

Confidentiality of Substance Use Disorder (SUD) Treatment Records

Pre-Class Knowledge Test

1. G.S. 7B-302(e) says that, when assessing a report of child abuse, neglect, or dependency, DSS may make a written demand for any information or reports, whether or not confidential, that may in the director's opinion be relevant to the assessment or provision of protective services. G.S. 122C-54(h) says that a mental health provider must disclose confidential information for purposes of complying with G.S. 7B-302(e). In a particular case, DSS requests the mental health record for a child as part of a CPS assessment. The family/social history section of child MH record states that Mom, during intake of the child, disclosed that she is "hooked on pain pills."
 - a. The mental health provider says that it cannot hand over the information because (i) the record is governed by 42 CFR Part 2 (federal SUD confidentiality law), (ii) which does not permit disclosure in response to G.S. 7B-302(e).
 - b. DSS says that 42 CFR Part 2 does not apply to, and therefore does not govern, the disclosure of the record.

Who is right? DSS or the mental health provider?

2. An SUD program discloses Jane's confidential SUD information, with her consent, to her primary care provider for purposes of coordinating care and treatment. Later, DSS CPS wants to obtain Jane's SUD treatment information as it investigates a CPS report. Knowing that it may be difficult to get the information from the SUD program, which is governed by a restrictive federal confidentiality law, DSS asks for and receives Jane's entire record from her primary care provider. DSS then seeks to use Jane's SUD treatment record at an upcoming hearing. Jane seeks a protective order preventing DSS from using and disclosing her SUD records in the proceeding, arguing that the information cannot be used unless DSS obtains a court order authorizing disclosure in compliance with 42 C.F.R. Part 2. DSS argues that:
 - a. It obtained the record from the primary care provider and (i) the primary care provider is not an SUD program governed by 42 CFR Part 2, and, therefore, (ii), 42 CFR Part 2 does not govern the use and disclosure of information in the record.
 - b. Even if 42 CFR 2 applied to the records at one time, because DSS is not an SUD program governed by 42 CFR Part 2, it is not bound by 42 CFR Part 2 and, therefore, is free to use and disclose Mom's SUD records in the course of carrying out its CPS duties in accordance with state law.

Who is correct? Mom or DSS?