



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

**PAUL J. MORRISON**  
ATTORNEY GENERAL

June 12, 2007

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*Via Fax: 410-502-3152, and Hand Delivery*

Paul R. McHugh, M.D.  
Johns Hopkins School of Medicine  
Department of Psychiatry and Behavioral Sciences  
600 N. Wolfe St. / Meyer 127  
Baltimore, MD 21287-7127

Dear Dr. McHugh:

We have seen your public statements regarding your review of medical records provided to you by the former Attorney General. We hereby demand that you cease and desist from any and all such statements, as they threaten our ongoing investigation and violate the privacy of the women whose medical records you reviewed.

First, we note that you have repeatedly stated that our office has not contacted you. These statements are incorrect. As you well know, one of my deputies at my direction contacted you in the first week of this administration to discuss your work on the case. Indeed, during that conversation, you were asked to send back the medical records Mr. Kline provided you, which you did. You were also asked if you would still be willing to testify in the case, which you agreed to do. Your repeated public statements to the contrary are plainly false.

More importantly, your continued public statements in this case threaten our ongoing investigation and the ability to bring criminal charges. Prosecutors – and their agents, experts, and employees – are prohibited from making an extrajudicial statement that "a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding." Kansas Rules of Professional Conduct 3.8(e) and 3.6(a).

In criminal matters such as this, such statements are deemed by law as likely to have such an effect if the statements relate to:

- (1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness; ...

(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented; (or)

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration; ...

Your statements to the media and to Operation Rescue and others regarding this investigation may well violate these standards and threaten our ability to conduct a fair trial. Accordingly, you must cease and desist from your public comments, lest you be disqualified from appearing as a witness.

Finally, and perhaps most importantly, your actions grossly violate the privacy rights of the women whose medical records Mr. Kline gave you. You may also have violated HIPAA. As Mr. Kline should have informed you, in this case the Kansas Supreme Court issued a lengthy order detailing the extensive privacy interests held by the patients whose medical records the former Attorney General subpoenaed. See *Alpha Medical Clinic v. Anderson*, 280 Kan. 903, 128 P.3d 364 (2006). It ordered Judge Anderson to impose strict limits on the handling of those documents, and "caution(ed) all parties to resist any impulse to further publicize their respective legal positions, which may imperil the privacy of the patients and the law enforcement objectives at the heart of this proceeding "

The Kansas Supreme Court most certainly did not contemplate that an "expert" hired by the former Attorney General would be allowed by the district court and Mr. Kline to go on television and the internet discussing his review of those medical records and revealing the details of those records and their findings. That is exactly what you have done. Your actions are a gross breach of trust and demonstrate the dangers in allowing prosecutors to randomly invade the medical privacy rights of American citizens. As a physician, you especially should know and respect those rights and obligations. Rather than complying with those obligations, you have chosen to engage in a politically-driven media campaign. Your actions do a disservice to you, Johns Hopkins, and your profession.

Again, we hereby demand that you cease and desist from all public comment about your work in this case, including any and all discussion of the medical records you reviewed and any conclusions or observations you reached or made as a result. Should you continue to make such statements, our office will pursue all available remedies— including filing disciplinary charges against you in Maryland and/or filing legal action to recover the more than \$5,000 our office has paid you for your services.

Very truly yours,

  
Paul J. Morrison

cc: J. Raymond DePaulo Jr., M.D., Director, Department of Psychiatry and Behavioral Sciences, Johns Hopkins School of Medicine

Stanton A. Hazlett, Office of Kansas Disciplinary Administrator