION AND ORDER:

4.1 The Request for a Protective Order to deny the Respondent's request for the medical and mental health records described in the Department's Exhibits 2-11, the Notice[s] of Deposition[s] of Records Custodian[s], Prog No. 92-09-0049MD, is hereby

GRANTED; and the Notice[s] of Deposition[s] of Records Custodian[s], Prog No. 92-09-0049MD, listed in Department's Exhibits 2-11 are hereby QUASHED.

4.2 The Request for a Protective Order to deny the Respondent from obtaining any privileged information as requested in Department's Exhibit 12, Notice of Deposition Upon Written Questions, Prog No. 92-09-0049MD, directed to Rosalie Thomas, R.N. Ph.D., is hereby GRANTED; and written interrogatories which ask information covered by the physician-patient and psychologist-patient privilege are hereby QUASHED;

4.3 Any information covered by the physician-patient or psychologist-patient privilege and obtained by the Respondent as a result of the Notice[s] of Deposition[s] of Records Custodian[s], Prog No. 92-09-0049MD, Department's Exhibit 2-11, shall be returned to the health care provider.

Appeal is not required to preserve the record related to this decision and order for judicial review after a final order is served in this case.

DATED THIS 26TH DAY OF JULY, 1994

S/S

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ARTHUR E. DeBUSSCHERE, Health Law Judge
Presiding Officer