[J-110-2018]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

IN RE: FORTIETH STATEWIDE INVESTIGATING GRAND JURY	:	No. 85 WM 2018
PETITION OF: R.M.L.	:	SUBMITTED: December 14, 2018

OPINION

JUSTICE TODD **DECIDED: NOVEMBER 20, 2019**

In this appeal, we consider the question of whether excerpts from the mental health treatment reports of Petitioner, a Roman Catholic diocesan priest, which were obtained by the investigating grand jury in this matter via subpoena, may be included in Report 1 ("Report 1") of the 40th Investigating Grand Jury ("grand jury").[1] After careful review, we conclude that, under the Mental Health Procedures Act ("MHPA"),[2] this information is not subject to public disclosure. We therefore reverse the order of the supervising judge of the grand jury allowing inclusion of these matters in Report 1.[3]

I. Background

[1] The subpoenas were issued as part of the grand jury's investigation into allegations of acts of sexual abuse committed by priests and other church employees in six Catholic dioceses in Pennsylvania. This appeal concerns the last of the 32 challenges made by individuals named in Report 1 who requested redaction of their personal and/or identifying information from that report. All other challenges have been adjudicated by our Court. *See generally In re 40th Investigating Grand Jury,* 190 A.3d 560 (Pa. 2018) ("*Grand Jury I*"); *In re 40th Investigating Grand Jury,* 197 A.3d 714 (Pa. 2018) *("Grand Jury II")*.

[2] 50 P.S. §§ 7101-7116.

[3] The parties herein filed redacted/public and unredacted/sealed versions of their briefs. Unless otherwise indicated, our references are to the redacted/public versions.

Petitioner is a priest who has served in a Pennsylvania Roman Catholic Diocese (the "Diocese"). In the mid-1990s, the Diocese received complaints that Petitioner had sexually abused an adolescent victim.[4] In response, the Diocese required Petitioner to receive inpatient evaluation and treatment at a facility specializing in providing integrated psychological, spiritual, and physical treatment (the "Facility"). At that time, Petitioner executed a release authorizing the disclosure by the Facility of confidential information acquired during the course of Petitioner's treatment to various officials of the Diocese (the "Release").[5]

In 2016, the grand jury was convened by the Office of the Attorney General ("OAG") to examine allegations of past acts of child abuse by priests and other individuals associated with six Catholic dioceses in Pennsylvania. *Grand Jury I*. Pursuant to a subpoena served on the Diocese, Petitioner's mental health treatment records at the Facility were disclosed to the grand jury.[6] At the conclusion of its work, the grand jury prepared Report 1 for release to the public detailing its investigative conclusions and recommendations for reforms. Report 1 also contains summaries of abuse alleged to have been perpetrated by over 300 priests and other individuals. With respect to Petitioner, Report 1 includes four pages setting forth the grand jury's allegations against him and, as pertinent to the present case, details from Petitioner's mental health treatment records while he was at the Facility, including a recounting of matters which he discussed with mental health professionals while receiving therapy there.

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[4] Petitioner "in no way concedes that there is any truth" to these allegations. Petitioner's (Redacted) Brief at 6 n.7.

[5] The Release, which remains sealed, is Exhibit 4 to the grand jury transcript attached to Petitioner's (Unredacted) Brief at Exhibit D. Certain details of the Release have been discussed in the public/redacted versions of the parties' briefs, and so we refer to those details.

[6] The Diocese did not challenge this subpoena before turning over the records.

Prior to the date scheduled for the release of Report 1, Petitioner was informed by a letter from the OAG of the fact that he had been named in Report 1, provided with notice of that material, and provided with a copy of the order from the supervising judge overseeing the grand jury, the Honorable Norman Krumenacker ("supervising judge"), which granted Petitioner 30 days to file a written response to that part of the Report. Thereafter, Petitioner filed a motion with the supervising judge seeking redaction of specific portions of two pages of Report 1 detailing the grand jury's summary of communications between himself and mental health professionals involved in his care at the Facility during the evaluation and treatment process (hereinafter, the "challenged paragraphs").[7] Petitioner argued in the motion that public release of such information violated Section 7111 of the MHPA, which, as discussed *infra*, prohibits disclosure of treatment records of any individual who underwent inpatient mental health treatment without that individual's written consent. *See* 50 P.S. § 7111(a) ("In no event . . . shall privileged communications, whether written or oral, be disclosed to anyone without . . . written consent."). Petitioner also claimed that revealing such information about his treatment records violated the psychologist-patient privilege codified in 42 Pa.C.S. § 5944, and his right to privacy secured by the United States and Pennsylvania Constitutions.[8] The supervising judge conducted a hearing on these claims on June 14, 2018, after which he issued an order rejecting each of them; however, he certified his order as immediately appealable.

