IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TAYLOR FAUSNAUGHT,	: NO. 19-1047
Plaintiff,	:
vs.	: CIVIL ACTION
	:
UPMC SUSQUEHANNA (formerly Susquehanna Health),	:
& TASHA KLOCK,	:
Defendants.	: *Motion to Seal*

OPINION & ORDER

On August 15, 2019, an expedited argument was held on Plaintiff's uncontested *Motion to File Complaint Under Seal and to Seal Judicial Record* (the "Motion"). During the argument, Plaintiff stated that she was relying on two Pennsylvania Superior Court cases for her assertion that she was required to state sensitive information in her Complaint in order to survive the demur stage for the invasion of privacy cause of action intrusion upon seclusion.[1] The Court requested that Plaintiff submit these cases by electronic mail to its law clerk. Plaintiff submitted *Bryant v. Easton Hospital* and *Hahn v. Loch* for the Court's consideration. Plaintiff also submitted a Columbia County Court of Common Pleas case, *Beaver v. McClogan*, for the Court's edification as to the common law tenets of sealing public records.[2]

Interestingly, *Bryant* supports the Court's opinion expressed in its August 8th Order that Plaintiff does not need to address the specifics of the facts underlying the cause of action, and *Hahn* is not relevant to Plaintiff's proposition. The Superior Court

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[1] *See Tagouma v. Investigative Consultant Servs., Inc.*, 4 A.3d 170, 174 (Pa. Super. Ct. 2010) ("Our Supreme Court has not officially adopted the definition of intrusion upon seclusion as set forth in the Restatement (Second) of Torts; however, our Court has relied upon § 652B in analyzing such claims. Intrusion upon seclusion has been defined as: [. . . .] One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.") (quoting Restatement (Second) of Torts § 652B (1977)).

[2] *Beaver v. McColgan* is not factually analogous as it involved the sealing of a settlement. *See* 11 Pa. D. & C. 4th 97, 98, 102 (Col. Com. Pl. 1990).

in *Bryant* reversed the Northampton County Court of Common Pleas' dismissal of the plaintiff's common law invasion of privacy claim at the preliminary objection stage.[3] Interpreting former precedent, the Superior Court stated that a claim for intrusion upon seclusion could be satisfied by averring that the "information in question was of such a character that its revelation would 'cause mental suffering, shame or humiliation to a person of ordinary sensibilities.' "[4] The Superior Court specifically noted that the trial court had failed to give weight to the Amended Complaint's averments that " '[t]he particularized testing and treatment [at issue] was highly personal, sensitive, character blackening, embarrassing,' and that appellant 'would have never shared the information with a third party.' "[5] The Superior Court also noted that the trial court incorrectly required that publication was an essential element of the plaintiff's invasion of privacy claim.[6]

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[3] *Bryant v. Easton Hospital*, 702 EDA 2012, at 6 (Pa. Super. Ct. Dec. 18, 2012).

[4] *Id.* at 7 (citing *Chicarella v. Passant*, 494 A.2d 1109 (Pa. Super. Ct. 1985)). The Court notes that the Monroe County Court of Common Pleas in *Adamski v. Johnson* misquoted *Chicarella v. Passant* when the *Adamski* court stated that the "Pennsylvania Superior Court has ruled that 'the information disclosed by hospital records is not the sort which would cause mental suffering, shame or humiliation to a person of ordinary sensibilities.' " *Adamski v. Johnson*, 80 Pa. D. & C. 4th 69, 74 (Monroe Com. Pl. 2006) (quoting *Chicarella*, 494 A.2d at 1114) (internal quotation marks omitted). *Chicarella* actually states, "Furthermore, the information disclosed by *the* hospital records is not of the sort which would 'cause mental suffering, shame or humiliation to a person of ordinary sensibilities.' " *Chicarella*, 494 A.2d at 1114 (quoting *Hull v. Curtis Publishing Co.*, 125 A.2d 644, 646 (Pa. Super. Ct. 1956)) (emphasis added). The omitted article is, of course, important since it indicates that the Superior Court in *Chicarella* held that the hospital records before it did not meet the standard, not that hospital records generally could not meet the standard.

