

DOCKET NO. WWM-15-6009136S

MELANIE PEREZ : SUPERIOR COURT

VS. : JUDICIAL DISTRICT OF
WINDHAM AT PUTNAM

STATE OF CONNECTICUT,
JUDICIAL DEPARTMENT : MARCH 10, 2016

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO SEAL

Plaintiff hereby submits this Memorandum in support of her Motion to Seal filed on March 2, 2016 (Doc. No. 124.00).

By way of the Motion to Seal, Plaintiff seeks to seal two expert disclosures (Doc. Nos. 122.00 and 123.00) containing confidential medical information of Plaintiff which were filed with the Court on March 1, 2016. These documents were filed unredacted with the court inadvertently rather than being lodged with the court in their unredacted form and Plaintiff therefore promptly sought a Motion to Seal on an emergency basis in connection with the documents in question. Plaintiff has an overriding interest in the confidentiality of the information contained in these disclosures justifying an Order of the Court sealing them.

Defendant does not oppose the sealing of these documents.

**THE COURT SHOULD ORDER SEALING OF THE DOCUMENTS AT ISSUE
PURSUANT TO PRACTICE BOOK § 11-20A(c)**

Pursuant to Practice Book § 11-20A(c), the Court "may order that files, affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding be sealed or their disclosure limited only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to

override the public's interest in viewing such materials." Here, the order sealing Doc. Nos. 122.00 and 123.00 is necessary to preserve Plaintiff's interest in the confidentiality of private medical information, which overrides the public's interest in viewing that information.

PLAINTIFF'S INTEREST IN THE CONFIDENTIALITY OF HER MEDICAL INFORMATION OVERRIDES THE PUBLIC INTEREST IN VIEWING THE MATERIAL

The interest at state here – the confidentiality of Plaintiff's medical information – is, without question, one that is protected by law. An individual's interest in maintaining the confidentiality of her private medical information is so overriding an interest that it has been codified in both state and federal law. The important interest in preserving the confidentiality of an individual's medical information has been codified in HIPAA, the Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320d, et seq. Likewise, Conn. Gen. Stat. 52-146o articulates a privilege applicable to communications between a patient and a physician or other health care provider. That privilege is applicable to the information contained within the documents Plaintiff seeks to seal. The clear public policy in favor of the interest at issue here demonstrates that it is a compelling interest. On the other hand, the public's interest in accessing Plaintiff's private medical information is minimal.

An individual's substantial privacy interest in his or her medical records and information has been recognized by Connecticut courts as an interest overriding the public interest in disclosure of those documents and justifying sealing of such records and information. "Judges of the Superior Court have found that an individual's privacy interest in his medical records may override the public's interest in open judicial proceedings. See *Noll v. Hartford Roman Catholic Diocesan Corp.*, Superior Court,

judicial district of Hartford, Docket No. CV-02-4034702-S (September 16, 2008, Shapiro, J.) (citing Health Insurance Portability and Accountability Act of 1996 [HIPAA] and concluding that public had only limited interest in deponent's personal medical information but deponent had substantial privacy interest in keeping such information confidential); accord *Tauck v. Tauck*, Superior Court, judicial district of Middlesex, Docket No. FA-05-4004889-S (September 21, 2007, Abery-Wetstone, J.) (granting motion to seal where disclosure of parties' medical records might discourage them from seeking treatment). In the present motion to seal, the defendant relies on HIPAA as support for his asserted interest in maintaining the privacy of his medical information.” *Cavalry SPV I, LLC v. Underkofler*, 2014 WL 683873 at *3 (Conn. Super. Jan. 24, 2014).

Furthermore, the parties to this matter previously agreed to treat, inter alia, medical information and records as confidential, which agreement was submitted in a proposed Protective Order which was approved by the court. Additionally, Defendant does not oppose the sealing of Plaintiff's expert disclosures. While an agreement between the parties to limit disclosure does not alone constitute sufficient basis for an order sealing documents, judges of the Superior Court have considered such agreement in granting motions to seal or limit disclosure. See *Cavalry SPV I, LLC v. Underkofler, supra*, at *3. The Court here should likewise consider the agreement of the parties as a factor in support of sealing these documents.