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[7] The challenged paragraphs of Report 1 are identified in Exhibit A to Petitioner's Motion to Redact Statutorily and Constitutionally Protected Information from the Grand Jury Report, which is itself attached as Exhibit C to Petitioner's (Unredacted) Brief. The same paragraphs are identified in Petitioner's prayer for relief before this Court. *See* Petitioner's (Unredacted) Brief at 35 n.35.

[8] Petitioner also alleged the inclusion of this mental health information violated his right to reputation protected by the Pennsylvania Constitution. He subsequently abandoned that argument.

In his opinion prepared pursuant to Pa.R.A.P. 1925(a),[9] the supervising judge agreed that Section 7111 prohibited the disclosure of Petitioner's mental health treatment records without his written consent; however, the supervising judge rejected Petitioner's claim that the OAG was required to obtain Petitioner's written consent to include them in Report 1. The supervising judge found that Petitioner had submitted to an evaluation at the Facility at the direction of his employer — the Diocese — in response to the allegations against him, and that he had signed what the supervising judge characterized as a "general release" in which Petitioner consented to the disclosure of confidential information obtained relating to his treatment. Supervising Judge Opinion, 7/2/18, at 3. In the supervising judge's view, because the Release contained no language limiting to whom the Diocese could disclose the records, nor limiting the purposes for which the Diocese was entitled to use the records, it granted the Diocese permission to disseminate the records as it deemed necessary. In addition, the supervising judge cited two other similar contractual waivers. *Id.* at 3-4.

The supervising judge considered these documents, when viewed in their entirety, to be evidence of Petitioner's intent to share his medical and psychological records with the Diocese, and without limitation on how those diocesan officials could further disseminate them. The supervising judge reasoned that, once Petitioner chose to share those secrets, he no longer could assure they would remain secret, risking that they would be shared with others. *Id.* at 5. Consequently, the supervising judge ruled that, as the Diocese provided those records to the OAG in response to a subpoena, they could be used by the grand jury. *Id.*

With respect to Petitioner's claim that the records were improperly released because they constituted confidential communications between himself and

[9] The supervising judge filed his opinion under seal. We address herein only his legal analysis of the matters at issue.

psychologists or psychiatrists, and, hence, were protected from disclosure under 42 Pa.C.S. § 5944 (prohibiting the examination of a psychiatrist or psychologist in a civil or criminal matter "as to any information acquired in the course of his professional services in behalf of such client"), the supervising judge also rejected it. Again, based on Petitioner's agreements to disclose information to the Diocese, the supervising judge considered Petitioner to have waived this privilege.

Lastly, the supervising judge rejected Petitioner's argument that release of this information violated his right to privacy secured by the United States and Pennsylvania Constitutions. The supervising judge observed that, only if an expectation of privacy is reasonable will it be afforded constitutional protection. He found that Petitioner had no reasonable expectation of privacy in these treatment records once he agreed to share them with the Diocese, inasmuch as, in the supervising judge's view, the Diocese had no obligation to maintain the confidentiality of these records. Supervising Judge Opinion, 7/2/18, at 8. Once more, the supervising judge viewed Petitioner's agreement to share these records with the Diocese as a waiver of any constitutional protection he may have enjoyed with respect to those records.

