

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
JOSEPH A. GREENAWAY, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES POST OFFICE & COURTHOUSE
FEDERAL SQUARE & WALNUT ST.
NEWARK, NJ 07101
973-622-4828

June 29, 2007

Andrew John Kyreakakis, Esq.
317 Belleville Avenue
Bloomfield, New Jersey 07003

Paul H. Saint-Antoine, Esq.
Drinker, Biddle & Reath LLP
One Logan Square
18th & Cherry Streets
Philadelphia, Pennsylvania 19103-6996

LETTER ORDER TO PARTIALLY SEAL

Re: Med Alert Ambulance, Inc. v. Atlantic Health System, Inc., et al.
Civil Action No. 04-1615 (JAG)

Dear Counsel:

This matter comes before the Court upon the Motion of defendants, Atlantic Health System, Inc. and Atlantic Ambulance Corp. ("Atlantic defendants"), seeking an Order to Seal, pursuant to L. CIV. R. 5.3(c) for materials submitted in support of, and in opposition to, the Atlantic defendants' motion for summary judgment. (Docket Entry No. 40). Specifically, the Atlantic defendants seek to file documents under seal containing third party patient medical and personal information as well as commercially sensitive information of defendants. These documents have been designated as "Confidential" under the parties' Consent Protective Orders and HIPAA-Complaint Qualified Protective Orders Pursuant To 45 C.F.R. § 164.512 (E)(1)(V) (hereinafter referred to as "Consent Protective Orders"). Plaintiff, Med Alert Ambulance, Inc. ("plaintiff") opposes this Motion. No oral argument was heard pursuant to FED. R. CIV. P. 78.

Having reviewed the parties' submissions, for good cause shown, and for the reasons set forth below, the Atlantic defendants' Motion for an Order to Seal is hereby **DENIED IN PART AND GRANTED IN PART**.

I. Background

This litigation involves, among other allegations, plaintiff's antitrust and tortious interference claims against the Atlantic defendants. Specifically, as alleged in its Complaint, plaintiff is a private ambulance company that transports special needs patients to New Jersey area hospitals in Sussex, Warren, and Morris Counties. Plaintiff further alleges that the Atlantic defendants created Atlantic Ambulance Corporation for the purpose of achieving an illegal monopoly over the Special Care Transport ("SCT") ambulance service market. As a result, hospitals, physicians, and patients were denied their right to select an ambulance company. The Atlantic defendants' alleged actions further barred free competition in the SCT ambulance service market and interfered with plaintiff's contracts with area hospitals, such as defendant Newton Memorial Hospital. (Pl. Compl. at ¶¶ 24-25, 27-30, 37).

In their moving papers, the Atlantic defendants seeks to seal the declaration of Paul H. Saint-Antoine submitted in support of their summary judgment motion (hereinafter referred to as "Saint-Antoine Declaration"), including all of the exhibits attached to the Saint-Antoine Declaration, as well as their moving summary judgment brief and statement of uncontested facts. In support of the motion to seal, the Atlantic defendants mention that the Consent Protective Orders covered, *inter alia*, the production of documents containing third party patient specific information, as well as sensitive financial, business, and commercial information the disclosure of which could cause competitive harm to the producing party. In reliance on the Consent Protective Orders, the Atlantic defendants produced internal company documents containing confidential patient information that reveal third party patient names and relevant medical conditions, commercially sensitive information as to pricing and pricing strategies, and documents detailing the Atlantic defendants' business plans. Nevertheless, this Court notes that the parties' agreement to keep documents confidential does not control whether these same documents should be sealed, pursuant to Local Civil Rule 5.3(c).

In opposition, plaintiff argues that none of the documents sought to be sealed contain confidential medical information regarding patients or commercially sensitive information concerning the Atlantic defendants, justifying the denial of the public's right of access to judicial records. Plaintiff further contends that the Atlantic defendants failed to identify any specific documents or particular testimony, which would warrant the relief sought under Local Civil Rule 5.3(c). Rather, the Atlantic defendants improperly seek to seal all papers submitted in connection with the summary judgment motion.

