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CENTRE COUNTY, PA

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CENTRE

**ORIGINAL**

COMMONWEALTH OF  
PENNSYLVANIA

v.

GERALD A. SANDUSKY

NOS. CP-14-CR-2421-2011 &  
CP-14-CR-2422-2011

TYPE OF PLEADING

Motion to Quash Subpoena  
or for Protective Order

Filed on Behalf of:

Alycia Chambers, Ph.D.

Counsel of Record for this Party:

Guy Brooks  
PA I.D. No. 49672  
John U. Baker  
PA I.D. No. 84529  
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COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CENTRE

COMMONWEALTH OF  
PENNSYLVANIA

v.

GERALD A. SANDUSKY

Nos. CP-14-CR-2421-2011 &  
CP-14-CR-2422-2011

**MOTION OF ALYCIA CHAMBERS, PH.D.  
TO QUASH SUBPOENA OR FOR PROTECTIVE ORDER**

Alycia Chambers, Ph.D (“Dr. Chambers”), by her attorneys, McNees, Wallace & Nurick, hereby moves the Court pursuant to Pennsylvania Rule of Civil Procedure 234.4(b) for an Order quashing the subpoena issued to Dr. Chambers which requires her to testify about privileged or confidential communications and/or produce privileged or confidential documents related to her treatment of “Victim No. 6.” In support of her motion, Dr. Chambers states as follows:

1. On or about Tuesday, April 10, 2012, Joseph L. Amendola, Esq., counsel for Defendant, served upon Dr. Chambers a subpoena commanding Dr. Chambers to attend and testify in the above-captioned matter.

2. The subpoena issued to Dr. Chambers requests that she produce “complete and non-redacted copies of [psychiatric documents] requested in the subpoena attachment.” A copy of the subpoena is attached hereto as Exhibit “A.” More specifically, the subpoena requests “copies of records, documents and reports” arising from Dr. Chambers’ identification “[o]n

Page 25 of the Pennsylvania State Police Incident No. G07-1147135 . . . as providing psychological services for accuser/alleged Victim No. 6.” Ex. A.

3. Dr. Chambers is a licensed psychologist who is employed by The Highlands, located at 229 West Foster Avenue, State College, Pennsylvania.

4. 42 Pa. C.S.A. § 5944, “Confidential communications to psychiatrists or licensed psychologists,” provides as follows:

No person who has been licensed under the act of March 23, 1972 (P.L. 136, No. 52) to practice psychology shall be, without the written consent of his client, examined in any civil or criminal matter as to any information acquired in the course of his professional services in behalf [sic] of such client. The confidential relations and communications between a psychologist or psychiatrist and his client shall be on the same basis as those provided or prescribed by law between an attorney and client.

5. Patients of Dr. Chambers, including the patient identified in the subpoena (“Victim No. 6”), enjoy the protection of the psychotherapist-patient privilege.

6. To the extent that Victim No. 6 was a minor at the time of treatment, such status does not preclude him from exercising his right to invoke the psychotherapist-patient privilege. See Commonwealth v. Simmons, 719 A.2d 336 (Pa. Super. Ct. 1998) (finding that a minor patient’s communications with psychotherapist were privilege without reference to patient’s age).

7. Victim No. 6 has not waived or consented to the waiver of the psychotherapist-patient privilege provided by 42 Pa. C.S.A. § 5944.

8. Furthermore, the Psychologists’ Code of Ethics provides that “Psychologists shall safeguard the confidentiality of information about an individual that has been obtained in the course of teaching, practice or investigation” and that psychologists cannot, without written consent, “be examined in a civil or criminal action as to information acquired in the course of their professional service on behalf of a client.” 49 Pa. Code. § 41.61, Principle 5(a).

9. The Code of Ethics imposes a duty of confidentiality which extends beyond the statutory psychotherapist-patient privilege, and “this duty is absolute and cannot be waived except after full disclosure and written authorization of the client.” Rost v. State Bd. of Psychology, 659 A.2d 626 (Pa. Commw. Ct. 1995).

10. The Code of Ethics also requires that “when working with minors or other persons who are unable to give voluntary, informed consent, psychologists take special care to protect the person’s best interests.” 49 Pa. Code § 41.61, Principle 5(b)(7).

11. As a licensed psychologist, Dr. Chambers is bound to uphold the principles of the Psychologists’ Code of Ethics.

12. As no written consent for the disclosure of the confidential information has been given, Dr. Chambers cannot disclose any confidential information regarding her treatment of Victim No. 6.