Importantly, *Chicarella* is not analogous as the plaintiff there discovered that Business Information Company obtained medical records as part of its insurance policy investigation and the Superior Court found that such an action was not "substantial and highly offensive to a reasonable person." *Id.* at 1111, 1114. To the extent Defendants attempt to extend *Chicarella* to the access of medical records unrelated to an insurance investigation, this Court finds such analysis unpersuasive. It is hard to imagine a scenario where any reasonable individual would find access to their medical records without their consent to be within the bounds of common decency. Hence why the Superior Court in *Bryant* gutted *Chicarella* by limiting *Chicarella* to an issue of pleading nomenclature. *Bryant*, 702 EDA 2012, at 7.

[5] *Id.* at 8. The Superior Court notes that the plaintiff "advised the trial court that it was prepared to provide the court with more details in an *in camera* setting" as support for its finding that general averments are sufficient; the Superior Court did not require such disclosure. *Id.*

[6] *Id.* at 9.

In *Hahn*, the Superior Court reversed the Northampton County Court of Common Pleas' dismissal of the plaintiff's intrusion upon seclusion claim because the trial court erroneously held that publication of the private information was a necessary element of the tort.[7] Additionally, while the Superior Court upheld the trial court's dismissal of another invasion of privacy action regarding the releasing of confidential medical records to a third party, the Superior Court found the dismissal proper because the plaintiff failed to include facts satisfying the elements of vicarious liability.[8] Neither *Bryant* nor *Hahn* require Plaintiff to meet the demanding pleading requirement that she claims for the intentional tort of intrusion upon seclusion.[9]

In light of the Commonwealth's presumption of the public's "right of access" to court documents,[10] and Plaintiff's heavy burden when seeking to seal an entire court record,[11] the Court finds that Plaintiff has not met her burden. Plaintiff's argument that her forthcoming claim of intrusion upon seclusion requires pleading specific facts underlying her medical records is unpersuasive. Plaintiff is not required to plead with

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[7] *Hahn v. Loch*, 2984 EDA 2014, 2016 WL 5172451, at *6 (Pa. Super. Ct. July 13, 2016), *appeal denied*, 641 Pa. 613 (Mar. 31, 2017).

[8] *Id.* at 4. It is also important to note that in both *Bryant* and *Hahn* the Superior Court commented on the terribly written state of the plaintiffs' complaints, specifically noting that causes of action had even been fused. *See Bryant*, No. 702 EDA 2012, at 4; *Id.* (internal quotation marks omitted).

[9] The Court currently finds itself in a unique posture. It is not often that the Court argues against a plaintiff averring more facts in his or her complaint. Indeed, this Opinion essentially serves as a preemptive preliminary objection ruling regarding Plaintiff's intrusion upon seclusion cause of action.

[10] *Stenger v. Lehigh Valley Hosp. Ctr.*, 554 A.2d 954, 960 (Pa. Super. Ct. 1989) ("There is a long-standing presumption in the common law that the public may inspect and copy judicial records and public documents. The public has a presumptive right of access to trial transcripts and transcripts of sidebar or chambers conferences. The presumption extends to documents which have been filed with the court, such as pleadings, arrest warrant affidavits, and settlement agreements, and which are considered public records.").

[11] *See Hart v. Tannery*, 461 F. App'x 79, 81 (3d Cir. 2012) ("There is a presumption of access to judicial records. A party seeking to seal a portion of the judicial record bears the burden of demonstrating that 'disclosure will work a clearly defined and serious injury to the party seeking disclosure,' and, further, that '[a] party who seeks to seal an entire record faces an even heavier burden.' " (quoting *In re Cendant Corp.*, 260 F.3d 183, 194 (3d Cir. 2001); *Miller v. Ind. Hosp.*, 16 F.3d 549, 551 (3d Cir. 1994)) (internal

particularity the highly personal, sensitive or potentially embarrassing contents of her medical records. Therefore, Plaintiff's Motion is **DENIED**.[12]

IT IS SO ORDERED this 20th day of August 2019.

BY THE COURT,

Eric R. Linhardt, Judge

cc: Paige Macdonald-Matthes, Esq. (Counsel for Plaintiff)
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citations omitted)).

[12] At the August 15th argument, Plaintiff passingly noted two potential conflicts. Because Plaintiff did not formally request the Court's recusal, and Defendants did not express a position on conflicts that would appear to only adversely affect their interests, the Court will take no action on Plaintiff's comments at this time. Further, as indicated above, the Court believes retaining possession is prudent since this Opinion may need to be invoked as preemptive at the preliminary objection stage. *See supra* note 9.