In their reply brief, the Atlantic defendants clarify that they do not wish to seal the entire summary judgment record, but rather identify a limited number of documents and/or portions of documents to be sealed. The Atlantic defendants further request that the Court seal additional documents, which they claim had been submitted as part of plaintiff's opposition to the summary judgment motion. Among those documents sought to be sealed, the Atlantic defendants request that information related to third party patient names and medical treatment, which by its nature is sensitive, should be sealed. (Df. Reply Br. at 6). They further "seek to keep the seal in place on documents that relate to Atlantic's specific pricing and market share information as well as

documents that evidence the specific terms of the confidential business relationships of third parties.” (*Id.* at 7). For example, the Atlantic defendants wish to seal “the copy of a contract between Med Alert and [defendant] Newton Memorial Hospital that contains not only specifics relating to pricing, but it also includes an express confidentiality provision.” (*Id.* at 7 n.3). Likewise, they seek to seal “documents that constitute or reflect Atlantic’s prospective business plans,” (*id.* at 7), because, if disclosed, those documents “would provide Atlantic’s competitors with sensitive, proprietary information concerning how Atlantic runs its operations.” (*Id.* at 8).¹

II. Analysis

The standard to be applied is cited in New Jersey Local Civil Rule 5.3(c)(2):

Any motion to seal or otherwise restrict public access shall be available for review by the public. The motion papers shall describe (a) the nature of the materials or proceedings at issue, (b) the legitimate private or public interests which warrant the relief sought, (c) the clearly defined and serious injury that would result if the relief sought is not granted, and (d) why a less restrictive alternative to the relief sought is not available.

L. CIV. R. 5.3(c)(2). The Explanatory Note to L. CIV. R. 5.3 notes that “[t]he Rule is intended to reflect Supreme Court and Third Circuit law and does not set forth in detail all standards established by precedent.”

It is well-established in the Third Circuit that there is “a common law public right of access to judicial proceedings and records.” *In re Cendant Corp.*, 260 F.3d 183, 192 (3d Cir. 2001). Thus, when a party files a motion to seal certain documents in the record, the moving party must show “good cause” to warrant the relief. *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994). In *Pansy*, the Third Circuit identified factors to be considered when determining whether good cause for a protective order exists. These factors, which were further articulated in *Glenmede Trust Co., v. Thompson*, 56 F.3d 476, 483 (3d Cir. 1995), include:

- 1) whether disclosure will violate any privacy interests;
- 2) whether the information is being sought for a legitimate purpose or for an improper purpose;

¹ In their reply brief, the Atlantic defendants created a chart, identifying all the disputed documents, and attached courtesy copies of the documents as exhibits “A”, “B”, and “C.” The chart contains a brief description of each document at issue, the document’s location in the summary judgment record, and a brief basis for sealing each document. However, when comparing the chart with the courtesy copies of the documents submitted to the Court, it appears defense counsel inadvertently transposed those documents identified in the chart as Exhibit “A” with those documents identified in the chart as Exhibit “B.”

- 3) whether disclosure of the information will cause a party embarrassment;
- 4) whether confidentiality is being sought over information important to public health and safety;
- 5) whether the sharing of information among litigants will promote fairness and efficiency;
- 6) whether a party benefitting from the order of confidentiality is a public entity or official; and
- 7) whether the case involves issues important to the public.

Id.

As an initial matter, this Court notes that the Pansy factors are neither exhaustive, nor mandatory. Id. Indeed, “discretion should be left to the court to evaluate the competing considerations in light of the facts of individual cases.” Pansy, 23 F.3d at 789. Thus, the core of any Pansy analysis is a balancing of the private versus the public interests at stake. Glenmede, 56 F.3d at 483. Local Civil Rule 5.3 provides general guidance regarding the standards to be applied.

The Nature Of The Materials Or Proceedings At Issue

As stated above, the nature of all the disputed materials, but one, (see Affidavit of David G. Mattes, M.D., attached as Exhibit B, Tab 25 to Defs.’ Reply Br.),² are documents (or portions of documents) containing confidential non-party patient information, as well as confidential commercial and business information that were designated as Confidential, pursuant to the Consent Protective Orders. As the Atlantic defendants suggest, this Court has previously protected materials containing “trade secret[s] or other confidential research, development, or commercial information” to prevent harm to a party’s standing in the marketplace. FED. R. CIV. P. 26(c)(7). See, e.g., Mars, Inc. v. JCM American Corp., Civ. No. 05-3165 (RBK), 2007 WL 496816, *2 (D.N.J. Feb. 13, 2007); Faulman v. Security Mutual Financial, C.A., No. 04-5083 (AET), 2006 WL 1541059, *1 (D.N.J. June 2, 2006).