Petitioner filed a petition for review from the supervising judge's order with our Court, along with several dozen other individuals who challenged their inclusion in Report 1. Unlike Petitioner, these other challengers predominantly argued that their reputations were unconstitutionally impugned by statements contained in the Report, violating their due process rights. Because of the multiplicity of such petitions, and their attendant applications for emergency stay of the release of the Report, our Court issued an order on June 20, 2018 temporarily staying the release of Report 1 to enable orderly judicial review of the various legal arguments for or against disclosure of its full contents.

On July 27, 2018, our Court issued an opinion and order allowing the release of Report 1, but also ordering that the identifying information of the challengers be temporarily redacted pending further appellate review of their constitutional and other challenges. *See Grand Jury I*. Accordingly, all identifying information concerning Petitioner in Report 1 was redacted at that time, and remains so.

On December 3, 2018, our Court issued a second opinion and order addressing the due process challenges of eleven priests who had been labelled "predator priests" in the Report. *See Grand Jury II*. These priests contended that the Investigating Grand Jury Act[10] failed to afford them constitutionally sufficient due process to meaningfully challenge the allegations against them and, thus, impaired their ability to protect their right to reputation secured by Article I, Section 1 of the Pennsylvania Constitution. Our Court ultimately agreed, concluding that the procedures established by the Investigating Grand Jury Act were inadequate to protect their reputational rights, and, thus, we made the interim redaction of their identifying information final, as it was the only remedy available to rectify this due process violation. *See id*.

Subsequent to *Grand Jury II*, our Court addressed the twenty similar requests by individual priests for redaction of their identifying information from Report 1. Pursuant to *Grand Jury I* and *Grand Jury II*, our Court granted each of those requests, by *per curiam* order, and directed that the temporary redaction of their names in Report 1 be made final. *See*, *e.g.*, *In re 40th Investigating Grand Jury*, 76 WM 2018 (Pa. filed Dec. 14, 2018) (order). Accordingly, all that remains is Petitioner's distinct challenge under, *inter alia*, the MHPA. This matter was submitted on the briefs.

Petitioner presently raises three issues for our Court's consideration:

> 1. Whether publication of the Report without redaction of Petitioner's confidential, privileged medical/psychotherapist

[10] 42 Pa.C.S. §§ 4541 *et seq*.

> evaluation and treatment communications and descriptions violates no less than five statutory and constitutional prohibitions?
>
> 2. Whether the Office of Attorney General's duty to maintain the confidentiality of such sensitive, privileged records is clear and self-executing, and its violation suggests a significant ethical breach?
>
> 3. Whether the supervising judge has a duty to protect the confidentiality of privileged medical records, even where the Office of Attorney General has obtained them lawfully and the court finds that there is a valid waiver?

Petitioner's (Redacted) Brief at 4-5.

II. Arguments of the Parties

As we find Petitioner's first issue to be dispositive, for reasons discussed at greater length herein, we set forth only the arguments of the parties pertaining to that issue. Petitioner argues that, because mental health treatment records contain personal information of a highly sensitive nature, these records have been strictly protected against public disclosure by the General Assembly through enactment of various statutes, and by the judiciary through application of the United States and Pennsylvania Constitutions.

Statutorily, Petitioner contends that disclosure of his records was barred by Section 7111 of the MHPA, which sets forth the following restrictions on the release of the mental health treatment records of patients, like Petitioner, who voluntarily received mental health treatment at a mental health clinic:

> (a) All documents concerning persons in treatment shall be kept confidential and, without the person's written consent, may not be released or their contents disclosed to anyone except:
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> > (1) those engaged in providing treatment for the person;
> > (2) the county administrator, pursuant to [50 P.S. § 7110];

> (3) a court in the course of legal proceedings authorized by this act; and
> (4) pursuant to Federal rules, statutes and regulations governing disclosure of patient information where treatment is undertaken in a Federal agency.
>
> In no event, however, shall privileged communications, whether written or oral, be disclosed to anyone without such written consent. This shall not restrict the collection and analysis of clinical or statistical data by the department, the county administrator or the facility so long as the use and dissemination of such data does not identify individual patients. Nothing herein shall be construed to conflict with section 8 of the act of April 14, 1972 (P.L. 221, No. 63), known as the "Pennsylvania Drug and Alcohol Abuse Control Act."