13. Additionally, Dr. Chambers cannot disclose the confidential information sought because in her professional opinion, the disclosure would not be in the best interests of Victim No. 6 as it would undermine the trust and confidence she developed with her client and would compromise the psychotherapeutic relationship.

14. To the extent that Victim No. 6 received involuntary inpatient or outpatient treatment or voluntary inpatient treatment for the mentally ill, his treatment is subject to the Mental Health Procedures Act, 50 P.S. §§ 7101-7503 (the “MHPA”).

15. The purpose of the MHPA is “to assure the availability of adequate treatment to persons who are mentally ill” and “to make voluntary and involuntary treatment available where the need is great and its absence could result in serious harm to the mentally ill person or to others.” § 7102. “In fact, the Pennsylvania Supreme Court has given the patient’s right to

confidentiality of psychiatric records constitutional status.” Hahnemann Univ. Hosp. v. Edgar, 74 F.3d 456, 462-63, 464 (3d Cir. 1996) (citing In re June 1979 Allegheny County Investigating Grand Jury, 415 A.2d 73, 77-78 (Pa. 1980)) (applying Pennsylvania law).

16. The MHPA states that “[a]ll documents concerning persons in treatment shall be kept confidential and, without the person’s written consent, may not be released or their contents disclosed to any except [where certain inapplicable conditions exist].” 50 P.S. § 7111(a); see also Leskin v. Christman, 78 Pa. D. & C.4th 152, 166 (Com. Pl. 2006) (“The protection provided by [MHPA Section 7111] is broader than that under the psychotherapist-patient privilege: it applies ‘to all documents regarding one’s treatment, not just medical records,’ and its confidentiality directive is mandatory, not discretionary—‘it is a requirement.’” (quoting Zane v. Friends Hosp., 836 A.2d 25, 32 (Pa. 2003))).

17. Where a patient did not provide written consent to release mental health records to the party requesting the subpoena, “all documents relating to a mental patient’s treatment are confidential.” Johnsonbaugh v. Dep’t of Pub. Welfare, 665 A.2d 20, 26 (Pa. Commw. Ct. 1995) aff’d, 701 A.2d 1357 (Pa. 1997) (citing 50 P.S. § 7111).

18. A subpoena requesting medical records that are protected under the MHPA should be quashed. Id.

19. The regulations enacted pursuant to the MHPA also provide that written records concerning mental health treatment shall be kept confidential, unless consent to their release is given. 55 Pa. Code § 5100.31.

20. To the extent that Victim No. 6 was fourteen (14) years or older at the time of treatment, he possessed sole control over release of his records. See 55 Pa. Code § 5100.33(a); Christy ex rel. Christy v. Wordsworth-at-Shawnee, 749 A.2d 557, 558-59 (Pa. Commw. Ct.

2000) (finding that absent court adjudication ordering release of records, a fourteen-year-old, not his parents, controls release of records).

21. Where consent has not been given and the records have been subpoenaed, “no records should be released in the absence of an additional order of court.” 55 Pa. Code § 5100.35(b)(1).

22. No valid consent or waiver has been given on behalf of Victim No. 6, and no order of court has been entered releasing the requested records.

23. Therefore, the records of Victim No. 6’s treatment by Dr. Chambers cannot be disclosed.

24. The information sought with regard to Victim No. 6’s treatment is therefore subject to the independent protections of: (1) the psychotherapist-patient privilege codified at 42 Pa. C.S.A. § 5944; (2) the confidentiality provisions of the Psychologists’ Code of Ethics; and (3) the mandatory non-disclosure provisions of the MHPA.

25. The Pennsylvania Superior Court has previously determined that a psychologist’s visual observations of her clients do not constitute confidential communications from the client to the psychologist. In re Adoption of Embick, 506 A.2d 455 (Pa. Super. Ct. 1986).

26. Dr. Chambers is prepared to appear and to give testimony with respect to any information in her possession which is relevant to the proceedings before this Court and which is not privileged.

27. To compel the testimony or production of records by Dr. Chambers on any matter covered by the privilege and ethical obligation set forth above visits an unreasonable annoyance and burden on Dr. Chambers and is potentially injurious to the psychotherapist-client relationship between Dr. Chambers and her client.

