IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

GRANT J. MEYERS and KATHY L. MEYERS, Plaintiffs	:	DOCKET NO. 11-01,166
vs.	:	CIVIL ACTION – MEDICAL PROFESSIONAL LIABILITY ACTION
PATRICK J. CAREY, D.O.; PRAFUL K. TILVA, M.D.; WEST BRANCH ORTHOPAEDICS & SPORTS MEDICINE, INC.; SUSQUEHANNA REGIONAL HEALTHCARE ALLIANCE, INC.; SUSQUEHANNA REGIONAL HEALTHCARE ALLIANCE t/d/b/a SUSQUEHANNA HEALTH and DIVINE PROVIDENCE HOSPITAL, Defendants	:	

O P I N I O N AND O R D E R

This matter comes before the Court on two discovery motions filed by Plaintiffs. Initially, this Court notes that the instant matter is a medical malpractice action filed by the Meyers against Defendants seeking damages for the alleged negligence of Defendants in diagnosing and treating a tumor in Mr. Meyer's lung. Plaintiffs have filed discovery motions requesting a motion to compel a non-party's compliance with a subpoena and a motion to determine the sufficiency of Defendant Dr. Carey's answers to a request for admissions. The Court will address these issues in turn.

I. Motion to Compel

By cover letter dated July 27, 2012, Plaintiffs notified Defendants of their intent to serve a subpoena on Teleradiology Holding, Inc. (Teleradiology). Plaintiffs allege that Teleradiology employed Dr. Tilva when the alleged negligence occurred.[1] The proposed subpoena requests the production of:

> … any and all employment records of [Dr. Tilva] to include but not limited to, job descriptions, agreements, privileges, letters, incident reports, memoranda, evaluations,

[1] In Dr. Tilva's response to Plaintiffs' motion, he admitted that he was an employee of Teleradiology, but averred that this employment did not involve the treatment of Mr. Meyers.

> disciplinary actions, complaints; and any and all records related to the suspension or termination of employment for any period of time and for any reason whatsoever whether or not voluntary. We request all records be produced and not just selected portions. This request includes your records, and any records in your possession from any source.

On August 3, 2012, Dr. Tilva filed objections to the subpoena to the extent that the subpoena requests irrelevant, immaterial, and privileged information. On August 10, 2012, Plaintiffs filed the instant motion to compel.

Plaintiffs' motion requires the analysis of the Pennsylvania Peer Review Protection Act, 63 P.S. §§ 425.1-425.4, and the confidentiality it provides to peer review documents. Section 425.4 of the Act provides that:

> [t]he proceedings and the records of a review committee shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action against a professional health care provider arising out of the matters which are the subject of evaluation and review by such committee… Provided, however, That information, documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil action merely because they were presented during the proceedings of such committee….

63 P.S. § 425.4. *See also Dodson v. Deleo*, 872 A.2d 1237, 1241-42 (Pa. Super. Ct. 2004). In addressing protections provided by the peer review Act, our Superior Court has held that the Act should be strictly construed in order to maintain the confidentiality of the peer review process. *Troescher v. Grody*, 869 A.2d 1014, 1021 (Pa. Super. Ct. 2005); *Dodson*, 872 A.2d at 1237; *Young v. W.Pennsylvania Hosp.*, 722 A.2d 153, 156 (Pa. Super. Ct. 1999); *Cooper v. Delaware Valley Med. Ctr.*, 630 A.2d 1, 7-8 (Pa. Super. Ct. 1993), *aff'd*, 654 A.2d 547 (Pa. 1995).

Requests for documents protected by peer review must be specific and narrowly tailored in order to align with the Act's purpose. *Dodson*, 872 A.2d at 1242. In *Dodson*, our Superior Court addressed the legislative intent of the peer review Act; specifically, that Court held the Act was enacted to "to facilitate self-policing in the health care industry." 872 A.2d at 1242. The Court held that the Act "is meant to facilitate comprehensive, honest, and potentially critical

evaluations of medical professionals by their peers." *Id*. Therefore, the *Dodson* Court concluded that documents used to determine staff privileges are the type of documents that the legislature intended to protect under the Act. *Id*. (citing *Young*, 722 A.2d at 156).

In addition to narrowly tailoring peer review document requests, the Court has long held that plaintiffs cannot request peer review information that is not directly related to their case. *Sanderson v. Byran*, 522 A.2d 1138, 1139 (Pa. Super. Ct. 1987). In *Sanderson*, the plaintiffs requested discovery of documents maintained by a review organization within the hospital that involved the alleged negligent doctor that did not pertain to the plaintiffs' case. 522 A.2d at 1139. After analyzing the purpose of the Act, the *Sanderson* Court held that that complaints, findings, and recommendations that do not relate to the plaintiffs' cause of action are protected by peer review confidentialities. 522 A.2d at 1143. In its analysis, that Court determined that allowing the plaintiffs to discover information concerning other patients would "obliterate" the confidential nature of the peer review process. *Id*. Therefore, under the Act, plaintiffs may access only their own medical records and not those records of other patients. *Id*.

