GABRIELLE SHIMKUS and FRANK SHIMKUS, as Parents and Natural Guardians on Behalf of Their Minor Daughter, H.S., *Plaintiffs*, vs.	:	In the Court of Common Pleas of Lackawanna County
PHYSICIANS HEALTH ALLIANCE, INC.; LVPG MATERNAL FETAL MEDICINE; SCRANTON QUINCY HOSPITAL COMPANY, LLC d/b/a MOSES TAYLOR HOSPITAL; and CHRISTINE PHILLIPS, D.O., *Defendants.*	:	Civil Action - Law Medical Professional Liability No. 19-CV-3534

MEMORANDUM AND ORDER

I. Introduction.

This is a medical professional negligence case brought by the parents of a minor born with catastrophic and permanent injuries. The case was scheduled for jury selection and trial to commence on June 9, 2022 when, after a full day of conferencing and negotiations among the parties, a global settlement was reached.[1] Since the matter involves claims presented on behalf of a minor, court approval of any settlement is required after presentation of the proposed settlement in a petition. Pa.R.Civ.P. 2039. The Defendants have filed a motion to seal the settlement documents from public view and the Plaintiffs have opposed that motion. We solicited briefs from the parties on the issue, and we conducted oral argument on June 8, 2022. Also appearing was a

[1] Plaintiffs and the Hershey Defendants, Dr. De La Fuente and Pediatrix Medical Group of Pennsylvania, P.C. actually reached an agreement to settle the claims peculiar to those particular Defendants in advance of the June 9, 2022 date.

reporter from the Scranton Times-Tribune, with counsel. The Defendants sought sequestration which we denied.

The Defendants ask us to order that any documents related to the settlement in this matter or our approval of the settlement "be sealed from access by the general public, in order to protect the interests of all the parties to this case." *See*, Motion to Seal the Record as to Settlement Documents, ¶3.[2] Defendants posit that "public knowledge of the nature and amount of the settlement may likely create unnecessary and invasive intrusion into financial and personal information of the parties contained in the settlement documents by members of the media, by third-parties with unscrupulous motives, and by disinterested parties with personal motives." *Id.*, ¶4. Defendants further offer that "they may be significantly prejudiced by the disclosure of the terms of this settlement. The Release expresses that the settlement is a compromise of a disputed claim and not an admission of liability, and provides that the terms of the settlement shall be kept confidential. Should the general public be permitted to be aware of the terms of the settlement, the Defendants' interests may be seriously impaired by a misperception of the meaning of the agreement between the parties." *Id.*, ¶5. Defendants argue that if the amount of the settlement becomes public knowledge, "the Hospital believes that it could face great difficulty in other pending and future litigation by those who might misperceive that the Hospital will settle much less

[2] Defendants also request that the motion to seal be included in any sealing order; this request is moot since it was filed on May 19, 2022, at which time it became a public document.

significant claims for similar sums. It could further become a target in lawsuits of questionable merit simply because of the amount being paid in settlement in this extraordinary case." *Id.*, ¶6.[3]

Dr. De La Fuente "believes that he might also be severely and adversely affected. Because of the amount of the settlement, his reputation and ability to continue practicing his profession could be severely damaged if the terms of the settlement became generally known." *Id.*, ¶7. Defendants offer that sealing the settlement documents in this case is consistent with "the judiciary's general policy to encourage the settlement of medical malpractice cases. If Defendants are unlikely to be able to keep settlements private, they will be more inclined to take their chances with a trial. Settlement will no longer be as attractive because there will be no guarantee that adverse publicity can be avoided." *Id.*, ¶8. Defendants maintain that the interest "of all the parties to this case warrant that any documentation in the record that relates to the terms of the settlement be sealed." *Id.*, ¶13.

Plaintiffs oppose sealing. Plaintiffs argue that Defendants are unable to overcome the presumption in favor of open access to judicial records. Plaintiffs' Memorandum in Opposition to Motion to Seal, pp.1-2.

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[3] Since the motion is presented on behalf of the Hershey Defendants, Dr. De La Fuente and the Pediatrix Medical Group of Pennsylvania, P.C., and joined in by the remaining Defendants, we take the reference to "the Hospital" in the motion to be the Penn State Milton S. Hershey Medical Center.

After consideration of the position and argument of the parties, the motion to seal the settlement documents will be **DENIED**.