The information contained in the documents Plaintiff wishes to seal is not otherwise disclosed or discussed in other documents filed with the Court and is unlikely

to be so discussed given that any medical records or information in this matter are governed by the Protective Order in place in this matter. (Doc. No. 125.00).¹

In addition to the fact that Plaintiff, as any citizen, has an overriding interest in the confidentiality of her medical information, Plaintiff is a probation officer within the Judicial Branch and is rightly concerned regarding the availability of her confidential medical information to the public, particularly its easy availability on the electronic docket.

**SEALING THE DOCUMENTS IS NOT BROADER THAN NECESSARY TO
PROTECT PLAINTIFF'S OVERRIDING INTEREST IN THE CONFIDENTIALITY OF
HER MEDICAL INFORMATION**

Plaintiff seeks only to seal two expert disclosures of her healthcare providers which contain confidential medical information of Plaintiff. Plaintiff's request is narrowly

¹ Plaintiff notes that judges of the Superior Court have, on occasion, denied requests for sealing of medical records. However, those instances involve information sought to be sealed which was otherwise available in the public domain or which had been extensively disclosed through public filings for which sealing was not sought. See e.g. *Sienkiewicz v. Ragaglia*, Superior Court, judicial district of Fairfield, Docket No. CV-10-6008363 (March 2, 2011, Arnold, J.) (denying motion to seal where parties' filings and court's decisions in prior action contained materially all information sought to be sealed in current action) and *O'Dell v. Greenwich Healthcare Services, Inc.*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-11-6008364-S (April 25, 2013, Adams, J.) (denying motion to seal where information sought to be sealed was thoroughly and extensively discussed in other memoranda and pleadings). Unlike those cases, Plaintiff here has not voluntarily placed the medical information in the public domain except through inadvertent disclosure in the documents she now seeks to have sealed. The medical information contained in the documents Plaintiff seeks to seal is not otherwise contained in any document or pleading filed with the Court. Because the contents of the medical information Plaintiff seeks to seal were not otherwise part of the filings in this matter, sealing is appropriate. *Provost-Daar v. Merz Aesthetics, Inc.* 2016 WL 720488 at * (Conn. Super. January 29, 2016) (granting motion to seal medical records where "plaintiff's privacy interest in the information in the medical documents overrides the public's interest in viewing the material"). Likewise, as in *Provost-Daar*, the agreement by the parties to treat medical information as confidential information by way of a protective order approved by the Court (Doc. No. 118.00) is instructive. Other than through the inadvertent disclosure in the documents Plaintiff now seeks to seal, the contents of the medical information Plaintiff seeks to be sealed has never been discussed in any filings with the Court excepting a basic description of Plaintiff's hearing disability in her Complaint.

tailored and is no broader than necessary to protect her overriding privacy interest in her medical information.

Practice Book § 11-20A(c) also states that "The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest." Here, the sealing of these expert witness disclosures is not broader than necessary to protect Plaintiff's overriding privacy interest in the confidentiality of her medical information. Nevertheless, the Court may consider alternatives such as redacting Plaintiff's medical information contained in Doc. Nos. 122.00 and 123.00 or, in the alternative, restricting public internet access to the same.

Sealing the disclosures themselves is not broader than necessary. However, to the extent that the Practice Book requires the Court to consider alternatives, Plaintiff posits that redaction of the confidential medical information in the disclosures, leaving the names of the witnesses disclosed and the fact of disclosure unredacted, may be a reasonable alternative. Plaintiff noted in her caseflow request regarding the Motion to Seal, Doc. No. 125.00, that the expert disclosures she seeks to have sealed were mistakenly filed with the Court in unredacted form. As such, the Court has before it an alternative to sealing the documents in their entirety, which is to allow for redaction of Plaintiff's confidential medical information contained therein. Another alternative the Court may consider is to restrict public internet access of the filings in question so that they are not easily and electronically available to the public.

