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Public may see records in hospital case, judge says

But he doesn't grant access to all of them

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BATON ROUGE -- A state judge ruled Wednesday that the public should see records the attorney general's office generated in its investigation of deaths at Memorial Medical Center after Hurricane Katrina.

But 19th Judicial District Judge Donald Johnson did not grant access to all records related to the case and delayed his ruling for 30 days to allow for inevitable appeals to the 1st Circuit Court of Appeal and eventually the Louisiana Supreme Court.

The case could give the high court an opportunity to clarify potentially conflicting precedents and statutes concerning public records, grand jury secrecy and individual privacy rights.

The Times-Picayune and CNN sought the records from the investigation that Attorney General Charles Foti said led him to arrest Dr. Anna Pou and two nurses accused of killing patients with lethal combinations of morphine and Versed.

None of the three ever stood trial. Orleans Parish District Attorney Eddie Jordan dropped charges against the nurses in exchange for their testimony before a grand jury that eventually declined to indict Pou.

Despite the expected appeal, the ruling represents an early victory for Foti, who is trying to defend his handling of the matter as he seeks another term.

Lori Mince, attorney for the media in the case, called Johnson's order a win for advocates of open government. "Today's ruling is a victory for the public, who deserve to understand what happened at Memorial that caused 34 deaths and why the attorney general spent our money to investigate it," she said.

Secrecy statute

Attorneys for Pou, nurses Lori Budo and Cheri Landry, and dozens of other Memorial employees who had been interviewed during the investigation sought to block the release of all the records. They were joined by attorneys for Tenet Health Corp. and LifeCare Hospitals, the medical holding companies involved with Memorial at the time of deaths.

If it stands, Johnson's ruling would make public nearly all of the documents Foti's office generated before Feb. 14, 2007, the date that Jordan impaneled the Orleans grand jury. That date is significant because Louisiana law states that "persons present at a grand jury meeting and all

persons having confidential access to information concerning grand jury proceedings, shall keep secret the testimony of witnesses and all other matters occurring at, or directly connected with, a meeting of the grand jury."

Mince had argued to Johnson that the secrecy statute protects only what happens in the grand jury room and does not apply to investigative documents generated before the grand jury was impaneled.

Lawyers trying to keep the records sealed contend that Foti was pursuing murder charges from the beginning, and because Louisiana law requires murder charges to come from a grand jury, the entire investigation is necessarily "directly connected" with the grand jury.

The bulk of records Johnson would unseal are transcripts of interviews with Memorial employees.

Johnson ruled that those individuals had no claim to confidentiality, as some of their attorneys had argued. He did agree -- as did the newspaper and CNN -- that their Social Security numbers, telephone numbers and addresses be redacted. Johnson also ordered that the name of any patient be blacked out unless the patient has consented to a release.

To remain sealed

As for records generated after Feb. 14, 2007, Johnson indicated that he will review each document and decide about access on a case-by-case basis. He also ordered the attorney general to give his office an index of patient medical records in the case, but said the index will remain sealed and "subject to further review." Foti has already released information on toxicology reports from the autopsies of nine victims.

Also remaining under seal are more than 30,000 documents collected by the state with subpoenas to Tenet and LifeCare. Those documents are part of a separate records dispute that began in an Orleans trial court and now rests with the state Supreme Court.

Johnson said explicitly that a portion of those records -- internal investigative files and personnel files of LifeCare, which the state apparently obtained under a confidentiality agreement with the company -- is not subject to Louisiana public records laws.

Efforts to reach Foti late Wednesday afternoon were not successful. Attorneys for Memorial employees did not immediately respond to requests for comment.

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