50 P.S. § 7111(a) (footnotes omitted).

Petitioner also asserts that disclosure of his treatment records was prohibited under Section 5944 of the Judicial Code – the psychologist-patient privilege – which provides:

> No psychiatrist or person who has been licensed under the [Professional Psychologists Practice Act, 63 P.S. §§ 1201, *et seq*.] to practice psychology shall be, without the written consent of his client, examined in any civil or criminal matter as to any information acquired in the course of his professional services in behalf of such client. The confidential relations and communications between a psychologist or psychiatrist and his client shall be on the same basis as those provided or prescribed by law between an attorney and client.

42 Pa.C.S. § 5944.

Petitioner further contends that he has a strong privacy interest in avoiding the disclosure of the highly personal matters contained within those records, and that this interest is entitled to protection under the United States Constitution, which implicitly recognizes and secures an individual right to privacy. Moreover, Petitioner emphasizes that his interest in preventing disclosure of personal matters is also explicitly protected by Article I, Section 1 of the Pennsylvania Constitution, which recognizes that every

individual has an inherent right "of acquiring, possessing, and protecting" his or her reputation. Petitioner's (Redacted) Brief at 16 (quoting *In re The June 1979 Allegheny County Investigating Grand Jury*, 415 A.2d 73, 77 (Pa. 1980)).

Regarding the supervising judge's waiver analysis, Petitioner argues that the supervising judge erred in treating the Release he executed granting access to these records only to the Diocese as a general authorization to publicly disclose them. Petitioner asserts that the Release "was limited in nature, only and explicitly permitting" the Facility "to disclose [his] confidential mental health treatment information to three [diocesan officials]. The waiver did not abrogate the statutory and constitutional protections from public disclosure of Petitioner's sensitive, privileged diagnostic and treatment records." *Id.* at 17-18. Petitioner maintains that, to allow his medical records to remain in Report 1 based on this limited release, would violate the aforementioned statutory and constitutional provisions.

Elaborating further, Petitioner notes that the Release, by its terms, authorized the release of confidential information about the treatment he received at the Facility to three diocesan officials but not to anyone else. Thus, according to Petitioner, the supervising judge erroneously ignored the content of the Release, and the narrow purposes for which it was executed — to comply with the Diocese's requirement that he be evaluated. In Petitioner's view, the supervising judge's analysis disregards the principle that the waiver of a privilege for one narrow purpose does not automatically waive the privilege for all other purposes. *Id.* at 28 (citing *Bagwell v. Department of Education*, 103 A.3d 409 (Pa. Cmwlth. 2014) (voluntary waiver of attorney-client privilege for purposes of an investigation being conducted in anticipation of litigation did not waive privilege such that

further disclosure to third parties was permissible)). Petitioner emphasizes that it is the context in which a waiver is given, then, which must be examined to determine its scope.

Petitioner stresses that, because the context of *his* waiver was to facilitate the Diocese's mandate that he undergo a psychological evaluation, it was given only to serve that limited purpose, and, consequently, he did not consent to the further disclosure of his treatment records over 20 years later as occurred herein. Because of the magnitude of the statutory and constitutional rights at issue, Petitioner proffers that only an "explicit, complete, global waiver by the affected individual with a full understanding of the scope of it" will suffice in order to permit release of such private information to the public in this fashion, and that the waiver he executed did not have such breadth. *Id.* at 30.

Petitioner finally notes that our Court has previously recognized that, even if sensitive information has been lawfully obtained by a grand jury through a subpoena, the supervising judge of the grand jury has a duty to strictly limit the purpose of its use, the parties to whom it is released, and, also, to allow such releases only when they are "consistent with a proper grand jury investigation." *Id.* at 31 (quoting *In re The June 1979 Allegheny County Investigating Grand Jury*, 415 A.2d at 78). Petitioner asserts that the supervising judge in this matter disregarded these principles in permitting his records to be released, without restriction, to the world at large.