PLAINTIFF HAS COMPLIED WITH THE PRACTICE BOOK

On March 1, 2016, Plaintiff filed the expert disclosures at issue here. On March 2, 2016, Plaintiff filed a motion to seal the disclosures. On March 3, 2016, the Court ordered that the motion to seal be heard on the short calendar on March 14, 2016 . Plaintiff now files this Memorandum in support of that motion. As such, the requirements of the Practice Book have been complied with. On March 4, 2016, Defendant filed a Reply to Plaintiff's Motion to Seal, noting that it did not object to the sealing of the documents Plaintiff seeks to have sealed. Defendant claimed in its reply that Plaintiff had not followed the rules regarding sealing because (1) Plaintiff had not filed a memorandum in support of the motion and (2) Plaintiff's Motion had not been on short calendar for fifteen days. Defendant's first argument is rendered moot by the filing of this Memorandum of Law. Defendant's second argument relies on a misreading of the Practice Book. Practice Book § 11-20A(f)(1) provides that a motion to seal *an entire court file* "shall be placed on the short calendar not less than fifteen days following the filing of the motion, *unless the judicial authority otherwise directs...*" Defendant's argument is flawed because Practice Book § 11-20A(f)(1) is not applicable here since does Plaintiff not seek to seal the entire court file in this matter.² In any event, the applicable section of the Practice Book, 11-20A(e), which states that "[e]xcept as otherwise ordered by the judicial authority, a motion to seal or limit the disclosure of affidavits, documents, or other materials, on file or lodged with the court or in connection with a court proceeding shall be calendared so that notice to the public is given of the

² Furthermore, even in the case of a motion to seal an entire court file, pursuant to Practice Book § 11-20A(f)(1), the Court may, in its discretion, place such a motion on the short calendar for less than fifteen days.

time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration.” Here, on March 3, 2016, the Court placed Plaintiff’s Motion to Seal on the short calendar for March 14, 2016. Therefore, the Practice Book has been complied with and Defendant’s arguments are moot.

WHEREFORE, for all of the foregoing reasons, Plaintiff respectfully requests that the Court GRANT her Motion to Seal and order that Doc. Nos. 122.00 and 123.00 previously filed with the Court be placed under seal.

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CERTIFICATION OF SERVICE

This is to certify that a copy of the foregoing was sent by first class mail on this 10TH Day of March, 2016 to the following counsel of record:

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2014 WL 683873

UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

Superior Court of Connecticut,
Judicial District of New Haven.

CAVALRY SPV I, LLC

v.

Sean UNDERKOFER.

No. NNHCV136037939.

|
Jan. 24, 2014.

Attorneys and Law Firms

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SPV I, LLC.

Opinion

NAZZARO, J.

*1 At issue is the defendant's motion to seal. For the reasons set forth below, the court finds the privacy interest sought to be protected outweighs the public's interest in obtaining essentially private medical information. The court further finds that a reasonable alternative to sealing exists in the form of redaction. The motion is granted in part.

FACTS AND PROCEDURAL HISTORY

On April 9, 2013, the plaintiff, Cavalry SPV I, LLC, commenced this action by service of a summons and two-count complaint on the defendant, Sean Underkofler. The defendant, who is self-represented, filed a motion to dismiss the complaint on May 21, 2013, and a motion to quash the plaintiff's discovery requests on July 17, 2013.¹ On September 24, 2013, the defendant filed the present "Motion to Seal Personal Identifying Information (PB 11-20B or PB 25-59B)" (motion to seal) and an "Addendum to his Response to Plaintiff's Objection to Defendant's Motion to Dismiss" (addendum). The defendant moves to seal Exhibit B to the addendum, which consists of two letters written by his treating physicians, dated July 18, 2006, and January 19, 2007. When the matter was heard at short calendar on October

28, 2013, the plaintiff represented to the court that it does not oppose the motion to seal.

DISCUSSION

Practice Book § 11-20A governs the sealing of files in civil cases.² This section provides that an agreement between the parties is not a sufficient basis for granting a motion to seal. Practice Book § 11-20A(c); see also *Bank of New York v. Bell*, 120 Conn.App. 837, 846, 993 A.2d 1022, cert. denied, 298 Conn. 917, 4 A.3d 1225 (2010) ("The right to have documents sealed is not a right the parties have as against each other; the court must determine the question as against the demands of the public interest" [internal quotation marks omitted]). Accordingly, the following subsections of Practice Book § 11-20A are relevant to the court's consideration of the present motion to seal:

"(a) Except as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public.

"(b) Except as provided in this section and except as otherwise provided by law, including Section 13-5, the judicial authority shall not order that any files, affidavits, documents, or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited.

"(c) Upon written motion of any party, or upon its own motion, the judicial authority may order that files, affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding be sealed or their disclosure limited only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing such materials. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to seal or limit the disclosure of documents on file with the court or filed in connection with a court proceeding shall not constitute a sufficient basis for the issuance of such an order.

