Dear Members of the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States,

I am writing in opposition to the proposed reform of the judicial conduct and disability rules, specifically regarding Rule 13. As a physician, I am opposed to compelled disclosure of medical (including psychiatric) information without due process and appropriate procedure.

No patient, including judges, should be deprived the right of privacy of health information. The proposed reform suggests that failure to disclose medical records could be considered judicial misconduct. The proposed reform neglects to specify appropriate procedure or protection for medical information. Such a rule would potentially strip a judge of the right to privacy of medical records. As the proposal stands, details of test results and medical history could be disclosed to non-medical colleagues, peers, and public. Lack of medical privacy could be personally devastating for an individual. This is indeed the very reason for the existence of the HIPAA Privacy Rule.

There is no evidence that indiscriminate disclosure of medical records provides greater public safety. Medical condition is not a corollary to the ability to perform duties. The majority of medical records for most individuals are not at all pertinent to the ability to perform ones duties. Details of medical history have very little predictive value for current competency. Rather than protect the public, the proposed reform would increase risk. As a physician, I see many people avoid medical / psychiatric evaluation or treatment for fear of negative repercussions and stigma. This would likely be especially true for judges who by nature maintain high profile positions. Loss of medical confidentiality or threat of judicial misconduct for non-disclosure of medical information would likely discourage judges from seeking medical care for very treatable conditions and could impede the efforts of physicians attempting to provide such care.

The issue of assessing the capacity to continue to perform judicial duties could be more directly addressed by other means such as periodic specific standardized testing as is required by specialty boards in the medical profession. Rather than medical or psychiatric history, capacity assessment should rely on a consensus of objective criteria that demonstrate the ability to perform ones duties. Furthermore, unlike some other professions, much of what a judge does is either recorded in a transcript or directly observable in a courtroom. There is no better way to assess capacity to perform ones duties than directly observing and reviewing one performing those duties. In the rare instance when further evaluation is needed, a consultant could be hired to perform an independent problem focused evaluation with voluntary informed consent. This does not necessitate complete compelled disclosure of medical history. Results of a consultant evaluation should also include specified protections of privacy.

The current proposed reform of Rule 13 would be detrimental to the overall goal of maintaining confidence in the judiciary.

Should you have any further questions related to my comments, feel free to contact me.

Sincerely,

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