The Commonwealth counters by wholly adopting the supervising judge's rationale as set forth in his opinion: that Petitioner had, through his execution of a waiver, allowed his treatment record and information to be disclosed to representatives of the Diocese, and that this waiver did not restrict the sharing of it with others. Thus, the Commonwealth repeats the supervising judge's rationale that the waiver must be regarded as being

general and not limited in nature, inasmuch as Petitioner had no ability to restrict how those individuals disseminated the information to others, and as he had no assurances that those who viewed the information would maintain its confidentiality. The Commonwealth further echoes the supervising judge's position that all of the statutory and constitutional protections over this information on which Petitioner relies can be waived, and that Petitioner did so when he signed the Release allowing access by the three diocesan officials.

III. Analysis

The circumstances of the prospective disclosure of Petitioner's mental health treatment records in Report 1 implicates Section 7111 of the MHPA. Indeed, initially, we note that there is no dispute that the records at issue in this case are protected by the MHPA. Section 7103 of the MHPA specifies that "[t]his act establishes rights and procedures for all involuntary treatment of mentally ill persons, whether inpatient or outpatient, and for all voluntary inpatient treatment of mentally ill persons." 50 P.S. § 7103. Section 7101.1 defines "inpatient treatment" as "[a]ll treatment that requires full or part-time residence in a facility," and defines "facility" as, *inter alia*, "[a] mental health . . . clinic." *Id.* § 7103.1. Thus, Section 7111 applies.

Given that the mental health treatment records at issue involve confidential communications between Petitioner and the mental health professionals at the Facility during the course of his inpatient treatment there, and because Section 7111 of the MHPA reflects a clear legislative policy to afford maximum protection of such records against public disclosure, we find the issue of whether Petitioner waived the protections afforded him by that statute to be controlling of the outcome of this appeal. Because this is a

matter involving interpretation of statutory language and the terms of a written waiver, it presents a pure question of law. *First Citizens National Bank v. Sherwood*, 879 A.2d 178 (Pa. 2005). Thus, our standard of review is *de novo*, and our scope of review is plenary. *Id.*

Our Court first interpreted Section 7111 in *Zane v. Friends Hospital*, 836 A.2d 25 (Pa. 2003), a case which addressed the question of whether this statutory provision precluded disclosure of mental health treatment records as part of a legal proceeding. In that case — a civil action — the plaintiff, who had been kidnapped and assaulted by the defendant, sought disclosure of the defendant's inpatient mental health treatment records from the hospital that treated and released him. The plaintiff asserted that these records were relevant to establishing her claim that the hospital was negligent in discharging him because it should have foreseen his propensity for such behavior. The hospital refused to disclose them, however, and the plaintiff sought an order compelling disclosure. A common pleas court judge granted the order, in part, allowing limited *in camera* inspection of the records; however, the hospital refused to comply with the order, due to its belief that the records were strictly confidential, and, thus, argued that, regardless of their relevance to the case, they were protected by Section 7111 from disclosure, since that statutory provision afforded no applicable exception. After the plaintiff sought sanctions for this non-disclosure, a different common pleas court judge issued an order denying the sanctions.

On appeal, in addressing the issue of whether the second judge should have enforced the first judge's order under the coordinate jurisdiction rule, our Court was required to determine if the first judge's order was "clearly erroneous," or would result in

a "manifest injustice" if enforced. *Zane*, 836 A.2d at 30. This determination necessitated an interpretation of Section 7111 of the MHPA to ascertain whether disclosure of the records was permissible due to their relevancy to the question of the hospital's negligence in the underlying civil action.

In construing Section 7111, our Court determined that, by its clear and unambiguous terms, disclosure was allowed only in certain limited enumerated instances, and only to parties designated by the statute. *See* 50 P.S. § 7111(a) (allowing disclosure to "those engaged in providing treatment for the person;" "the county administrator;" "a court in the course of legal proceedings authorized by this act;" and pursuant to federal law where treatment took place in a federal agency). Apart from these express exceptions, our Court held that disclosure is permitted to third parties *only* where the patient has given his or her written consent:

> The unambiguous terms contained in the provision regarding the confidentiality of medical records leaves little room for doubt as to the intent of the Legislature regarding this section. As noted above, "[a]ll documents concerning persons in treatment shall be kept confidential and, without the person's written consent, may not be released or their contents disclosed to anyone." 50 P.S. § 7111(a). The provision applies to *all* documents regarding one's treatment, not just medical records. Furthermore, the verbiage that the documents "*shall* be kept confidential" is plainly not discretionary but mandatory in this context—it is a requirement. The release of the documents is contingent upon the person's written consent and the documents may not be released "*to anyone*" without such consent. The terms of the provision are eminently clear and unmistakable and the core meaning of this confidentiality section of the Mental Health Procedures Act is without doubt—there shall be no disclosure of the treatment documents to anyone.