*2 "(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of

such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file and publish by posting both on the judicial branch website and on a bulletin board adjacent to the clerk's office and accessible to the public. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

“(e) Except as otherwise ordered by the judicial authority, a motion to seal or limit the disclosure of affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding shall be calendared so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with a motion to file affidavits, documents or other materials under seal or to limit their disclosure.

“(g) With the exception of any provision of the General Statutes under which the court is authorized to seal or limit the disclosure of files, affidavits, documents, or other materials, whether at a pretrial or trial stage, any person affected by a court order that seals or limits the disclosure of any files, documents or other materials on file with the court or filed in connection with a court proceeding, shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. Nothing under this subsection shall operate as a stay of such sealing order ...

“(j) When placed on a short calendar, motions filed under this rule shall be listed in a separate section titled “Motions to Seal or Close” and shall also be listed with the time, date and place of the hearing on the Judicial Branch website. A notice of such motion being placed on the short calendar shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk's office and accessible to the public.” Practice Book § 11-20A.

“[Practice Book] § 11-20A codifies the common-law presumption of public access to judicial documents ...” *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 292 Conn. 1, 30, 970 A.2d 656, cert. denied sub. nom. *Bridgeport*

Roman Catholic Diocesan Corp. v. New York Times Co., 558 U.S. 991, 130 S.Ct. 500, 175 L.Ed.2d 348 (2009). “The presumption of openness of court proceedings ... is a fundamental principle of our judicial system ... This policy of openness is not to be abridged lightly. In fact, the legislature has provided for very few instances in which it has determined that, as a matter of course, certain privacy concerns outweigh the public's interest in open judicial proceedings.” (Internal quotation marks omitted.) *Bank of New York v. Bell*, *supra*, 120 Conn.App. at 846.

*3 “[T]he Superior Court has opined that, in order to overcome the [Practice Book] § 11-20A presumption in favor of public access to judicial documents, a specific injury which would unfairly harm the parties must be shown and the sealing must be narrowly tailored to it.” (Internal quotation marks omitted.) *Redmond v. Promotico*, Superior Court, judicial district of New Haven, Docket No. CV-12-6029399-S (October 16, 2012, Wilson, J.) (54 Conn. L. Rptr. 828, 829). Thus, the threshold inquiry in the present case is whether the defendant's privacy interest in the medical information contained in Exhibit B justifies a sealing order.³

Judges of the Superior Court have found that an individual's privacy interest in his medical records may override the public's interest in open judicial proceedings. See *Noll v. Hartford Roman Catholic Diocesan Corp.*, Superior Court, judicial district of Hartford, Docket No. CV-02-4034702-S (September 16, 2008, Shapiro, J.) (citing Health Insurance Portability and Accountability Act of 1996 [HIPAA] and concluding that public had only limited interest in deponent's personal medical information but deponent had substantial privacy interest in keeping such information confidential); accord *Tauck v. Tauck*, Superior Court, judicial district of Middlesex, Docket No. FA-05-4004889-S (September 21, 2007, Abery-Wetstone, J.) (emphasizing private nature of family matters and granting motion to seal where disclosure of parties' medical records might discourage them from seeking treatment). In the present motion to seal, the defendant relies on HIPAA as support for his asserted interest in maintaining the privacy of his medical information.⁴ Here, the court finds that the defendant's privacy interest overrides the public's interest in viewing the personal medical information. Nondisclosure in the public domain protects and advances a party's privacy concerns. Notably, the plaintiff poses no objection to sealing such documents.

It is incumbent on this court to consider reasonable alternatives to a sealing order, such as redaction. See Practice

Book § 11–20A(c). In undertaking this consideration, it is noted that where information is already in the public domain, no useful purpose would be served by limiting the public's access through a motion to seal. See *Sienkiewicz v. Ragaglia*, Superior Court, judicial district of Fairfield, Docket No. CV–10–6008363 (March 2, 2011, Arnold, J.) (denying motion to seal where parties' filings and court's decisions in prior action contained materially all information sought to be sealed in current action). Moreover, the privacy interest that justifies sealing personal medical information does not obtain with respect to information a party has voluntarily placed in issue in the litigation. *O'Dell v. Greenwich Healthcare Services, Inc.*, Superior Court, judicial district of Stamford–Norwalk, Docket No. CV–11–6008364–S (April 25, 2013, Adams, J.) (denying motion to seal exhibits whose “contents ... are quite thoroughly and openly discussed in memoranda and affidavits submitted in connection with [the motion for] summary judgment”).

