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Challenging the Parameters of the Mental Health and Developmental Disabilities Confidentiality Act: *Jones v. Arden Court*

The Illinois Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/1 et seq. (West 2020), can serve as both the proverbial shield and sword. The Illinois Mental Health and Developmental Disabilities Confidentiality Act (Confidentiality Act) on its face specifically applies to "records and communications" which can only be disclosed, save to a specific list of persons, with the written consent. 740 ILCS 110/5. But are we seeing a disparity in the extent of the application of the privilege depending upon how the Confidentiality Act is being wielded?

The Illinois Mental Health and Developmental Disabilities Confidentiality Act

The Illinois Mental Health and Developmental Disabilities Confidentiality Act acts as a definitive shield of sensitive mental health or developmental disabilities information, requiring certain requirements be met before mental health information (both records and communications) is disclosed without a specific written consent. Sections of the Confidentiality Act provide strict and discrete circumstances where protective mental health information can be disclosed without written consent, including to a "therapist's supervisor, a consulting therapist . . . or person acting under the supervision and control of the therapist" and for "peer review" and, for example, in situations triggered by the Sexually Violent Persons Commitment Act. *See* 740 ILCS 110/9, 9.3. In many cases within the healthcare law setting, the Confidentiality Act is raised because one of the parties is the patient to whom the privilege belongs. But, at other times, the privilege may not belong to a party but greatly impacts the discovery and defense of the case nonetheless.

The Illinois Supreme Court in *Reda v. Advocate Health Care*, 199 Ill.2d 47 (2002) provided an instructive statement about the significant hurdle that must be cleared by those seeking mental health records without a signed authorization.

> The legislature carefully drafted the Act to maintain the confidentiality of mental-health records except in the specific circumstances explicitly enumerated. In each case where disclosure is allowed under the Act, the legislature has been careful to restrict disclosure to that which is necessary to accomplish a particular purpose. Exceptions to the Act are narrowly crafted. Consequently, anyone seeking the nonconsensual release of mental health information faces a formidable challenge and must show that disclosure is authorized by the Act.
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> *Reda*, 199 Ill.2d at 60.

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Jones: When the Confidentiality Act Impacts Others' Testimony

The Illinois First District Appellate Court recently decided the case of *Jones v. Arden Courts of Palos Heights, IL, LLC*, 2026 IL App (1st) 240590-U, involving the application of the Confidentiality Act in a situation where the patient receiving mental health services is not a party to the lawsuit. The plaintiff, Debra Fay Jones, who provides therapy dogs to facilities, alleged that she was hired by Arden Courts. *Jones*, 2026 IL App (1st) 240590-U, ¶ 5. On a date in March 2021, Debra Jones claimed that she was assaulted by a resident of Arden Courts while providing therapy dogs to the facility. In the ensuing lawsuit filed against both the facility and director alleging "failure to properly supervise and manage" the resident, the plaintiff alleged that the resident was known to have dementia and that he had periods of "agitation" and "engaged in physical threats and attacks on other individuals." *Id.*

As discovery proceeded, counsel for the defendants moved for a protective order given the interwoven nature of the plaintiff's claims and the resident's medical and mental health issues. The protective order sought by the defendants included preventing any witness from being questioned regarding the resident's information "protected under the Confidentiality Act." *Id.* ¶ 8. The protective order also sought to prevent questioning of witnesses at deposition "regarding any care or treatment of [the resident], including any examination, diagnosis, evaluation, treatment, training, pharmaceuticals, aftercare, habilitation or rehabilitation, or any communications with [the resident] at any times." *Id.* The court's initial order of protection prevented any deposition questions of witnesses "concerning any diagnosis of [the resident] or regarding any medical or mental health treatment provided to [the resident]." *Id.* ¶ 9. However, the court allowed counsel to ask the witnesses regarding their "observations" of the resident and the event that gave rise to Jones' injury. *Id.*

Because questioning regarding "observations" could encroach upon protected mental health "records and communications," the counsel for the nursing home moved the court to reconsider its decision. *Jones*, 2026 IL App (1st) 240590-U, ¶ 10. "The Arden defendants asserted that the Confidentiality Act broadly protects services, including examinations, diagnosis, evaluation, treatment, training, pharmaceuticals, aftercare, habitation, or rehabilitation and confidential communications." *Id.* The Arden defendants maintained that "anything Mr. Hendricks or Ms. Johnson heard from [the resident] would be protected communications and anything they saw [the resident] do would form the basis of examinations and evaluations, which were included in 'services' under the Confidentiality Act." *Id.* Additionally, the defendants argued, any testimony regarding the resident would "confirm that [the resident] was a recipient of mental health services" which is prohibited by the Confidentiality Act. *Id.* The Arden defendants asserted that the situation presented by Jones' lawsuit did not fall under an exception carved out in the Confidentiality Act. Ultimately, the trial court agreed and revised the subject scope of depositions to only observations of the resident "as it relates to the events resulting in injury" to Jones. *Jones*, 2026 IL App (1st) 240590-U, ¶ 11.

Issues Raised by Complaint and Deposition Questioning

At the depositions of defendant Kevin Hendrick and former Arden employee Kimberly Johnson (the precise role Kimberly Johnson had is not contained within the decision), they refused to answer deposition questions on certain discrete issues based on the position that the answers to the questions would require disclosure of privileged information under the Confidentiality Act. *Id.* ¶ 14. In turn, counsel for the plaintiff moved for sanctions based upon the witnesses' failure to answer certain questions at deposition. The areas of questioning that the Motion for Sanctions sought answers to were:

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- Whether the plaintiff, Jones, had an altercation with the resident on the date in question;
- Whether the witness observed the resident anywhere within the facility prior to 4 PM on the date in question;
- Whether the witness spoke with the resident on the date of the altercation;
- Whether the witness heard the resident speak to the witness or any other person on the date of the altercation;
- Whether the witness observed the resident in a state of agitation prior to 4 PM on the date in question;
- Whether the police were called on the date in question;
- Whether the police were informed that the resident was agitated earlier on the date in question;
- Whether the witness was aware of anyone who witnessed the altercation; and
- Whether the witness knew if the alleged assailant was a resident of the facility.