Zane, 836 A.2d at 31-32 (emphasis original). Consequently, our Court ruled that, because the disclosure of mental health treatment records for purposes of a civil

proceeding was not one of the permissible disclosures set forth in Section 7111, and because the patient had not given written consent for their disclosure, the trial court's order compelling their disclosure was legally erroneous and could not be enforced.

Subsequent to *Zane,* in *Octave ex rel. Octave v. Walker*, 103 A.3d 1255 (Pa. 2014), our Court addressed whether Section 7111's restrictions can be waived in the special situation where the person entitled to claim the privilege initiated a civil lawsuit alleging negligence and sought recovery for damages arising out of an incident in which there was evidence implicating the plaintiff's mental health (his attempted suicide). Our Court found that, in such circumstances, allowing the plaintiff to use Section 7111 to shield his mental health records would be "manifestly unfair and grossly prejudicial" as it would undermine the truth-seeking purpose of the legal proceedings. *Id.* at 1263. Accordingly, our Court held that, in the limited circumstances where a plaintiff, by filing a lawsuit, objectively "knew or reasonably should have known his mental health would be placed directly at issue," he implicitly waives the protections of Section 7111. *Id.* at 1262.

Critically, however, our Court also reemphasized in that case the important purpose served by the confidentiality protections afforded by Section 7111, and reminded that those protections "must not be ignored in deciding whether a patient impliedly waived the privilege." *Id.* at 1263. Further, our Court cautioned that such records were to be handled by the judicial system with the utmost care and with maximal safeguards against widespread dissemination of the matters contained therein; hence, we approved of trial courts conducting *in camera* review of such records, and allowing disclosure of only "the particular information directly related to the subject of the litigation." *Id.* at 1264 n.12.

In the case at bar, as acknowledged by the supervising judge, Petitioner's treatment records were not subject to disclosure under any of Section 7111(a)'s enumerated exceptions. We must therefore determine whether Petitioner waived this privilege protecting his mental health treatment records from public disclosure, as the supervising judge justified inclusion of the records in Report 1 on this basis.

As a general matter, once it is established that records are privileged from disclosure to third parties, the burden shifts to the party seeking disclosure to establish that an exception to the privilege exists which would allow the disclosure. *See In re Investigating Grand Jury of Philadelphia County*, 593 A.2d 402 (Pa. 1991) (once individual established that bank records were privileged against disclosure because of the attorney-client privilege, burden shifted to the Commonwealth to establish that disclosure was, nevertheless, permissible under the crime-fraud exception to attorney-client privilege). Thus, the burden rests with the Commonwealth in this case to demonstrate that Petitioner waived the privilege conferred by Section 7111.

Furthermore, we observe that, given the strong legislative policy reflected in Section 7111 to keep mental health treatment records confidential, implicit waiver of this privilege is disfavored and has been recognized by our Court in only one circumstance — where a plaintiff initiated a civil action and sought to use Section 7111 to shield disclosure of mental health treatment records, which he could reasonably have foreseen would be relevant given that his mental health was directly implicated by his cause of action. *Octave*. What was critical to our disposition in that case, however, was the fact that the individual asserting the privilege had placed his mental health at issue by *initiating* the case, and, thus, considerations of fundamental fairness were implicated, given that

our Court did not wish to countenance using this privilege as an "offensive" shield for a party to gain a tactical advantage in civil litigation. *Octave*, 103 A.3d at 1263.