*4 In the present case, the defendant discusses much of the medical information contained in Exhibit B in his reply to the plaintiff's objection to the motion to dismiss. See Docket Entry # 111. Notwithstanding this partial disclosure, the defendant maintains a privacy interest in the undisclosed information sufficient to override the presumption of public access. The court finds that redacting the undisclosed information, which is contained in the letter dated July 18, 2006, is a reasonable alternative to sealing that will effectively advance the defendant's privacy interest in this information.

Footnotes

- 1 On November 4, 2013, the court denied both motions.
- 2 Preliminarily, it is noted that although the defendant titled the present motion “Motion to Seal Personal Identifying Information (PB 11–20B or PB 25–59B),” both of these Practice Book sections are irrelevant. Practice Book § 11–20B provides in relevant part: “If a document containing personal identifying information is filed with the court, a party or a person identified by the personal identifying information may request that the document containing the personal identifying information be sealed.” Exhibit B does not contain any “personal identifying information” as that term is defined. See Practice Book § 4–7(a). Practice Book § 25–59B is also irrelevant as it pertains to the sealing of personal identifying information in family matters.
- 3 This inquiry is hampered by the defendant's failure to comply with Practice Book § 7–4B, which provides in relevant part: “The motion [to seal] must be accompanied by an appropriate memorandum of law to justify the sealing or limited disclosure.” Nevertheless, the Supreme Court has recognized “the established policy of the Connecticut courts to be solicitous of [self-represented] litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the [self-represented] party.” (Internal quotation marks omitted.) *Equity One, Inc. v. Shivers*, 310 Conn. 119, 136 n. 13, 74 A.3d 1225 (2013).
- 4 Specifically, the defendant states that he “does not waive his right to confidentiality of his privileged medical information under HIPAA federal law protection, and has redacted some identifying confidential and irrelevant information.” It is unclear whether the defendant relies on HIPAA as a basis for asserting a privacy interest that warrants sealing or merely

CONCLUSION

On the basis of the foregoing findings, the court issues the following order. There exists a reasonable alternative to sealing in the form of redacting that information which the defendant has not previously disclosed in public filings with the court. Accordingly, the defendant shall e-file a copy of Exhibit B from which he has redacted the fourth, fifth, and sixth sentences of the letter dated July 18, 2006. Pursuant to Practice Book § 11–20A(d), the unredacted copy of Exhibit B lodged with the court will remain sealed for the duration of this litigation and any appeal period thereafter. The contents may be disclosed upon further leave of the court. Furthermore, pursuant to Practice Book § 11–20A(g), “any person affected by a court order that seals or limits the disclosure of any files, documents or other materials on file with the court or filed in connection with a court proceeding, shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order.”

It is so ordered.

All Citations

Not Reported in A.3d, 2014 WL 683873, 57 Conn. L. Rptr. 535

as a justification for having redacted the letters. An examination of the letters indicates that the defendant has redacted the names of the physicians who wrote them.

End of Document

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2016 WL 720488

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of New Haven.

Terasia PROVOST-DAAR, et al.

v.

MERZ AESTHETICS, INC., et al.

No. CV136037872S.

Jan. 29, 2016.

Attorneys and Law Firms

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WILSON, J.

FACTS

*1 On April 16, 2013, the plaintiffs, Terasia Provost-Daar and Bradley Daar (plaintiffs) commenced this informed consent action against the defendants, Merz Aesthetics, Inc., Merz Pharmaceuticals, LLC, Merz Incorporated (collectively Merz), Zachary G. Klett, M.D. and Klett Oculoplastic Surgery, P.C. (defendants).¹ In the operative complaint, which is dated July 6, 2015, the plaintiffs allege the following. On January 17, 2011, Terasia Provost-Daar presented to Dr. Zachary Klett, an ophthalmologist and oculoplastic surgeon, for a consultation to “discuss facial wrinkles and skin rejuvenation to slow signs of aging on her face.” The plaintiffs claim that, during the January 17, 2011 visit, Dr. Klett recommended a product known as “Radiesse” to address these issues. The plaintiffs allege that Radiesse is manufactured by Merz, the co-defendant, and is “a trademarked volumizing derma filter marketed to be injected into the skin on the face to counter visible wrinkles, facial folds and signs of skin aging.” The plaintiffs allege that Dr. Klett injected Radiesse into Provost-Daar’s face during the January 17, 2011 visit, and that as a result of the

