

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: February 19, 2010

DEPARTMENT 5

HONORABLE: Mitchell L. Beckloff
DEPUTY SHERIFF: NONE

M. Dewey, DEPUTY JUDICIAL ASSISTANT
No REPORTER

BP 117321

(Parties and Counsel checked if present)

In re the Estate of Michael
Joseph Jackson

COUNSEL FOR
PETITIONER N/A

COUNSEL FOR
RESPONDENT N/A

**RULING ON SUBMITTED MATTER
(Motion to Quash)**

This matter is before the court on The Estate of Michael Jackson's Notice of Motion and Motion to Quash the Deposition Subpoena for Production of Business Records Served on UCLA Medical Center/UCLA Health Systems and Request for Attorneys' Fees in the Amount of \$8,856.25 (the "Motion to Quash") filed January 14, 2010.

The Special Administrator's for the Estate of Michael Jackson seek an order quashing "in its entirety" the "deposition subpoena for production of business records served on UCLA Medical Center/UCLA Health Systems by Petitioner Joseph Jackson. The request is based on three grounds: Privacy, Physician-Patient privilege, and relevance.

Privacy

The Special Administrators assert that Michael Jackson's fundamental privacy rights prevent disclosure of the UCLA medical records. (Motion to Quash, p. 8.) While the court acknowledges that medical records are documents to which the right of privacy attaches, Michael Jackson's right of privacy does not apply under these facts because Michael Jackson is deceased.

"It is well settled that the right to privacy is purely a personal one; it cannot be asserted by anyone other than the person whose privacy has been invaded Further, the right does not survive but dies with the person." (*Hendrickson v. California Newspapers, Inc.* (1975) 48 Cal.App.3d 59, 62. See also *Moreno v. Hanford Sentinel, Inc.* (2009) 172 Cal.App.4th 1125, 1131.)

The authorities cited by the Special Administrators do not provide otherwise. The Motion to Quash is denied on the claim of privacy.

Physician-Patient Privilege

The Special Administrators hold Michael Jackson's physician-patient privilege. (Evid. Code sec. 953, subd. (c).) The privilege may be asserted after an individual's death. (*Rittenhouse v. Superior Court* (1991) 235 Cal.App.3d 1584, 1588.)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: February 19, 2010

DEPARTMENT 5

HONORABLE: Mitchell L. Beckloff
DEPUTY SHERIFF: NONE

M. Dewey, DEPUTY JUDICIAL ASSISTANT
No REPORTER

BP 117321

(Parties and Counsel checked if present)

**In re the Estate of Michael
Joseph Jackson**

COUNSEL FOR
PETITIONER N/A

COUNSEL FOR
RESPONDENT N/A

Joseph Jackson argues, however, that the privilege is not implicated herein because Michael Jackson "was deceased when he arrived at UCLA." (Memorandum in Opposition, p. 6.) Joseph Jackson contends that "because Michael Jackson had no heart beat, no pulse, no respirations, and no vital signs for hours prior to his admission to UCLA, he made no communications to any of the doctors and had no physician-patient privilege." (Memorandum in Opposition, p. 6.)

On this record, the court cannot determine whether and to what extent a "patient" may have had "confidential communications" with his health care providers at UCLA Medical Center. (See Evid. Code secs. 991 and 992.)

To evaluate the applicability of the privilege asserted by the Special Administrators, the court is required to examine the requested records *in camera*.

Relevance

Code of Civil Procedure section 2017.010 provides in part: "Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action . . . if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." "[T]he relevance of the subject matter standard must be reasonably applied; . . . in accordance with the liberal policies underlying the discovery procedures, doubts as to relevance should generally be resolved in favor of permitting discovery . . ." (*Colonial Life & Accident Ins. Co. v. Superior Court* (1982) 31 Cal.3d 785, 790 [quoting *Pacific Tel. & Tel. Co. v. Superior Court* (1970) 2 Cal.3d 161, 173].)

The pending action is Joseph Jackson's petition for family allowance. Thus, the subject matter before the court includes Joseph Jackson's financial situation and his need, if any, for financial support from Michael Jackson's estate during the course of administration. Assuming Joseph Jackson makes the necessary showing that he was "actually dependent in whole or in part upon [Michael Jackson] for support, the court "may" provide Joseph Jackson a "reasonable family allowance out of the estate as the court in its discretion determines is necessary for [his] maintenance according to [his] circumstances . . ."

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: February 19, 2010

DEPARTMENT 5

HONORABLE: Mitchell L. Beckloff
DEPUTY SHERIFF: NONE

M. Dewey, DEPUTY JUDICIAL ASSISTANT
No REPORTER

BP 117321

(Parties and Counsel checked if present)

**In re the Estate of Michael
Joseph Jackson**

COUNSEL FOR
PETITIONER N/A

COUNSEL FOR
RESPONDENT N/A

(Prob. Code sec. 6540, subd. (b).) The court has broad discretion in setting the amount of a family allowance award.

