

### THIRD DIVISION

G.R. No. 179786 – JOSIELENE LARA CHAN, Petitioner, v. JOHNNY T. CHAN, Respondent.

Promulgated:

JUL 24 2013

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### CONCURRING OPINION

LEONEN, J.

I concur but add the following points:

I agree that the hospital records of respondent Johnny Chan may not be produced in court without his/her consent. Issuance of a subpoena *duces tecum* for its production will violate the physician-patient privilege rule under Rule 130, Sec. 24(c)<sup>1</sup> of the Rules of Civil Procedure.

However, this privilege is not absolute. The request of petitioner for a copy of the medical records has not been properly laid.

Instead of a request for the issuance of a subpoena *duces tecum*, Josielene Lara Chan should avail of the mode of discovery under Rule 28 of the Rules of Civil Procedure.

Rule 28 pertains to the physical or mental examination of persons. This may be ordered by the court, in its discretion,<sup>2</sup> upon motion and showing of good cause<sup>3</sup> by the requesting party, in cases when the mental and/or physical condition of a party is in controversy.<sup>4</sup> Aside from showing good cause, the requesting party needs only to notify the party to be examined (and all other parties) and specify the time, place, manner, conditions, and scope of the examination, including the name of the physician who will conduct the examination.<sup>5</sup>

<sup>1</sup> RULES OF COURT, Rule 130, Sec. 24(c) provides:

A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in that capacity, and which would blacken the reputation of the patient.

<sup>2</sup> RULES OF COURT, Rule 28, Sec. 1.

<sup>3</sup> RULES OF COURT, Rule 28, Sec. 2.

<sup>4</sup> RULES OF COURT, Rule 28, Sec. 1.

<sup>5</sup> RULES OF COURT, Rule 28, Sec. 2.

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The examined party may obtain a copy of the examining physician's report concerning his/her mental or physical examination.<sup>6</sup> The requesting party shall deliver this report to him/her.<sup>7</sup> After such delivery, however, the requesting party becomes entitled to any past or future medical report involving the same mental or physical condition.<sup>8</sup> Upon motion and notice, the court may order the examined party to deliver those medical reports to the requesting party if the examined party refuses to do so.<sup>9</sup>

Moreover, if the examined party requests a copy of the examining physician's report or if he/she takes the examining physician's deposition, the request waives the examined party's privileges when the testimony of any person who examined or will examine his/her mental or physical status is taken in the action or in any action involving the same controversy.<sup>10</sup>

Discovery procedures provide a balance between the need of the plaintiff or claimant to fully and fairly establish her case and the policy to protect – to a certain extent – communications made between a patient and his doctor. Hence, the physician-patient privilege does not cover information discovered under Rule 28. This procedure is availed with the intention of making the results public during trial. Along with other modes of discovery, this would prevent the trial from being carried on in the dark.<sup>11</sup>

In view of the foregoing, I vote to DENY the petition.



**MARVIC MARIO VICTOR FAMORCA LEONEN**

Associate Justice

<sup>6</sup> RULES OF COURT, Rule 28, Sec. 3.

<sup>7</sup> RULES OF COURT, Rule 28, Sec. 3.

<sup>8</sup> RULES OF COURT, Rule 28, Sec. 3.

<sup>9</sup> RULES OF COURT, Rule 28, Sec. 3.

<sup>10</sup> RULES OF COURT, Rule 28, Sec. 4.

<sup>11</sup> *Republic v. Sandiganbayan, Tantoco and Santiago*, G.R. No. 90478, November 21, 1991, 204 SCRA 212.