Radiesse injections, Provost-Daar developed certain injuries, including infections and a “biofilm commonly associated with infectious growth on implants placed in the human body.” The plaintiffs allege that Dr. Klett failed to obtain Provost-Daar’s informed consent before injecting her face with Radiesse on January 17, 2011. Specifically, the plaintiffs allege that Dr. Klett failed to warn Provost-Daar of Radiesse’s “risks, dangers and side effects, to wit, that it was a semi-solid implant that could form a dangerous biofilm if injected with bacteria and cause a bacterial infection, which may require surgery to remove.” With regard to the co-defendant, Merz, the plaintiffs claim that the Radiesse injected into Provost-Daar’s face was defective and are seeking to recover against Merz under a product liability theory. The plaintiff, Bradley Daar has asserted a claim for loss of consortium.

Both the plaintiffs and Merz have filed motions to seal plaintiff Provost-Daar’s medical records that have been attached as exhibits to plaintiffs’ objection to defendant Klett’s motion for summary judgment, and as exhibits to Merz’ motion to reargue/reconsider part of the court’s December 16, 2015 Order Regarding Motion for Commission to Conduct Out-of-State Deposition. The court heard oral argument on both motions on January 25, 2016 at short calendar.

DISCUSSION

The trial court has the inherent authority to moderate the discovery process by imposing protective orders under appropriate circumstances. See *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 276 Conn. 168, 221–22 n. 59, 884 A.2d 981 (2005). The Supreme Court has “long recognized that the granting or denial of a discovery request rests in the sound discretion of the [trial] court ...” (Internal quotation marks omitted.) *Barry v. Quality Steel Products, Inc.*, 280 Conn. 1, 16–17, 905 A.2d 55 (2006).

*2 In relevant part, Practice Book § 13–5 provides, “for good cause shown, the judicial authority may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: ... (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters ...”

Practice Book § 11–20A governs the sealing or limiting of disclosure of documents in civil cases. “Except as otherwise provided by law, there shall be a presumption that documents

filed with the court shall be available to the public.” Practice Book § 11–20A(a). Thus, as a general rule, “the judicial authority shall not order that any ... documents ... on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited.” Practice Book § 11–20A(b). Nevertheless, “the judicial authority may order that [such documents] be sealed or their disclosure limited ... if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing such materials.” Practice Book § 11–20A(c). Prior to issuing an order sealing or limiting the disclosure of documents, “[t]he judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest.” *Id.* Finally, “[i]n connection with any order issued pursuant to subsection (c) ... the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order.” Practice Book § 11–20A(d).

“[Section] 11–20A codifies the common-law presumption of public access to judicial documents, meaning any document filed with the court that the court reasonably could rely on in support of its adjudicatory function.” *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 292 Conn. 1, 30, 970 A.2d 656, cert. denied sub nom. *Bridgeport Roman Catholic Diocesan Corp. v. New York Times Co.*, 130 S.Ct. 500, 175 L.Ed.2d 348 (2009). “The presumption of openness of court proceedings ... is a fundamental principle of our judicial system ... This policy of openness is not to be abridged lightly. In fact, the legislature has provided for very few instances in which it has determined that, as a matter of course, certain privacy concerns outweigh the public's interest in open judicial proceedings ... The right to have documents sealed is not a right the parties have as against each other; the court must determine the question as against the demands of the public interest.” (Citation omitted; internal quotation marks omitted.) *Bank of New York v. Bell*, 120 Conn.App. 837, 846, 993 A.2d 1022, cert. denied, 298 Conn. 917, 4 A.3d 1225 (2010).

