

**THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY  
IN THE COURT OF COMMON PLEAS**

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<b>ARTHUR ERLE AND NICOLE ERLE,</b>	:	
	:	<b>TRIAL DIVISION- CIVIL</b>
<b>Appellees</b>	:	
	:	<b>January Term, 2010</b>
<b>VS.</b>	:	<b>No. 2378</b>
	:	
<b>THE UNIVERSITY OF PENNSYLVANIA</b>	:	<b>Superior Court No.</b>
<b>HEALTH SYSTEM, d/b/a PENN MEDICINE,</b>	:	<b>2378 EDA 2011</b>
<b>d/b/a PENN MEDICINE, PENNSYLVANIA</b>	:	
<b>HOSPITAL, JANE DOES – 2, JOHN DOE -1</b>	:	
	:	
<b>Appellants</b>	:	

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**OPINION**

**PROCEDURAL HISTORY**

Defendants, The University of Pennsylvania Health System, d/b/a Penn Medicine, d/b/a Penn Medicine, Pennsylvania Hospital appeal this Court’s Order dated August 1, 2011, ordering Defendants to produce the name and address of Plaintiff, Arthur Erle’s roommate at the time of the alleged injury of January 23-34, 2008.

**FACTUAL BACKGROUND**

Plaintiffs commenced this action by filing a Complaint on May 7, 2010. (See Docket). Plaintiff, Arthur Erle was admitted to Pennsylvania Hospital on January 23, 2008 for a restorative proctocolectomy with ileal pouch anal anastomosis and temporary loop ileostomy. (Amended Complaint, ¶ 21). Following the surgery, Plaintiff was placed in Room 434 with a roommate, identified in the caption as John Doe 1. (Amended Complaint, ¶ 23). In the early morning hours of January 23, 2008, Plaintiff’s roommate was attempting to walk to the bathroom unassisted by hospital personnel when he fell on

top of Arthur Erle in his hospital bed. (Amended Complaint, ¶¶ 24-25). Plaintiff then tried to remove his roommate from his person and called for help. (Amended Complaint, ¶¶ 26-27). Subsequently, hospital personnel temporarily placed Plaintiff's roommate in restraints. (Amended Complaint, ¶ 29). On January 28, 2008, Plaintiff was taken back to the operating room for wound exploration and approximation of the fascia with interrupted maxon sutures. (Amended Complaint, ¶ 30). Plaintiff alleges that the combined negligence of Plaintiff's roommate and hospital personnel necessitated a second surgery, which resulted in a longer recovery period, extensive scarring and disfigurement, and additional time lost from work. (Amended Complaint, ¶¶ 30-32).

On May 11, 2011,<sup>1</sup> this Court ordered Defendants, University of Pennsylvania Health System and Pennsylvania Hospital (hereinafter "Defendants") to file full and complete Answers to Request for Production of Documents, Expert Witness Interrogatories and Supplemental Request for Production of Documents. (See Docket). On June 15, 2011, Defendants filed an Emergency Motion to Vacate the May 11, 2011 Order and for Reconsideration, or in the Alternative, for Appellate Certification. *Id.* On June 16, 2011,<sup>2</sup> this Court vacated its Order pending Reconsideration. *Id.* On July 21, 2011, Plaintiffs filed a Response to Defendant's Motion for Reconsideration, requesting that the May 11, 2011 Order be reinstated. On August 1, 2011,<sup>3</sup> this Court vacated its Order of June 16, 2011, denying Defendants' Motion for Reconsideration and reinstating its Order of May 11, 2011. *Id.* The Court clarified that Defendants were to produce the name and address of Plaintiff's roommate at the time of the alleged injury of January 23/24, 2008. *Id.*

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<sup>1</sup> Docketed May 18, 2011

<sup>2</sup> Docketed June 17, 2011

<sup>3</sup> Docketed August 2, 2011

On August 31, 2011, Defendants appealed the August 1, 2011 Order. On November 11, 2011, Defendants filed their 1925(b) Statement of Matters Complained of on Appeal.

