

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

CRIMINAL DIVISION - LAW

COMMONWEALTH OF PENNSYLVANIA	:	
	:	NO. 2007-1371
v.	:	
	:	
DONALD FRANCOIS,	:	
Defendant.	:	
	:	
	:	

ORDER OF COURT

AND NOW, this ____ day of _____ 2008, Defendant's Motion to Compel Discovery is hereby **DENIED**.

STATEMENT OF REASONS

Presently before the Court is Defendant's Motion to Compel Discovery, initially filed October 4, 2007. On November 27, 2007, the Court entered a Rule Returnable in the matter, directing KidsPeace Hospital to appear and produce the records sought by the present motion. After a series of continuances, the matter came before the Court once more on January 11, 2008 at which time the subject records were sealed by the Court. Defendants and KidsPeace were ordered to file briefs in the matter. Defendant filed a brief in support of the motion on February 6, 2008 and interested party Kidspeace Hospital filed a brief in opposition to the motion on January 18, 2008.

Defendant, a former employee of Easton Hospital in Easton, Pennsylvania is charged with a count of Sexual Assault as a felony of the first degree at 18 PA.CON.S.STAT.ANN. § 3124.1; one count of Indecent Assault as a misdemeanor of the second degree at 18 PA.CON.S.STAT.ANN. § 3126(a)(1); one count of Indecent Exposure as a misdemeanor of the second degree at 18

PA.CON.S.TAT.ANN. § 3127(a) and one count of Corruption of Minors as a misdemeanor of the first degree under 18 PA.CON.S.TAT.ANN. § 6301(a)(1) pursuant to the alleged rape of a sixteen year old patient of Easton Hospital in October of 2006.

The victim first reported the alleged rape while a patient at KidsPeace Hospital, a mental health facility for juveniles located in Orefield, Pennsylvania, where she was admitted subsequent to a brief stay at Easton Hospital, where the incident is alleged to have occurred. By the present motion, Defendant seeks access to KidsPeace Hospital's records relevant to the alleged victim on the basis that their contents have already been disclosed to the Commonwealth. Defendant asserts that this alleged disclosure constitutes a waiver of privilege under the Mental Health Procedures Act at 50 P.S. §7100 et seq. See Commw. v. Davis, 674 A.2d 214 (Pa. 1996). Defendant asserts his position with regard to the victim's records on the basis of his rights under the Confrontation Clause of the Six Amendment of the Constitution of the United States, pursuant to Commonwealth v. Guy, 686 A.2d 397 (Pa. Super. Ct. 1996).

In a brief filed contra the present motion, counsel for KidsPeace asserts that the provisions of the Mental Health Procedures Act at 50 P.S. § 7100 et seq., the statutory psychiatrist/psychologist-patient privilege at 42 PA.CON.S.TAT.ANN. § 5944 and the physician-patient privilege at 42 PA. CONS.STAT.ANN.§ 5929 require the confidentiality of their various patient records, thereby precluding disclosure for the purposes of Defendant's motion.

KidsPeace asserts that pursuant to the Pennsylvania statutes governing the records held by the hospital, and the common law interpreting those statutes, the records are absolutely protected from disclosure absent a written waiver by the patient. See generally Pennsylvania v. Ritchie, 480 U.S. 39, 107 S. Ct. 989 (1987); Commw. v. Kyle, 367 Pa. Super. 484, 533 A.2d 120, 124

(1987), *appeal denied*, 518 Pa. 617, 541 A.2d 744 (1988); Patosky v. Kozakiewicz, 960 F. Supp. 905 (1997). By his motion, Defendant does not appear to suggest that Plaintiff ever signed such a written waiver. Rather, he alleges that the KidsPeace staff shared confidential information with a police officer, which ultimately came into the hands of the Commonwealth, and that such disclosure acts to waive the patient's privilege.

In support of his contention that the Commonwealth possesses privileged information contained in the victim's KidsPeace records, Defendant points to a police report provided by to Defendant by the Commonwealth. The aforementioned police report, attached to the present motion as Exhibit "A," states in pertinent part that "[an employee of KidsPeace] stated that the victim related her story to her and a nurse [at KidsPeace]. [The employee] also stated that she called Childline and spoke to Barbara Smith who laughed and told her it was impossible for a girl to be raped in an emergency ward as well as this did not come under Childline guidelines. (I later gave this information to [an employee] from the District Attorney's Office who will look into it.)"

Given the nature of the crime alleged in the instant case, the Court notes that notwithstanding the privileged nature of the victim's communications with her KidsPeace treatment team, such crime was reportable by the team pursuant to the relevant provisions of the Child Protective Services Act at 23 PA.CON.S.TAT.ANN. § 6311. Under that statute, privilege does not apply to the reporting of child abuse, and The Mental Health Procedures Act must yield to the Child Protective Services Act. *See* Fewell v. Besner, 444 Pa. Super. 559, 567, 664 A.2d 577, 581 (1995). Thus, while it is apparent from the record that certain members of the KidsPeace staff did in fact speak with the Officer investigating these allegations, and that the

Officer may have relayed some of that information to the District Attorney's Office, the Court finds that such actions do not constitute a waiver of the patient's privilege under Davis.

Further, there is no indication in the police report that the Commonwealth is or was ever in possession of the victim's medical or psychiatric records, or that they ever withheld from Defendant the information that was revealed to them. Accordingly, the Davis case is inapplicable here, and as such, there is no basis upon which to allow the examination of the victim's KidsPeace records by Defendant. Defendant's right to cross-examine witnesses is not prejudiced by the Court's denial. In light of the foregoing, Defendant's Motion to Compel Discovery is hereby **DENIED**.

BY THE COURT:

WILLIAM F. MORAN

J.