However, documents are not protected by the Act simply because they are eventually used by a peer review committee. *See Atkins v. Pottstown Memorial Med. Ctr.*, 634 A.2d 258, 260 (Pa. Super. Ct. 1993). In *Atkins*, the Court addressed whether or not an incident report generated for a risk manager was protected under the Act. In that case, the Superior Court held that a document is not protected under the Act solely because it is viewed by a peer review board; the Court determined that that interpretation of the statute would do injustice to the purpose of the Act, i.e. need to provide a shield of confidentiality for peer review documents. *Id*. The Court held that incident reports that are not generated as part of an evaluation process or for review by a peer review committee are not protected under the Act. *Id*.

Plaintiffs argue that the peer review Act should not apply to Teleradiology because it is a corporation, as opposed to a medical facility. The Court finds this argument unpersuasive.

In *Troesher*, our Superior Court addressed the phrase "review committee" as provided for in Section 425.4 of the Act. 869 A.2d at 1022. In *Trosher*, the plaintiffs argued that the confidentiality protections of the Act apply only to records of a "review committee" and not records generated by an individual. *Id*. Our Superior Court disagreed with the plaintiffs' interpretation. *Id*. That Court found that the plaintiffs' interpretation would defeat the purpose of the Act, i.e. providing a shield of confidence to peer review documents; specifically, the Court reasoned that "drawing a distinction between multi-purpose committees and single individuals would be a distracting and meaningless exercise." *Id*. Therefore, the Court ultimately determined that the credentialing documents that the plaintiffs were requesting were protected by peer review confidentiality. *Id*.

This Court finds the *Troescher* Court's analysis applicable to the case at bar. In this instance, Plaintiffs allege that the requested information is not peer review protected because they are requesting the information from a corporation as opposed to a hospital. The Court disagrees. Upon reading *Troescher*, the Court believes that the legislature intended to cover peer review information regardless of what organization or individual generated such documents.

Based upon our review of the requested documents and the language of the peer review Act, the Court finds that any agreements, privileges, letters, memoranda, evaluations, disciplinary actions, complaints, and any and all records related to the suspension or termination of Dr. Tilva from Teleradiology are protected under the Pennsylvania Peer Review Protection Act, 63 P.S. §§ 425.1-425.4. Also, the Court finds that those incident reports that were generated by Teleradiology that were created or part of an evaluation or review of a peer review committee

shall not be disclosed because the Act intended to protect these confidential documents. *See Atkins,* 634 A.2d at 260. However, any incident report that was generated as a business record and that Teleradiology did not intend to be used in the peer review process should be disclosed. *Id*. Teleradiology should disclose to Plaintiffs Dr. Tilva's job description.

II. Motion to Determine Sufficiency of Answers

On or about June 21, 2012, Plaintiffs served Dr. Carey with a set of admissions. On July 23, 2012, Plaintiffs received Dr. Carey's responses. On August 3, 2012, Plaintiffs filed a motion to determine the sufficiency of four of Dr. Carey's responses. In particular, Plaintiffs have issue with Dr. Carey's responses to questions 2, 4, 5, and 6. The Court will address Dr. Carey's responses to questions 2 and 4, collectively, and questions 5 and 6, collectively.

a. Question 2 – Office Procedure and Question 4 – Implementation of Office Procedure

Questions 2 and 4 of Plaintiffs' request for admissions state:

2. Please admit that you did not have any office procedure at that time for the radiology reports being brought to your attention
4. Please admit that the failure to have a system in place in your office to assure that the written reports were seen by you and now such a system is in place.

In objecting to these requested admissions, Dr. Carey reasoned that the admissions seek irrelevant evidence that is unlikely to lead to admissible evidence; specifically, Dr. Carey provided that the complaint holds no allegations of negligence as it pertains to policies and procedures and that remedial policies would be inadmissible during trial and are beyond the scope of discovery. The Court does not agree with Dr. Carey's objections.

Pa. R.C.P. 4014 governs a request for admissions. Specifically, that rule provides that a party may seek admissions within the scope of Pa. R.C.P. 4003.1-4003.5. Pa. R.C.P. 4014. Pa. R.C.P. 4003.1 governs the general scope of discovery. Particularly, that rule provides that "a

party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." Pa. R.C.P. 4003.1(a). Regarding objections to discovery, that rule provides that "[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Pa. R.C.P. 4003.1(b).