“It is difficult to distill from the relatively few judicial decisions a comprehensive definition of what is referred to as the common-law right of access or to identify all the factors to be weighed in determining whether access is appropriate. The few cases that have recognized such a right do agree that the decision as to access is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular

case.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598–99, 98 S.Ct. 1306, 55 L.Ed. 2d 570 (1972). In exercising its discretion, this court fully acknowledges that “however painful or embarrassing the disclosure of information may be, such disclosure must be carefully balanced against the public's right to know ... or at least to be able to know, if it so chooses ..., what is happening in our courthouses .” *Soroka v. Household Automotive Finance Corp.*, Superior Court, Judicial District of New Haven, Docket No. CV 04 4000300 (Apr. 30, 2007, Silbert, J.) [43 Conn. L. Rptr. 481].

*3 “[T]he Superior Court has opined that, in order to overcome the [Practice Book] § 11–20A presumption in favor of public access to judicial documents, a specific injury which would unfairly harm the parties must be shown and the sealing must be narrowly tailored to it.” (Internal quotation marks omitted.) *Redmond v. Promotico*, Superior Court, judicial district of New Haven, Docket No. CV–12–6029399–S (October 16, 2012, Wilson, J.) (54 Conn. L. Rptr. 828, 829).

As background, the court, Blue, J., in the present case, previously granted a motion for protective order in which the defendant, Merz requested that certain information, including the plaintiff's, medical records be sealed. Notwithstanding Judge Blue's previous order, the threshold inquiry for this court relative to the plaintiff's and defendant's Merz' present motions to seal, is whether, the plaintiff's privacy interest in the medical information contained in the exhibits attached to plaintiff's objection and opposition to defendant, Klett's motion for summary judgment, and medical information contained in exhibits 1 and 2 attached to defendant, Merz' motion to reargue part of the court's December 16, 2015 order regarding a Motion For Commission to Conduct Out-of-State Deposition, justifies a sealing order.

“Judges of the Superior Court have found that an individual's privacy interest in his or her medical records may override the public's interest in open judicial proceedings. See *Noll v. Hartford Roman Catholic Diocesan Corp.*, Superior Court, judicial district of Hartford, Docket No. CV–02–4034702–S (September 16, 2008, Shapiro, J.) (citing Health Insurance Portability and Accountability Act of 1996 [HIPAA] and concluding that public had only limited interest in deponent's personal medical information but deponent had substantial privacy interest in keeping such information confidential); accord *Tauck v. Tauck*, Superior Court, judicial district of Middlesex, Docket No. FA–05–4004889–S (September 21, 2007, Abery–Wetstone, J.) (emphasizing private nature of family matters and granting motion to seal where disclosure

of parties' medical records might discourage them from seeking treatment)." *Calvary SPVI, LLC v. Underkofler*, Superior Court, judicial district of New Haven, Docket No. CV-136037939 (January 24, 2014, Nazzaro, J.) [57 Conn. L. Rptr. 535].

In the present motions to seal, the plaintiff and defendant, although not specifically cited, presumably rely on HIPAA, and certain Connecticut statutes which protect the privacy of an individual's medical information, as support for their asserted interest in maintaining the privacy of the plaintiffs medical information. Among the medical records sought to be sealed are plaintiff's treatment with various health providers, including psychiatric records, that contain very private and personal information, and, that also contain communications, relating to her medical conditions.

" '[T]he people of this state enjoy a broad privilege in the confidentiality of their psychiatric communications and [medical] records ... and the principal purpose of that privilege is to give the patient an incentive to make full disclosure to a physician in order to obtain effective treatment free from the embarrassment and invasion of privacy which could result from a doctor's testimony ... Accordingly, the exceptions to the general rule of nondisclosure of communications between psychiatrist and patient were drafted narrowly to ensure that the confidentiality of such communications would be protected unless important countervailing considerations required their disclosure.' (Citations omitted; internal quotation marks omitted.) *Falco v. Institute of Living*, *supra*, 254 Conn. at 328. '[I]t is contrary to the language of the statute and the intent of the legislature for courts to make discretionary case-by-case determinations of when the privilege may be overridden.' *Id.*, at 331. See also *Hethcote v. Norwich Roman Catholic Diocesan Corp.*, Superior Court, Complex Litigation Docket at Middletown, Docket No. X04 CV 05 4003450 (April 3, 2007, Beach, J.) [43 Conn. L. Rptr. 196] (no exception to confidentiality in § 52-146e, which pertains to communications to a psychiatrist, for situations in which child abuse is known or in good faith suspected); *Girard v. Girard*, Superior Court, judicial district of Hartford at Hartford, Docket No. CV 03 0825089 (February 10, 2005, Beach, J.) (38 Conn. L. Rptr. 704) (different criterion applies to records subject to psychologist-patient privilege under § 52-146c)." *Noll v. Hartford Roman Catholic Diocesan Corp.*, *supra*, Superior Court, at Docket No. CV-02-4034702-S.

