



The goal of our monthly newsletter is to keep you abreast of changes in the legislature affecting your industry as well as important court decisions. Should you have any questions regarding any of this information, please feel free to contact us via phone or email.

## PA Superior Court Upholds Confidentiality of Non-Party Medical Records

On September 25, 2013, the Superior Court upheld Cumberland County trial court's denial of plaintiff's motion to compel medical records of non-party patients. In *Lykes v. Yates*, the plaintiff sued Dr. Yates, a plastic surgeon, for medical malpractice because he used Gold Bond powder as part of post-surgical wound care. The plaintiff sought redacted medical records of Dr. Yates' prior patients on whom he used Gold Bond powder. The trial court denied plaintiff's motion, and after a jury returned a defense verdict, the plaintiff appealed.

The Superior Court acknowledged that a health care provider may disclose medical information without violating HIPAA, but that Pennsylvania still required courts to use a balancing test when deciding whether to disclose medical information without a patient's permission. Citing two prior Superior Court decisions, *Buckman v. Verazin*, and *Stenger v. Lehigh Valley Hospital Center*, the court identified the factors to be considered, which include the potential for harm, the adequacy of safe guards to prevent unauthorized disclosure, the degree of need for access, whether there is an expressed statutory mandate, and the public policy and public interest concerns.

The plaintiff argued extreme prejudice because Dr. Yates led the jury to believe that it was within the standard of care to use Gold Bond powder, and the plaintiff was unable to sufficiently cross-examine without the other patients' medical records. The Court disagreed, quoting *Buckman* and citing another Superior Court decision, *Passarello v. Grumbine*, stating, "The law in Pennsylvania only allows consideration of whether the care a physician rendered [falls] below the standard of care established by expert testimony."

The Court noted that actions taken by a defendant doctor when caring for previous patients are not necessary to prove a breach. The Court acknowledged that redacted medical records may be discoverable if deemed necessary to establish negligence, but that the plaintiff in *Lykes* did not need the records to establish negligence.

The Court also found that the trial court did not abuse its discretion by allowing Dr. Yates to testify at trial that he has used Gold Bond powder on other patients. The Court noted that a defendant physician is permitted to testify about his or her own experience and that such opinion testimony was relevant to the issue of causation.

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