These considerations are not present in the case at bar, as Petitioner did not initiate the grand jury proceedings into which he was drawn, nor when he sought mental health treatment over 20 years ago could he have reasonably foreseen that the records of that treatment would be made available to all members of the public in this fashion. Thus, we decline to extend the principle of implicit waiver recognized in *Octave* to circumstances such as those presented by the case at bar. Indeed, given the manifest legislative policy to shield confidential mental health treatment records from public view embodied in Section 7111, where there is a written waiver implicating Section 7111, we find that we must strictly construe such a waiver.

Finally, as a general matter, the purpose for which a privilege has been waived is determinative of the scope of that waiver in subsequent legal proceedings. *See Commonwealth v. Chmiel*, 738 A.2d 406 (Pa. 1999) (holding the fact that the defendant waived his privilege of confidentiality in attorney-client communications in order to challenge the effectiveness of his trial counsel in representing him at trial did not bar him from asserting the privilege to prevent counsel's testimony from being used against him by the Commonwealth in the second trial to establish his guilt). Thus, the fact that a privilege has been narrowly waived for a discrete purpose counsels against construing it as a general waiver for all unrelated purposes.

With these considerations in mind, we address whether the waiver Petitioner executed in 1994 at the behest of his employer, the Diocese, to allow the Facility to release confidential information to diocesan personnel related to his treatment at the

Facility, may be construed as a general waiver of his privilege under Section 7111, as the supervising judge concluded. While, as noted, the Release remains sealed, several of its features are publicly known. First, the Release authorized the Facility to disclose to the Diocese confidential information obtained by the Facility during Petitioner's evaluation and treatment there. Second, the Release listed three diocesan officials to whom the confidential information could be released, and no other recipients were specified. Third, the treatment Petitioner received at the Facility which necessitated the Release was required by his employer, the Diocese.

Upon our review of the Release, we find nothing to indicate that Petitioner intended to waive his privilege against disclosure of his mental health treatment records generally, so as to allow third parties not employed by the Diocese to view them. Moreover, Petitioner did not waive his privilege during the course of a legal proceeding; rather, his waiver was restricted to select identified individuals in an organization with whom he had a private employment relationship, and for the apparent purpose of maintaining that employment relationship. We find that the narrow scope of this waiver, therefore, did not permit disclosure of these records to the public at large, and that the Commonwealth did not carry its burden to establish that Petitioner waived his right to assert the privilege against future public disclosures. *Chmiel*.

We also reject the corollary conclusion of the supervising judge, echoed by the Commonwealth, that Petitioner had a duty when signing the Release to explicitly restrict the Diocese from disclosing this information to third parties, and that his failure to do so supports the conclusion that the waiver was a general one. The statutory privilege of Section 7111 is conferred on individuals such as Petitioner for so long as their mental

health treatment records exist, and, by its plain terms, it is self-executing. It would be inconsistent, in our view, with our determination that Section 7111 waivers are to be strictly construed to interpret any waiver that fails to affirmatively and prospectively assert the privilege against any and all future possible public disclosures as, essentially, a general one; rather, such waivers are presumptively narrow, to be construed only as broad enough to accomplish the purpose for which they are provided. Accordingly, we find the Release did not authorize diocesan officials to further disclose Petitioner's records to the public at large, and that a contrary holding would be repugnant to the notion of privacy embodied in Section 7111.

Additionally, we discern nothing in the Investigating Grand Jury Act which would supersede the prohibitions against disclosure contained in Section 7111. Section 4552 of the Act, which governs investigating grand jury reports, does not contain any provision permitting the disclosure of these type of records as part of such a report, nor does the Act confer authority on the supervising judge, the attorneys for the Commonwealth, or any other participant in investigative grand jury proceedings to disregard the legislatively established protections conferred by Section 7111 and allow the public release of such records. *See* 42 Pa.C.S. § 4549(b) (enumerating permissible disclosures by participants in investigative grand jury proceedings other than witnesses). Given the manifest legislative purpose of shielding confidential mental health treatment records from public view embodied in Section 7111 of the MHPA, we decline to read the general mandates of the Investigating Grand Jury Act as overriding Section 7111's clear prohibitions against the release of such materials.