The issue on appeal is whether this Court erred in requiring Defendants to produce the name and address of Plaintiff's roommate at the time of the alleged injury of January 23/24, 2008, identified in the caption as John Doe 1.

### LEGAL ANALYSIS

"Generally, on review of an order concerning discovery, an appellate court applies an abuse of discretion standard. To the extent that the question involves a pure issue of law, [the] scope . . . of review [is] plenary." *Lockley v. CSX Transp. Inc.*, 2010 Pa. Super. 167, 5 A.3d 383, 388 (2010), quoting *Berkeyheiser v. A-Plus Investigations, Inc.*, 2007 Pa. Super. 336, 936 A.2d 1117, 1125 (2007).

On appeal, Defendants argue that requiring them to reveal the name of Plaintiff's roommate would violate state and federal privacy laws, including the Health Insurance Portability and Accountability Act (HIPAA).

However, HIPAA is not an absolute prohibition. Disclosure of protected health information is permitted in judicial and administrative proceedings:

- (1) Permitted Disclosures. A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:
  - (i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order. 45 C.F.R. §164.512(e)(1)(i).

Moreover, under Pennsylvania law, the physician-patient privilege<sup>4</sup> limits but does not prevent the dissemination of communications between physician and patient.

The physician-patient privilege, codified at 42 Pa.C.S.A. § 5929 provides,

No physician shall be allowed, in any civil matter, to disclose any information which he acquired in attending the patient in a professional capacity, and which was necessary to enable him to act in that capacity, which shall tend to blacken the character of the patient, without consent of said patient, except in civil matters brought by such patient, for damages on account of personal injuries.

As indicated by the statute, only information that tends to blacken the character of a patient is protected from disclosure by the physician-patient privilege. *Soltaniuk v. Metropolitan Life Ins. Co.*, 133 Pa. Super. 139, 143-144, 2 A.2d 501 (1938); *Phillip's Estate*, 295 Pa. 349, 145 A. 437 (1929). The Supreme Court of Pennsylvania has determined, "While identifying data, such as patient's name and address, would tend to reveal communications by the patient, such communications would in no way tend to blacken the character of a patient." *Id.* at 150, 77. See *Woods v. National Life and Accident Ins. Co.*, 347 F.2d 760 (3d Cir. 1965); *Sweeney v. Green*, 116 Pa. Super. 190, 176 A. 849 (1935); *Miller Oral Surgery, Inc. v. Dinello*, 416 Pa. Super. 310, 611 A.2d 232 (1992).

In the instant matter, the Court ordered the Defendants to produce the name and address of Plaintiff Arthur Earle's roommate. As Pennsylvania courts have uniformly held, identifying data does not blacken the character of a patient and therefore is not protected from disclosure under the physician-patient privilege.

In addition, Plaintiff's roommate is the only witness to the incident and therefore possesses relevant information about the course of events giving rise to this litigation.

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<sup>4</sup> 42 Pa.C.S.A. §5929

Therefore, because the identity of Plaintiff's roommate is not protected from disclosure by either federal or state law, and the information that could be provided by Plaintiff's roommate is relevant to the cause of action, the name and address of Plaintiff's roommate should be produced.

### **CONCLUSION**

For the foregoing reasons, this Court respectfully requests that its decision to order Defendants the University of Pennsylvania Health System, d/b/a Penn Medicine, d/b/a Penn Medicine, Pennsylvania Hospital to produce the name and address of Plaintiff Arthur Erle's roommate at the time of the alleged injury of January 23-34, 2008 be

**AFFIRMED.**

**BY THE COURT:**

**2-13-2012**

\_\_\_\_\_  
**DATE**

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**ALLAN L. TERESHKO, J.**

cc:

**All counsel**

Douglas A. Brockman, Esq/Teresa Ficken Sachs, Esq., for Appellant  
Kathleen P. Carmen, Esq., for Appellees