

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	<b>CP-41-CR-967-2021</b>
	:	
<b>v.</b>	:	
	:	
<b>PATRICK RACEY,</b>	:	<b>MOTION FOR RELEASE OF</b>
<b>Defendant</b>	:	<b>MENTAL HEALTH RECORDS</b>

**OPINION AND ORDER**

Patrick Racey (Defendant) was charged on June 21, 2021 with Rape-Forcible Compulsion<sup>1</sup>, a felony of the first degree, Aggravated Indecent Assault<sup>2</sup>, a felony of the second degree, Sexual Assault<sup>3</sup>, a felony of the second degree, Indecent Assault<sup>4</sup>, a misdemeanor of the second degree, and one (1) count of Simple Assault<sup>5</sup>, a misdemeanor of the second degree. The charges stem from complainant's report to Muncy Borough Police about an incident that occurred two (2) weeks prior between her and Defendant at her residence. On April 12, 2022, the Defendant was scheduled for jury selection before this Court. While preparing for jury selection, Defense counsel and the Commonwealth requested to speak with the Court. The Court, over the Commonwealth's objection, granted the Defendant's request to explore the issue of mental health records they believed existed. Argument was held on April 25, 2022, to enable the parties to present their respective positions and the information was provided to the Court. The present issue for this Court to decide is whether mental health records relating to the

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<sup>1</sup>18 Pa. C.S.A § 3121(a)(1).

<sup>2</sup>18 Pa. C.S.A. § 3125(a)(1).

<sup>3</sup>18 Pa. C.S.A. § 3124.1.

<sup>4</sup> 18 Pa.C.S.A. § 3126(a)(1).

<sup>5</sup> 18 Pa.C.S.A. § 2701(a)(3).

complaining party are discoverable to the Defendant. Those records were provided to the Court but they have not been reviewed.

## **Discussion**

Under the Mental Health Procedures Act (MHPA), section 7111 provides

(a) All documents concerning persons in treatment shall be kept confidential and, without the person's written consent, may not be released or their contents disclosed to anyone except:

- (1) those engaged in providing treatment for the person;
- (2) the county administrator, pursuant to section 110;
- (3) a court in the course of legal proceedings authorized by this act;

and

(4) pursuant to Federal rules, statutes and regulations governing disclosure of patient information where treatment is undertaken in a Federal agency.

50 P.S. § 7111.

In no event, however, shall privileged communications, whether written or oral, be disclosed to anyone without such written consent. Id. Under the exception set forth in section (a)3, the “course of legal proceedings” referred to is defined as limiting the judicial use of mental health records to mental health commitment proceedings unless the patient consents to their use in other judicial proceedings. *Commonwealth v. Gonzales*, 109 A.3d 711, 728 (Pa. Super. 2015). In fact, *Commonwealth v. Moyer* provides that “a patient's inpatient mental health treatment records may be used by a court *only* when the legal proceedings being conducted are *within the framework* of the MHPA, that is, involuntary and voluntary mental health commitment proceedings.” *Moyer*, 595 A.2d 1177, 1179 (Pa. Super. 1991) (emphasis added); *See* 50 P.S. § 7103; *See also Commonwealth v. Segarra*, 228 A.3d 943 (Pa. Super. 2020). There is nothing in the MHPA itself which specifically permits the release of protected mental health information in a criminal proceeding and no caselaw in the Commonwealth exists that supports such an assertion. *Gonzales*, 109 A.3d at 729.

Here, Defense counsel has merely argued that since the complainant may have spent time in mental health treatment after the incident occurred, this justifies the opportunity for Defendant to obtain a copy of her records through discovery. Defense counsel has not asserted any particular purpose for the discovery of the documents. However, the Court surmises that the purpose of obtaining the records is either to discover information to use to embarrass her or to create a negative impression of her to the jury from the sole fact she sought help in dealing with the trauma of what happened. Defense counsel has not shown that the mental health records have any relevance to this criminal proceeding and has not provided precedent or statutory exception allowing for the release of the records at issue. Therefore, the Court finds that the MHPA has not provided an exception for the records to be provided to the Defendant and Defendant .

The Court further finds that if the records have been provided to the Commonwealth, without the complainant's specific consent, they were not subject to disclosure by the treatment facility. If the complaining party involuntarily granted her consent or implicitly waived her privilege for the release of the records based upon the perceived directive of the Court, the Court erred in creating that impression. She has not placed her mental health at issue and has the right to believe that her extremely personal information, as protected by statute, shall not be disclosed. The Court also finds that she has not waived her privilege or the protection afforded to her by the MHPA.

### **Conclusion**

The MHPA protects the disclosure of the complainant's mental health information unless the disclosure falls under one of the enumerated exceptions. Since there is no exception here that would apply or caselaw that requires disclosure, the request must be denied.

**ORDER**

**AND NOW**, this 31st day of May 2022, based upon the foregoing Opinion, the Defendant's oral motion for Discovery requesting to obtain the mental health records of the complainant is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (TB)  
Michael C. Morrone, Esq.

NLB/