

The Superior Court of Pennsylvania Clarifies the Discoverability of Mental Health Records in Personal Injury Lawsuits

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In two recently released opinions, the Superior Court of Pennsylvania held that a personal injury lawsuit including related allegations of emotional harm, in and of itself, is insufficient to waive the statutory psychiatrist/psychologist-patient privilege or the protections of the Pennsylvania Mental Health Procedures Act, which preclude the disclosure of certain kinds of mental health records. See *Boyle v. Main Line Health, Inc.*, 2022 Pa. Super. Unpub. LEXIS 71 (Jan. 10, 2022) (non-precedential decision); *Tavella Zirilli v. Ratner Companies, L.C.*, 2021 Pa. Super. 240 (Dec. 8, 2021).

The key question in both cases is: does the initiation of a personal injury lawsuit where emotional injuries are an alleged component of the harm suffered automatically waive the protections of the psychiatrist/psychologist-patient privilege and/or the Pennsylvania Mental Health Procedures Act and permit defendants in those cases to obtain unfettered access to the plaintiff's mental health records? Although in these two cases the Superior Court held that general averments of emotional and mental pain and suffering do not sufficiently put a plaintiff's mental health at issue so as to constitute waiver of the psychiatrist/psychologist-patient privilege, the court provided some insight into what kinds of allegations would be sufficient to waive the privilege.

In *Boyle*, the court suggested, but did not expressly hold, that an independent claim for negligent infliction of emotional distress would be sufficient to waive the privilege but a claim for loss of consortium would not. The *Boyle* court further distinguished between cases where a plaintiff alleges having experienced anxiety during a discrete incident (no waiver) as opposed to cases where a plaintiff claims that the defendant's negligence actually caused the development of a mental health disorder like anxiety (waiver). The court's prior decision in *Tavella-Zirilli* followed this line of reasoning. In that case, the court reached a compromise solution – allowing the discovery of the plaintiff's mental health records, which contained information regarding the emotional manifestations of her physical injuries, while requiring the redaction of any actual communications between the plaintiff and her psychologist pursuant to the psychiatrist/psychologist-patient privilege.

Many litigants bringing lawsuits do not necessarily appreciate the extent to which allegations of emotional harm may place their otherwise privileged mental health records at issue and make them discoverable in their case. Likewise, many defense attorneys assume, incorrectly, that once a person brings a lawsuit for personal injuries, any and all medical records of any kind become discoverable. However, that is not the case. Accordingly, regardless of the nature of the plaintiff's claims or the allegations in the complaint, defense attorneys should carefully develop the underlying factual record in an effort to demonstrate that a prior mental health condition could contribute to the development of the alleged physical injuries, impact the plaintiff's ability to work, or affect the plaintiff's relationship with family members. A well-established factual record will best position defense attorneys to obtain potentially helpful information contained in a plaintiff's mental health records.

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