II. Discussion.

Pennsylvania law recognizes that the public has a right of access to judicial proceedings and records based upon the federal and state constitutions as well as the common law of this Commonwealth. *PA Childcare, LLC v. Flood*, 887 A.2d 309, 312 (Pa.Super. 2005); *Cendant Corp. v. Forbes*, 260 F.3d 183, 192 (3d Cir. 2001). Historically, our court has relied upon Pennsylvania constitutional and common law in refusing to seal judicial records. *Vaccaro v. Scranton Quincy Hospital Co., LLC*, 2016 WL 6836985, at *1 (C.P.Lacka.Co. November 18, 2016); *Korczakowski v. Hwan*, 68 D&C 4th 129, 132-134 (Lacka.Co. 2004); *Davis v. Newton Township*, 101 Lacka.Jur. 42, 45-47 (1999).

In order to justify closure or sealing of a judicial record, the party seeking to seal or close the record must overcome the presumption of openness. *In re: Estate of DuPont*, 2009 WL 333983 at *1 (Pa.Super. 2009). In order to override the common law right of access, the requesting party must demonstrate "good cause" by showing: (1) that the material is the kind of information that courts will protect, and (2) that disclosure will work a clearly defined and serious injury to the parties seeking closure. *Cendant Corp.*, 260 F.3d at 194; *Zdrok v. Zdrok*, 829 A.2d 697, 700 (Pa.Super. 2003). Although a bright line test has not been formulated, the type of information that courts will protect includes trade secrets, the privacy and reputations of innocent parties, risks to national

security interests, or the danger of an unfair trial by adverse publicity. *Estate of DuPont, supra.* at *2 (*quoting Zdrock, supra.*).

Pennsylvania courts have noted that "the nature, scope and extent of the public's right of access to judicial records, in general, has long been recognized as a matter deeply rooted in public policies." *A.A. v. Glicken*, 237 A.3d 1165, 1169 (Pa. Super. 2020). *See also, R.W. v. Hampe*, 426 Pa. Super. 305, 626 A.2d 1218, 1220 (1993)(the community's common law right of access to judicial proceedings and inspection of judicial records is beyond dispute).

There are two methods for analyzing requests to seal judicial records, the constitutional approach and the common law analysis, both of which begin with the presumption of openness. *Commonwealth v. McKown*, 79 A.3d 678, 695 (Pa.Super. 2013), *appeal denied*, 625 Pa. 648, 91 A.3d 162 (2014). The constitutional approach[4], based upon the First Amendment to the Constitution of the United States and Article I, Section 11 of the Pennsylvania Constitution, requires the party seeking to deny access to a judicial record or proceeding to rebut a presumption of openness by showing that the sealing or closure serves an important governmental interest and there is no less restrictive way to serve that interest. *Zdrok*, *supra.* at 699. To satisfy these dual requirements, the party requesting sealing must demonstrate "that the material is the kind of information that

[4] The constitutional approach may be applicable here since Defendants' motion offers as one of the expressed grounds that sealing would protect against unnecessary and invasive intrusion of information contained in the settlement documents "by members of the media." Motion to Seal, ¶4. Additionally, as noted, the Scranton Times-Tribune was present for the argument.

the courts will protect and that there is good cause for the order to issue" since providing access "will work a clearly defined and serious injury to the party seeking disclosure." *Flood, supra.*; *Storms ex. rel. Storms v. O'Malley*, 779 A.2d 548, 568 (Pa.Super. 2001), *appeal denied*, 570 Pa. 688, 808 A.2d 573 (2002).

Pennsylvania has long recognized a common law right of access to inspect and copy judicial records and documents. *Commonwealth v. Dominick*, 40 Pa. D.&C. 5th 347, 349 (Lacka.Co. 2014). "The existence of a common law right of access to judicial proceedings and inspection of judicial records is beyond dispute." *In re: Estate of DuPont*, 966 A.2d 636, 638 (Pa.Super. 2009), *aff'd*, 606 Pa. 567, 2 A.3d 516 (2010). The right of access to judicial records in civil cases "promotes public confidence in the judicial system" and "helps assure that judges perform their duties in an honest and informed manner." *Cendant Corp. v. Forbes*, 260 F.3d at 192. The party seeking to seal the record is obligated to establish that his or her interest in secrecy outweighs the presumption in favor of public access. *McKown*, 79 A.3d at 696; *In re: J.B.*, 39 A.3d 421, 434 (Pa.Super. 2012). "In deciding whether to grant the motion of a party who seeks to seal records or proceedings under the common law approach, the court engages in a balancing test weighing on the one hand the factors in favor of access and, on the other, those against it." *Storms*, 779 A.2d at 569 (*citing Bank of America National Trust and Savings Association v. Hotel Rittenhouse Associates*, 800 F.2d 339, 344 (3d Cir. 1986)). A request to seal or unseal is a matter committed to the discretion of the common pleas court. *In re: Estate of DuPont*, 606 Pa. 567 (2010).