Indeed, in the one instance in which this Court has allowed protected medical information to be acquired by a grand jury via subpoena, we admonished that it should not be subject to wholesale release. In *In re The June 1979 Allegheny County Investigating Grand Jury*, *supra*, an investigating grand jury, looking into the question of whether the testing of hospital patient tissue samples by a private company was improperly performed at a government laboratory, sought to subpoena personal medical records containing the test results of the tissue samples. The hospital opposed the release of the records, as they contained information identifying the patient, and the purpose of the test; therefore, it refused to comply with the subpoena.

In addressing whether the records were barred from disclosure by the physician-patient privilege, 42 Pa.C.S. § 5929, our Court noted that the records in question revealed only the name of the patient and the test results, but did not contain any communications between the physician and the patient. Because the purpose of the physician-patient privilege is to encourage frank communication between the physician and patient by assuring the patient that his or her reputation will not be harmed through disclosure of personal medical matters to the community at large, our Court found that this limited disclosure to the grand jury would not impair that objective, given that the records revealed no communications between the patients and their physicians. *In re The June 1979 Allegheny County Investigating Grand Jury*, 415 A.2d at 77.

However, our Court emphasized that even this limited information from patients' medical records should be protected from public disclosure because such revelation would impermissibly infringe on the patients' individual privacy interest in avoiding disclosure of personal matters protected by Article I, Section 1 of our Constitution.

Nevertheless, our Court found that the patients' privacy interests were adequately protected in that case, due to the fact that, while the medical records were used in the initial phases of the grand jury investigation, the secrecy requirements statutorily imposed on grand jury proceedings protected the information from being revealed to the public by anyone involved in the proceedings. Our Court observed that, in the event the investigation should proceed further to a public trial, appropriate means of protecting the patients' confidentiality could be devised. *Id.* at 78.

By contrast, in the case at bar, there was no effort by the supervising judge or the Commonwealth to shield these records from public view, even though they *do* contain privileged communications between Petitioner and his therapists at the Facility. Instead, the Commonwealth sought the supervising judge's approval to include these records in a document which will be on public display. We find nothing in the relevant statutes or our extant jurisprudence that authorizes such a widespread disclosure, absent Petitioner's written consent. For all of the aforementioned reasons, we find that Petitioner's mental health treatment records were protected against public disclosure under Section 7111 of the MHPA, and, thus, as ordered below, that the challenged paragraphs, *see supra* note 7 and accompanying text, must be permanently redacted from Report 1.[11]

This is not the end of the matter, however, as the Commonwealth filed global motions to unseal and release Report 1 with respect to each individual challenger. Our Court previously denied these motions with respect to all other challengers, leaving only the Commonwealth's request pertaining to Petitioner undecided. Here, the entire section

[11] The OAG does not contend that he possesses inherent authority independent of the Investigating Grand Jury Act to release this information on his own initiative.

of Report 1 pertaining to Petitioner was temporarily redacted by this Court pending resolution of his challenge. In light of the very limited nature of Petitioner's requested relief, seeking redaction of only the challenged paragraphs of Report 1 as noted above, by our Order below, we will we grant the Commonwealth's motions with respect to Petitioner, in part, and unseal those portions of Report 1 pertaining to Petitioner, except for the challenged paragraphs.

IV. Order

The order of the Supervising Judge is reversed. The Commonwealth's Motion to Unseal and Application to Lift Stay are granted, in part, as specified below, and otherwise denied. The Prothonotary is directed to amend the August 14, 2018 interim redacted version of the grand jury report ("Interim Report") as follows:

1. Remove the temporary redaction of Petitioner's name at page 212 of the Interim Report;

2. Remove all temporary redactions at pages 692 through 695 of the Interim Report, except for the redactions on pages 693 and 694 identified by Petitioner in his prayer for relief. See *supra* note 7 and Petitioner's (Unredacted) Brief at 35 n.35.

The Prothonotary shall issue this amended version of the Interim Report within 14 days of the expiration of the time period for filing an application for reargument, or this Court's disposition of any reargument application, whichever occurs last.

Chief Justice Saylor and Justices Baer, Donohue, Dougherty and Wecht join the opinion.

Justice Mundy files a dissenting opinion.