*4 In addition, "[i]t is incumbent on this court to consider reasonable alternatives to a sealing order, such as redaction. See Practice Book § 11-20A(c). In undertaking this consideration, it is noted that where information is already in the public domain, no useful purpose would be served by limiting the public's access through a motion to seal. See *Sienkiewicz v. Ragaglia*, Superior Court, judicial district of Fairfield, Docket No. CV-10-6008363 (March 2, 2011, Arnold, J.) (denying motion to seal where parties' filings and court's decisions in prior action contained materially all information sought to be sealed in current action). Moreover, the privacy interest that justifies sealing personal medical information does not obtain with respect to information a party has voluntarily placed in issue in the litigation. *O'Dell v. Greenwich Healthcare Services, Inc.*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-11-6008364-S (April 25, 2013, Adams, J.) (denying motion to seal exhibits whose 'contents ... are quite thoroughly and openly discussed in memoranda and affidavits submitted in connection with [the motion for] summary judgment')." *Calvary SPVI, LLC v. Underkofler*, *supra*, Superior Court, at Docket No. CV-136037939.

Here, from the outset, dating back to October 2013, the parties sought and was granted a protective order regarding medical information contained in the plaintiff's file. Since the granting of that protective order, for each pretrial motion and memorandum filed since that date, the parties have lodged the plaintiff's medical information, including the motions and memoranda themselves which reference the plaintiff's medical information, with the clerk's office, which they have deemed covered by that protective order. Thus, the court therefore cannot conclude that the contents of the medical information sought to be sealed were quite thoroughly and openly discussed in memoranda and affidavits submitted in connection with the pretrial motions filed in this case. Given the very private and sensitive nature of the plaintiff's medical records sought to be sealed, the court finds that the plaintiff, and defendant Merz have maintained a privacy interest in plaintiff's medical records which overrides the public's interest in viewing plaintiff's personal medical information. In addition, given the voluminous documents of medical records, a reasonable alternative to sealing does not exist. In addition, nondisclosure in the public domain protects and advances the plaintiff's privacy concerns.

CONCLUSION

On the basis of the foregoing findings, the court issues the following order. Pursuant to Section 11-20A of the Connecticut Practice Book, the court finds that:

- (1) The plaintiff Provost-Daar's medical records are entitled to remain confidential; and
- (2) The plaintiff's privacy interest in the information in the medical documents overrides the public's interest in viewing the material.
- *5 (3) Given the voluminous medical documents involved, there is no reasonable alternative to protect the plaintiff's privacy interest.

Therefore, the plaintiff Provost-Daar's medical records and any pretrial motions/pleadings referencing said medical records are hereby ordered sealed pursuant to Section 11-20A(e) of the Connecticut Practice Book. This order covers all of the plaintiff's medical records that are the subject of this litigation and therefore, as a hearing has already been held in accordance with Practice Book § 11-20A, no further hearings are necessary regarding the plaintiff's medical records, unless the parties request same or same is hereby ordered by the court. Said medical records, and any documents/pre-trial

motions/affidavits which reference the plaintiff's medical records or have attached thereto said medical records, that have already been lodged with the court pursuant to Judge Blue's previous order, will remain sealed for the duration of this litigation and any appeal period thereafter. The contents may be disclosed upon further leave of the court. This order pertains specifically to plaintiff's medical records. It does not cover Merz' request to seal documents pertaining to its proprietary interests and/or trade secrets which may be the subject of further hearings. Furthermore, pursuant to Practice Book § 11-20A(g), "any person affected by a court order that seals or limits the disclosure of any files, documents or other materials on file with the court or filed in connection with a court proceeding shall have the right to the review of such order by the filing of a petition for review with the Appellate Court within seventy-two hours from the issuance of such order."

It is so ordered.

All Citations

Not Reported in A.3d, 2016 WL 720488

Footnotes

- 1 One of the motions to seal (# 224) presently before this court was filed by the Merz defendants. Thus, the court's reference to the defendants in ruling on this motion is with regard to the Merz defendants.

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