There are no trade secrets at risk of disclosure or exposure here, nor are there any risks to national security interests. There is no danger of an unfair trial by adverse publicity because the settlement has averted any trial. To be sure, Defendants have argued that their respective reputations "could be" severely damaged if the terms of this settlement are not sealed. Defendants also argue in Cassandra-like fashion that not sealing the terms of this settlement "might drastically increase the value of potential future settlements," thereby hampering their ability to provide medical care to the community. Brief in Support of Motion to Seal, p.9.[5] Additionally, Defendants argue that "any public interest in the settlement of this matter is illusory." *Id.* Wrongly, Defendants argue that no party advocates for the openness of the terms of this settlement. To the contrary, Plaintiffs, as noted, have indeed opposed the motion to seal. Defendants characterize the presumption of openness as a "very general interest[s] in open Courts." *Id.* Apparently, Defendants are of a mind that the presumption of openness is not a "measurable good" to be achieved here. Quite simply, this is stunning.

Defendants' efforts to minimize the public interest in open records goes further when they argue that "it is clear that the dissemination of information regarding this particular settlement will trigger both 'public scandal' and harm to these Defendants' competitive standing." Brief in Support of Motion to Seal, p.7. Tellingly, Defendants do not point to any "public scandal"; nor do they elucidate exactly what they mean by harm to their competitive standing. Rather, Defendants cherry-pick phrases from the

[5] The brief is not paginated, so we counted.

United States Supreme Court's opinion in *Nixon v. Warner Communications*, 435 U.S. 589 (1978) (the Nixon tapes). Defendants' brief, *id.* Defendants are truly reaching here.

The Defendants offered no testimony or other evidence in support of their arguments on June 8, 2022. Any purported chilling effect on settlements is insufficient, standing alone, to overcome the compelling public interest in open records. *Glicken*, 237 A.3d at 1170. In short, Defendants did not establish any clearly defined and serious injury that would befall them upon disclosure of the terms of this settlement. Indeed, it seems the Defendants' argument is illusory. In any event, Defendants have not met their burden to overcome the presumption of openness and the motion to seal will be **DENIED**. We will, however, keep the Temporary Sealing Order in place for thirty (30) days to allow for the possibility of appeal. If no appeal is taken, the Sealing Order will be lifted. An appropriate Order follows.

GABRIELLE SHIMKUS and FRANK SHIMKUS, as Parents and Natural Guardians on Behalf of Their Minor Daughter, H.S., *Plaintiffs*, vs. PHYSICIANS HEALTH ALLIANCE, INC.; LVPG MATERNAL FETAL MEDICINE; SCRANTON QUINCY HOSPITAL COMPANY, LLC d/b/a MOSES TAYLOR HOSPITAL; and CHRISTINE PHILLIPS, D.O., *Defendants.*	:	In the Court of Common Pleas of Lackawanna County Civil Action - Law Medical Professional Liability No. 19-CV-3534

ORDER

AND NOW, this 14th day of June, 2022, upon consideration of the motion to seal the settlement documents, the parties' argument, written and oral, IT IS HEREBY ORDERED THAT:

1. The motion to seal is **DENIED**;

2. The temporary Sealing Order will remain in place for a period of thirty (30) days from the date of this Order in order to allow for the possibility of appeal;

3. If no appeal is taken within that time, the temporary Sealing Order shall be lifted.

BY THE COURT:

_____, J.
James A. Gibbons

cc: *Written notice of the entry of the foregoing Order has been provided to each party pursuant to Pa. R. Civ. P. 236 (a)(2) by e-mailing time-stamped copies to:*

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