Id. ¶ 16.

In turn, the counsel for the Arden Defendants argued that the questions asking for observations of the alleged perpetrator resident were protected from disclosure by the Confidentiality Act. *Id.* ¶ 18. They further argued that the court could only order disclosure of the observations if the resident were to introduce his mental health condition as an element of a claim or defense, which had not happened. *Id.* The trial court disagreed and held counsel for the Arden Defendants in friendly contempt and an interlocutory appeal pursuant to Illinois Supreme Court Rule 304(b)(5).

Distinguishing *Stuckey* and *Giangiulio*: The Appellate Court's Analysis

The appellate court, in analyzing whether the refused deposition questions fall within the scope of privileged materials, reviewed two prior decisions: *Stuckey v. Renaissance at Midway*, 2015 IL App (1st) 14311, and *Giangiulio v. Ingalls Memorial Hospital*, 365 Ill. App. 3d 823 (1st Dist. 2006).

Similar to the scenario of *Jones*, *Stuckey* involved allegations of a resident assaulting another resident resulting in a claim for personal injuries. *Stuckey,* 2015 IL App (1st) 14311, ¶ 1. The injured resident's attorneys issued written discovery seeking medical records of the alleged assailant resident as well as any information regarding prior assault complaints. *Id.* ¶ 4. Like *Jones*, counsel for the Defendants took a friendly contempt order after refusing discovery requests that they believed were precluded from disclosure pursuant to the Health Insurance Portability and Accountability Act, physician-patient privilege and Mental Health and Developmental Disabilities Confidentiality Act. *Stuckey,* 2015 IL App (1st) 14311, ¶¶ 5, 7. The trial court, after an *in camera* inspection, found that the vast majority of the requested medical records were privileged. However, they ordered the production of a small set of partially redacted forms that left unredacted primarily nurses' notes that include descriptions of "any physical acting out" by the resident which the trial court believed that *Stuckey* was entitled to receive. *Id.* ¶ 12. After defense counsel advised that they would not produce the records, a friendly contempt order was entered and an appeal filed. *Id.* ¶¶ 13, 14.

The *Stuckey* court evaluated the records that were ordered and produced in redacted form by the trial court through the Confidentiality Act. *Id.* ¶ 19. The appellate court noted: "Certainly, the long-term care [resident], a severely demented person who had been diagnosed with Alzheimer's disease, received while a resident of Renaissance's dementia unit qualified as, at least, 'treatment' or 'aftercare, habilitation or rehabilitation.'" The *Stuckey* court's review of the documents ordered disclosed by the trial court found that the documents "fall comfortably" within the broad definition of "any communication made by a recipient or other person to a therapist or to or in the presence of other persons during or in connection with providing mental health or developmental disability services to a recipient" or that the person is a recipient of mental health or developmental disability services. *Stuckey*, 2015 IL App (1st) 14311, ¶ 24.

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Also examined by the *Jones* court was the earlier decision of *Giangiulio*, 365 Ill. App. 3d 823, which also involved a patient who suffered an injury after being assaulted by a fellow patient. That case also involved a question of the discovery available, including medical records, regarding the assailant. *Giangiulio*, 365 Ill. App. at 827. However, the *Jones* court limited that applicability of *Giangiulio*, because "the information that the hospital was required to provide was limited to information regarding staff members at the hospital who had contact with the attacker," but not information regarding the attacker's medical or mental conditions. *Jones*, 2026 IL App (1st) 240590-U, ¶ 33.

Ultimately, the *Jones* court noted that the "key concern under the Confidentiality Act is whether the requested information would disclose information about the mental health patient's medical or mental health condition or treatment." *Id.* ¶ 37. Given this, the appellate court upheld the trial court's decision regarding the scope of disclosure required because "no information about [the resident's] medical or mental condition is required when answering the questions." *Id.*

Though the *Jones* decision claims to align with the *Stuckey* decision, there seems to be a not insignificant inconsistency. Recall that in *Stuckey*, the records for the resident, which would be a memorialization of observations of the resident, were found to be privileged from disclosure. Specifically, the *Stuckey* court found that the alleged assailant, "a severely-demented person who had been diagnosed with Alzheimer's disease, received while a resident of Renaissance's dementia unit qualified as, at least, 'treatment' or 'aftercare, habilitation or rehabilitation.'" *Stuckey*, 2015 IL App (1st) 14311, ¶ 22.

The *Stuckey* court further noted that even if the care at Renaissance's dementia unit did not qualify as treatment because the statutory definition within the Act is "not limited to the itemized services contained therein and in light of the fact that the Confidentiality Act 'constitutes a strong statement by the General Assembly about the importance of keeping mental-health records confidential, we would conclude the long-term care John Doe received at Renaissance qualified as mental health or developmental disabilities services.'" *Id.* However, the distinction can be drawn down to the fact that Kevin Hendricks, the named defendant and deponent who was the subject of the motion to compel was an Executive Director, rather than a nurse or provider, as was key to the decision in *Stuckey*.

Key Takeaways

In this situation, the prudent practitioner should lean into the definitions contained within the Confidentiality Act—both regarding what constitutes mental health services and the breadth of those included as therapists when needing to shield mental health information of a non-party who has not agreed to the disclosure of information.

About the Author

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