WHEREFORE, Alycia Chambers, Ph.D. respectfully requests that this Court: (1) enter an Order quashing the subpoena to the extent it requires testimony about confidential and/or privileged information and the production of confidential and/or privileged documents in violation of the statutes, regulations and code of ethics cited above; or, in the alternative, (2) enter a protective order precluding any party to these proceedings from inquiring into such confidential and/or privileged matters.

McNEES, WALLACE & NURICK

By  \_\_\_\_\_

Guy Brooks

PA I.D. No. 49672

John U. Baker

PA I.D. No. 84529

Geoffrey B. Fehling

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100 Pine Street

P. O. Box 1166

Harrisburg, PA 17108-1166

(717) 232-8000

Attorneys for Alycia Chambers, Ph.D.

Date: May 8, 2012

# **EXHIBIT A**

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**JOSEPH L. AMENDOLA**

ATTORNEY-AT-LAW

110 REGENT COURT  
SUITE 202

STATE COLLEGE, PA 16801-7966

TELEPHONE  
814-234-6821

FAX  
814-234-6013

April 10, 2012

Alicia Chambers, Ph.D.  
229 West Foster Avenue  
State College, PA 16801

**RE: Commonwealth v. Gerald A. Sandusky  
Subpoena with Attachment**

Dear Dr. Chambers:

Please find enclosed a subpoena requiring the production of information as provided in the Subpoena Attachment. If this information is provided to me at my above-listed office address on or before May 14, 2012, it will not be necessary for a representative of your office to appear in court in Centre County, Pennsylvania, on May 16, 2012 at 10:00 a.m. with the requested information.

Thank you for your anticipated prompt attention to this matter. I will await further word from a representative of the office concerning the request contained in this correspondence.

Truly,



Joseph L. Amendola, Esquire

JLA:dka  
Enclosures

CP-14-CR-2421-2011&CP-14-CR-2422- Term 20 11

Commonwealth of Pennsylvania  
**COUNTY OF CENTRE**

COMMONWEALTH OF PENNSYLVANIA

VS.

GERALD A. SANDUSKY, DEFENDANT

TO ALICIA CHAMBERS, PH.D., 229 WEST FOSTER AVENUE, STAE COLLEGE, PA 16801

You are ordered by the court to come to CENTRE COUNTY COURTHOUSE, COURTROOM NO. 1,  
SECOND FLOOR, 102 SOUTH ALLEGHENY STREET at Bellefonte, Pennsylvania, on  
WEDNESDAY, MAY 16, 2012 at 10:00 A. M. to testify on behalf of  
DEFENDANT in the above captioned case

and to remain until excused:

And bring with you the following: COMPLETE AND NON-REDACTED COPIES OF THE  
INFORMATION REQUESTED IN THE SUBPOENA ATTACHMENT.

Witness, the Honorable, Thomas K. Kistler, President Judge of our said  
Court at Bellefonte, this 10TH day of APRIL, A.D. 20 12

 Prothonotary

If you fail to attend or to produce the documents or things required by this Subpoena, you may be  
subject to the sanctions authorized by Rule 234.5 of the Pennsylvania rules of Procedure, including, but  
not limited to, costs, attorney fees, and imprisonment.

COURT SUBPOENA

COMMONWEALTH OF PENNSYLVANIA

vs.

GERALD A. SANDUSKY, DEFENDANT

SUBPOENA ON PART OF

DEFENDANT

Issued by: JOSEPH L. AMENDOLA, ESQUIRE  
(attorney's name, address, phone #, and ID #)

110 REGENT COURT, SUITE 202  
STATE COLLEGE, PA 16801  
(814) 234-6821  
I.D. NO. 17667

CENTRE COUNTY, ss:

\_\_\_\_\_, being duly sworn according to  
law, doth depose and say, that he served the within Subpoena upon \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_\_ :  
\_\_\_\_\_ day of \_\_\_\_\_ A.D. 20 \_\_\_\_\_ :  
\_\_\_\_\_ : \_\_\_\_\_

**JOSEPH L. AMENDOLA**

ATTORNEY-AT-LAW  
110 REGENT COURT  
SUITE 202  
STATE COLLEGE, PA 16801-7966

TELEPHONE  
814-234-6821

FAX  
814-234-6013

**SUBPOENA ATTACHMENT**

Alicia Chambers, Ph.D.  
229 West Foster Avenue  
State College, PA 16801

**RE: Commonwealth of Pennsylvania vs. Gerald A. Sandusky,  
Nos. CP-14-CR-24-2011 & CP-14-CR-2422-2011**

Dear Dr. Chambers:

Pursuant to the enclosed Subpoena and Subpoena Attachment, you are requested to provide Joseph L. Amendola, Esquire, 110 Regent Court, Suite 202, State College, PA 16801 with copies of records, documents and reports as described in this Subpoena Attachment. On Page 25 of the Pennsylvania State Police Incident No. G07-1147135, your name appeared as providing psychological services for accuser/alleged Victim No. 6 ( in the above-captioned matter. Therefore the following information is requested to be provided in its full and complete form void of redactions as well as documents removed prior to issuance:

A. Complete office file on accuser/alleged Victim No. 6 to include but not limited to the following records for accuser/alleged Victim No. 6:

1. All testing completed by you of this individual;
2. All referrals made for testing of this individual with testing(s) results;
3. Copies of all school records you requested and or were provided to you by this individual or other source(s);
4. Copies of all your reports that were provided to the Pennsylvania State Police/Office of Attorney General;
5. Copies of all opinion(s) you developed regarding this individual based upon your training and education which resulted in your title Ph.D.;
6. Copies of any and all self assessments completed by this individual;
7. Copies of all reports, documents and files that would pertain to the individual's self description of the alleged occurrences between he and Gerald Sandusky;

8. Identify the edition of the *Diagnostic and Statistical Manual of Mental Disorders*, Section 302.2, you consulted to identify Gerald A. Sandusky as an individual who has Pedophilia as a diagnosis;

9. Provide the means in which you obtained the diagnostic criteria for Section 302.2, Pedophilia, Sub-Section A, B, and C;

10. Provide copies of all medical, psychological and psychiatric report(s), testing and evaluations of Gerald Sandusky, as the patient, that were reviewed by you to come to the opinion he was a Pedophile;

11. Provide copies of all publication(s), manuals and/or other criteria you reviewed that enabled you to come to the opinion Gerald Sandusky was a Pedophile;

12. Provide specific training/education/and pertinent documents you reviewed that enabled you to come to the opinion Gerald Sandusky was a Pedophile;

13. Provide details of all experts you consulted with that you came to the opinion Gerald Sandusky was a pedophile;

14. Provide all criminal case information that includes the Criminal Information No., the county within the Commonwealth of Pennsylvania that you have been certified by the Court of Common Pleas as an expert in the diagnosis of Pedophilia to a degree of medical, psychological and psychiatric certainty;

15. Provide the same information for any and all case(s) outside the Commonwealth of Pennsylvania that you were indentified by the trial court judge as an expert;


16. Provide copies of all reports/files/documents/records or related printed information provided to you by any of the following agencies in your efforts to identify Gerald Sandusky as a Pedophile: a) the Office of Attorney General-Commonwealth of Pennsylvania, b) the Pennsylvania State Police, c) The Pennsylvania State University, d) any and all Children and Youth Services offices within the Commonwealth of Pennsylvania, e) the Freeh Group Investigative Agency, f) The Second Mile, g) The Pennsylvania State University Board of Directors, h) the known accuser/alleged victim, and i) any and all individuals, agencies not detailed in this Paragraph No. 16;

17. Provide copies of any and all reports you prepared that in any way dealt with your diagnosis of Gerald Sandusky being a Pedophile and identify the person(s) and agency(s) you provided a copy;

18. Provide any and all documents that you have provided an investigative agency both private and/or governmental that in any way relates to Gerald Sandusky;

19. All other file documents not described in Nos. 1 through 18 of this Subpoena Attachment in regard to the above-captioned matter.

Truly,

  
Joseph L. Amendola, Esquire

JLA:dka  
Enclosure

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 8th day of May, 2012, a true and correct copy of the foregoing document was sent overnight FedEx to the following:

Joseph L. Amendola, Esq.  
110 Regent Court  
Suite 202  
State College, PA 16801-7966

Joseph McGettigan, Esq.  
Senior Deputy Attorney General  
Commonwealth of Pennsylvania  
Office of Attorney General  
Criminal Prosecution Section  
16<sup>th</sup> Floor Strawberry Square  
Harrisburg, PA 17120



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John U. Baker

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2012 MAY - 8 P 4:01  
DEBRA C. IMHEL  
PROTHONOTARY  
JENNER COUNTY, PA