Joseph Jackson has argued that he intends to file a wrongful death action for the death of Michael Jackson. The Code of Civil Procedure provides him with standing for such an action assuming he was "dependent" upon Michael Jackson. (Code of Civ. Proc. Sec. 377.60, subd. (b).)

According to Joseph Jackson, his pursuit of the wrongful death action directly impacts his financial circumstances. He claims that to the extent he pays legal fees and/or costs, his need for a family allowance is increased. That is, as he incurs more legal expenses, he needs more money for his maintenance.

Joseph Jackson claims that the UCLA Medical Center records are necessary to evaluate his wrongful death claim for purposes of determining the likely cost of pursuing that action. He asserts that the records will provide the necessary foundation for evidence he will present at the family allowance hearing about his overall ongoing financial needs during the course of estate administration.

Given the applicable standards and Joseph Jackson's stated justification for the UCLA Medical Center records, the Motion to Quash is denied on the grounds of relevance. The court finds that the requested records are reasonably calculated to lead to the discovery of admissible evidence in the pending family allowance matter.

Confidentiality

The parties are ordered to meet and confer for purposes of reaching a stipulation with regard to the confidentiality of the UCLA Medical Records. The court will require Joseph Jackson and his attorneys, Mr. Oxman and Ms. Jaroscak, to sign the confidentiality agreement. Any expert consulted by Joseph Jackson shall be required to sign the confidentiality agreement, will not be permitted to make copies of the records and shall return the records to Joseph Jackson's attorney at the conclusion of the consultation.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: February 19, 2010

DEPARTMENT 5

HONORABLE: Mitchell L. Beckloff
DEPUTY SHERIFF: NONE

M. Dewey, DEPUTY JUDICIAL ASSISTANT
No REPORTER

BP 117321

(Parties and Counsel checked if present)

In re the Estate of Michael
Joseph Jackson

COUNSEL FOR
PETITIONER N/A

COUNSEL FOR
RESPONDENT N/A

Subpoena Revision

The court finds the subpoena to be overbroad. Joseph Jackson shall limit the scope of the request to documents created on or after June 25, 2009, communications occurring on or after June 25, 2009, and correspondence dated on or after June 25, 2009.

In Camera Review

As noted, the court is required to examine the documents produced pursuant to the subpoena *in camera* to evaluate the physician-patient privilege claim. The documents are to be subpoenaed directly to Department 5 of this court for such review. Joseph Jackson's attorneys shall make arrangements to ensure that the documents are hand-delivered to the clerk of this department. The parties are to meet and confer concerning the delivery of the documents to this court and take appropriate steps to ensure the security of the documents.

Sanctions

The Estate's request for sanctions is denied.

A copy of this order is sent this date by way of facsimile transmission to Attorneys Howard Weitzman (FAX: 310-566-9871) and Brian Oxman (FAX: 714-521-1317). The court clerk's Certificate of Mailing otherwise reflects the service of this order.

Paul Gordon Hoffman, Esq., Hoffman, Sabban et al., 10880 Wilshire Blvd., Suite 2200
Los Angeles, CA 90024

Howard Weitzman, Esq., Kinsella, Weitzman et al., 808 Wilshire Blvd., Suite 300
Los Angeles, CA 90401

Joseph Zimring, Esq., Office of the Attorney General, 300 S. Spring Street, Suite 1702
Los Angeles, CA 90013

Margaret Lodise, Esq., Sacks, Glazier et al., 350 S. Grand Avenue, Suite 3500
Los Angeles, CA 90071

Brian Oxman, Esq., 14126 East Rosecrans Blvd., Santa Fe Springs, CA 90670

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: February 19, 2010

DEPARTMENT 5

HONORABLE: Mitchell L. Beckloff
DEPUTY SHERIFF: NONE

M. Dewey, DEPUTY JUDICIAL ASSISTANT
No REPORTER

BP 117321

In re the Estate of Michael
Joseph Jackson

(Parties and Counsel checked if present)

COUNSEL FOR
PETITIONER N/A

COUNSEL FOR
RESPONDENT N/A

Adam Streisand, Esq., Loeb and Loeb, 10100 Santa Monica Blvd.,
Los Angeles, CA 90067

CERTIFICATE OF MAILING

I am over the age of 18 years and not a party to the within action. I am familiar with the Los Angeles Superior Court practice for collection and processing of correspondence and know that such correspondence is deposited with postage prepaid with the United States Postal Service the same day it is delivered to the mailroom in the Los Angeles Superior Court. I declare under penalty of perjury under the laws of the State of California that I delivered a true copy of the document to which this is attached to the parties or their attorney addressed as listed above by placing the copy in a sealed envelope to the mail room of this court.

Date: February 19, 2010

JOHN A. CLARKE, Executive Officer/
Clerk of the Superior Court of California,
County of Los Angeles
by: M. Dewey, Deputy Clerk