A trial court's duty includes the prompt disposition of discovery matters in accordance with the Rules of Civil Procedure. *See Poulos v. Commonwealth*, 575 A.2d 967, 969 (Pa. Cmwlth. Ct. 1990). In deciding discovery disputes, the Court must consider the need for prompt disposition and the parties' substantive rights. *Id*. In deciding this discovery issue, despite the absence of a negligence claim pertaining to the policies in Dr. Carey's office, the Court believes that the answers to these admissions may lead to the discovery of relevant evidence. Additionally, recognizing the Rule of Evidence pertaining to subsequent remedial measures, Pa. R.E. 407[2], the Court believes that this claim alone is insufficient to sustain Dr. Carey's discovery objection. Therefore, the Court OVERRULES Dr. Carey's objections to questions 2 and 4.

b. Question 5 – Procedure Failure Represents Lack of Due Care and Question 6 – Procedure Failure Represents Negligence

Questions 5 and 6 of Plaintiffs' request for admissions state:

5. Please admit that the failure to have a system in place to assure that you did see the reports contemporaneously with their arrival represents *lack of due care*.
6. Please admit that the failure to have a system in place to assure that you did not see the reports contemporaneously with their arrival represents *negligence*.

In objecting to these requested admissions, Dr. Carey reasoned that the admissions call for a legal conclusion that is outside of the scope of Pa. R.C.P. 4014. This Court agrees.

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[2] Pa. R.E. 407 provides:

> [w]hen after an injury or ham allegedly caused by an event, measure are taken which, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent remedial measures is nto admissible to prove that the party who took the measures was negligent or engaged in culpable conduct….

Pa. R.C.P. 4014 governs a request for admissions. Specifically, that rule provides that a party may serve a request for admissions on any other party for the truth of any matters within the rules "that relate to statements or opinions *of fact* or the *application of law to fact*, including the genuineness, authenticity, correctness, execution, signing, delivery, mailing or receipt of any document described in the request." Pa. R.C.P. 4014(a) (emphasis added).

Both our Superior and Commonwealth Courts have held that request for admissions cannot be used to request conclusions of law. *See Estate of Borst v. Stover*, 30 A.3d 1207, 1211-12 (Pa. Super. Ct. 2011); *Brindley v. Woodland Vill. Rest.*, 652 A.2d 865, 871-72 (Pa. Super. Ct. 1995); *Dwight v. Girard Med. Ctr.*, 623 A.2d 913, 916 (Pa. Cmwlth. Ct. 1993). This analysis was initially promulgated by our Commonwealth Court in *Dwight*; however, our Superior Court has upheld the Commonwealth Court's analysis of Rule 4014(a). *Id*. Specifically, the Court in *Dwight* held:

> requests for admissions must call for admissions of fact rather than legal opinions or conclusions. Since conclusions of law are not within the permissible scope of requests for admissions under Rule 4014, those statements in the requests for admissions which constitute conclusions of law are not properly before the court.

623 A.2d at 916 (citations omitted).

This Court finds those cases dispositive of Plaintiffs' request for admissions in questions 5 and 6. There is no question that Plaintiffs are requesting conclusions of law from Dr. Carey in these admissions. Requesting Dr. Carey to admit that failure to have systems in place represent lack of due care and negligence constitutes legal conclusions and are not permissible under Pa. R.C.P. 4014 and the applicable case law. Therefore, the Court SUSTAINS Dr. Carey's objections to questions 5 and 6.

The Court enters the following Order.

O R D E R

AND NOW, this 18th day of October, 2012, following oral argument on Plaintiffs' motion to compel and motion to determine sufficiency of answers, it is hereby ORDERED and DIRECTED as follows:

1. Plaintiffs' motion to compel production of records pursuant to subpoena to Teleradiology Holding, Inc., is GRANTED in part and DENIED in part. Teleradiology Holding is ORDERED and DIRECTED to provide Dr. Tilva's job description and those incident reports that were generated as a business record and not intended to be used in the peer review process. In all other respects, Plaintiffs' motion is DENIED and Dr. Tilva's objections are SUSTAINED.
2. Plaintiffs' motion to determine sufficiency of answers is GRANTED in part and DENIED in part. Defendant Dr. Carey shall provide answers to Questions 2 and 4 of Plaintiffs' request for admissions within seven (7) days. In all other respects, Plaintiffs' motion is DENIED and Dr. Carey's objections are SUSTAINED.

BY THE COURT,

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Date Richard A. Gray, J.

cc: Clifford A. Rieders, Esquire
C. Edward S. Mitchell, Esquire
James A. Doherty, Esquire – 321 Spruce Street, 10th Floor, Scranton, PA 18503
Richard F. Schluter, Esquire
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