Here, for example, Exhibit A, attached to the Atlantic defendants’ reply brief, consists of documents and testimony that contain commercially sensitive information relating to the Atlantic defendants’ specific pricing and market share information. Exhibit A also contains documents and testimony that outline specific terms of confidential business relationships of third parties. Exhibit B contains documents and testimony detailing personal and confidential medical information of third party patients, such as patient names and medical conditions. Exhibit C consists of documents reflecting the Atlantic defendants’ business plans that describe confidential business strategies for future market development and competitive positioning as well as potential tactical business initiatives.

² (Hereinafter referred to as the “Mattes Affidavit”).

On the other hand, after careful review of the Mattes Affidavit, which was originally attached as Exhibit 22 to the Saint-Antoine Declaration in support of the Atlantic defendants' summary judgment motion, this Court finds that the document does not contain any confidential patient or commercially sensitive information. As set forth in more detail below, this Court will deny the Atlantic defendants' request to seal this document, pursuant to Local Civil Rule 5.3(c).

The Legitimate Private Or Public Interests Which Warrant The Relief Sought

With the exception of the Mattes Affidavit, the materials contain confidential information relating to the Atlantic defendants' pricing strategies, business plans, and market strategies that if disclosed, would compromise the Atlantic defendants' ability to remain competitive in the industry. See generally Mars, Inc., 2007 WL 496816, *2; Faulman, 2006 WL 1541059, *1. Additionally, many of the documents contain confidential patient information pertaining to patient names and medical conditions. As a result, disclosure of legitimate privacy interests of patients who are not parties to the instant suit outweighs any identifiable public interest in such personal and confidential information. See United States v. Hawaii Pacific Health, 2007 U.S. Dist. LEXIS 2303, *3-4 (D. Haw. Jan. 10, 2007). Accordingly, this Court finds that both the Atlantic defendants and third party patients possess legitimate privacy interests which warrant confidentiality of all documents sought to be sealed with one exception.

While the Mattes Affidavit references an incident involving a patient, which led to the Atlantic defendants' decision not to award a new contract for ambulance services to plaintiff, the patient is not specifically referenced by name or with any other personal identifiers. Therefore, this Court finds that any possible legitimate privacy interest is outweighed by the public's interest in having access to a document that is part of the summary judgment record.

The Clearly Defined And Serious Injury That Would Result If The Relief Sought Is Not Granted

This Court further finds that, unless the relief sought is granted (with the exception of sealing the Mattes Affidavit), the public will have access to confidential medical and personal information regarding third party patients as well as the Atlantic defendants' confidential pricing strategies, business plans, and market strategies. Neither non-party patients nor the Atlantic defendants should have to sacrifice privacy of medical information or a competitive position within the market for the Atlantic defendants to pursue relief effectively concerning their summary judgment motion.

Why A Less Restrictive Alternative To The Relief Sought Is Not Available

Finally, there is no other alternative to sealing the documents(or portions thereof) because the documents will either be available on the electronic filing system or not. As detailed in their reply brief and exhibits attached thereto, with many of the documents, the Atlantic defendants are

seeking to seal only narrowly tailored portions. This Court finds that redacting portions of materials, which contain patient specific and commercially sensitive information, is not a less restrictive alternative than sealing in this case because redaction cannot easily be achieved without rendering the documents meaningless. See Hawaii Pacific Health, 2007 U.S. Dist. LEXIS 2303, *3-4. As noted above, unless the relief sought is granted, the public will have access to information that has been designated confidential.

III. Decision

This Court has reviewed the documents attached to Exhibits A, B, and C of the Atlantic defendants' reply brief that the Atlantic defendants propose to seal. This Court finds that, because the interests of the Atlantic defendants and individual third party patients in maintaining the confidentiality of information that if disclosed may divulge confidential financial, proprietary, and medical information, respectively, outweigh any concern over public access to those records and the public-at-large will suffer no adverse effect from a lack of access, the Atlantic defendants meet the standard set forth in Local Civil Rule 5.3(c)(2), with the exception of the Mattes Affidavit.

Accordingly, the Atlantic defendants' Motion for an Order to Seal Materials is **DENIED IN PART AND GRANTED IN PART**. It is **ORDERED** that all of the documents, except for the Mattes Affidavit (Exhibit B, Tab 25), attached to exhibits A, B, and C of the Reply Memorandum submitted in support of the Atlantic defendants' motion to seal, as outlined in the Consent Protective Orders, shall be sealed, pursuant to L. Civ. R. 5.3(c).



JOSEPH A. GREENAWAY, JR.
United States District Judge

cc: Hon. Madeline Cox Arleo, U.S.M.J.
Clerk of the Court
All parties
File