

Court Refuses to Seal Minor's Settlement Information

A recent decision from a Court of Common Pleas has set a very high standard for the sealing of settlement information in medical malpractice cases involving distributions made to minors, even where the standard MCARE release is used. The findings of the Court should clearly be considered by defense counsel during settlement negotiations and should be used as a guide when estimating whether a settlement is likely to be sealed by the Court.

In the matter of *Vaccaro v. Scranton Quincy Hospital Company, LLC, et al.*, Judge Terrence R. Nealon Jr., of the Lackawanna County Court of Common Pleas, issued a memorandum and order approving the settlement of a medical malpractice action brought by the parents of Emma Vaccaro, a minor. The settlement petition, filed by the plaintiffs, sought to allocate 18 percent of the settlement proceeds to the plaintiff's mother's negligent infliction of emotional distress claim and 82 percent of the proceeds to the claims of the minor. Additionally, in compliance with the standard MCARE release, the petition also sought to have both the petition and any order granting the petition "immediately sealed."

In support of the sealing of the documents, the defendant medical providers argued that they had a significant interest in protecting their respective reputations by maintaining the privacy of the settlement documents, and that the disclosure of the settlement information may hinder the subsequent negotiation of other malpractice claims. The defendants further argued that knowledge of the settlement could prevent future patients from selecting the defendants as healthcare providers. Finally, the defendants argued that the settlement documents were not relevant to public health or safety and did not involve a matter of legitimate public concern.

In analyzing the request to seal the settlement, the Court noted that the sealing of the record in the case of a minor's settlement is within the Court's discretion. In reaching its determination, the Court applied the "common-law" approach and held that under Pennsylvania Common Law, the right to access, inspect and copy judicial records and documents has long been recognized. To that end, a presumption of "openness" exists and may only be rebutted by a party requesting the sealing of records if that party establishes that his or her interest in secrecy outweighs the presumption in favor of public access.

In determining whether the presumption was rebutted, the Court engaged in a balancing test. On one hand, the Court had the defendant's assertion that public knowledge of the settlement may discourage future patients from seeking care from the defendants and the assertion that disclosure of the settlement sum would increase the value of future settlements for all similarly situated defendants, versus the common law presumption on the other hand. The Court concluded that an "abstract concern" that the defendants may lose patients did not provide good cause for the sealing of the settlement, as good cause is only established on a showing that the disclosure will "work a clearly defined and serious injury to the party seeking closure." The Court found that an "amorphous fear" regarding the possible loss of business does not constitute a "clearly defined and serious injury." The Court further concluded that the public good is served by publishing medical malpractice settlements so as to provide consumers with information arguably relevant to their healthcare decisions. The Court pointed out that the medical community and the public have an interest in learning from medical malpractice actions.

Finally, the Court gave little credence to the argument that publishing the settlement would increase the value of future settlements, holding that each "medical professional liability action is unique and its settlement value is dictated by the underlying facts of the case, the merits of the parties' claims and defenses, the communication skills and effectiveness of the lay and expert witnesses, the composition of

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the jury and the ability of counsel."

Comment: What this case means for medical malpractice defendants is that the traditional arguments regarding the sealing of settlements have been rejected by this Court and are unlikely to be accepted by most Courts of Common Pleas. In order to have a minor's settlement sealed, defendants must show some "good cause" other than the fear of lost business or higher settlement values. The Court provided no instruction as to what "good cause" might be, but continually indicated that such a decision is to be made on a case-by-case basis. It should be noted, as it was by the Vaccaro Court, that this decision applies only to minor's settlements. Litigants of cases not involving minors remain free to negotiate confidentiality provisions which do not require the Court's approval.