DOCKET NO.: HHD-CV17-5045594S	:	SUPERIOR COURT
MARCUS T. HARVIN	:	JUDICIAL DISTRICT OF HARTFORD
v.	:	AT HARTFORD
YALE NEW HAVEN HEALTH SERVICES CORP., ET AL.	:	JUNE 24, 2025

MEMORANDUM OF DECISION
RE: MOTION TO DISMISS (#233)[1]

This case requires the court to reconcile a tension between two competing legal obligations applicable to healthcare providers: (1) the obligation to protect the privacy of a patient's confidential health information, including highly privileged mental health records that may not be disclosed without a patient's consent; and (2) the obligation to comply with a facially valid court order directing the provider to disclose a patient's medical records to a state prosecutor in the course of a criminal prosecution against the patient.

In its motion to dismiss, the defendant Lawrence and Memorial Hospital argues that the litigation privilege immunizes it from liability for arguably violating the first obligation because it disclosed the plaintiff's mental health records in response to a facially valid court order. The litigation privilege affords absolute immunity to those who provide relevant information in connection with judicial and quasi-judicial proceedings. The plaintiff responds that the litigation privilege does not apply under the facts and circumstances of this case and, therefore, the hospital may be held civilly liable for money damages for breaching the obligation to protect the confidentiality of his mental health records.

For the following reasons, the court concludes that the litigation privilege applies to a healthcare provider that produces privileged mental health records in response to a facially valid

[1] During a remote hearing on June 2, 2025, the parties jointly consented to the court issuing this opinion beyond the 120-day deadline.

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court order, regardless of any legal infirmity in the issuance of the order. Accordingly, the court will grant the hospital's motion to dismiss.

I

DISCUSSION

This matter is before the court on remand from the Appellate Court following its decision in *Harvin* v. *Yale New Haven Health Services Corp.*, 225 Conn. App. 171, 315 A.3d 365 (2024) ("*Harvin*"). The Appellate Court held that the litigation privilege barred the plaintiff's claims that the hospital unlawfully disclosed his confidential health information when two hospital employees testified during the criminal prosecution against the plaintiff. The Appellate Court remanded the case for further proceedings to determine whether the litigation privilege also barred the plaintiff's wrongful disclosure claims[2] based on the hospital's disclosure of mental health records in response to a subpoena and court order that called for the production of the plaintiff's "medical records."

Before the court is the hospital's motion to dismiss the wrongful disclosure claims based on the litigation privilege. The court held an evidentiary hearing on January 22, 2024. The court requested supplemental briefing after the hearing.

To appreciate fully the parties' respective arguments, the court first discusses the applicable law concerning the privacy of patient healthcare records. The court then sets forth the relevant facts and applies the law, including the litigation privilege, to those facts.

A

[2] Specifically, the plaintiff asserted claims for negligence per se and negligent infliction of emotional distress, both based on the purportedly unlawful disclosure of his medical records. The court refers to these claims as the wrongful disclosure claims.

At issue are two distinct statutory privileges governing healthcare records. The first is General Statutes §§ 52-146d through 52-146i, which protects communications between patients and psychiatric mental health providers.[3] Section 52-146e provides in relevant part, "all communications and records [between a patient and a psychiatric mental health provider] shall be confidential" and may only be disclosed with the patient's consent. General Statutes § 52-146e. The General Assembly enacted the patient-psychiatrist privilege in 1961.[4] Absent a patient's express consent, the statute does not authorize the disclosure of covered mental health records in criminal cases, even pursuant to a court order, except in very narrow circumstances not present in this case. General Statutes § 52-146f; *State* v. *Jenkins*, 73 Conn. App. 150, 807 A.2d 485 (2002), rev'd on other grounds, 271 Conn. 165, 856 A.2d 383 (2004).[5] "The broad sweep of the statute covers not only disclosure to a defendant or his counsel, but also disclosure to a court even for the limited purpose of an in camera examination." (Internal quotation marks omitted.) *State* v. *Kemah*, 289 Conn. 411, 424, 957 A.2d 852 (2008) (quoting *State* v. *Esposito*, 192 Conn. 166, 177-78, 471 A.2d 949 [1984]).

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[3] General Statutes § 52-146d (7) defines "psychiatric mental health provider" to mean "a physician specializing in psychiatry and licensed under the provisions of sections 20-9 to 20-12, inclusive, an advanced practice registered nurse licensed under chapter 378 who is board certified as a psychiatric mental health provider by the American Nurses Credentialing Center, a person licensed to practice medicine who devotes a substantial portion of his or her time to the practice of psychiatry or a person reasonably believed by the patient to be so qualified."

[4] The General Assembly enacted a similar privilege for patient-psychologist communications in 1969. General Statutes § 52-146c.

[5] The narrow exception is relevant when a defendant seeks the psychiatric records of a witness for impeachment and cross-examination purposes in a criminal case. *State* v. *Jenkins*, supra, 73 Conn. App. 167. The Supreme Court has held that the Confrontation Clause of the federal constitution may require the disclosure of the witness's psychiatric records under certain circumstances without the witness's consent. E.g., *State* v. *Esposito*, 192 Conn. 166, 179-80, 471 A.2d 949 (1984).

In 1990, the General Assembly enacted § 52-146o to "[create] a broad physician-patient privilege . . . ." *Edelstein* v. *Dept. of Public Health and Addiction Services*, 240 Conn. 658, 662, 692 A.2d 803 (1997). Subsection (a) provides:

> Except as provided in sections 52-146c to 52-146j, inclusive, sections 52-146p, 52-146q and 52-146s, and subsection (b) of this section, in any civil action or any proceeding preliminary thereto or in any probate, legislative or administrative proceeding, a physician or surgeon, licensed pursuant to section 20-9, or other licensed health care provider, shall not disclose (1) any communication made to him or her by, or any information obtained by him or her from, a patient or the conservator or guardian of a patient with respect to any actual or supposed physical or mental disease or disorder, or (2) any information obtained by personal examination of a patient, unless the patient or that patient's authorized representative explicitly consents to such disclosure.

General Statutes § 52-146o (a). There is no dispute that Lawrence and Memorial Hospital is a "licensed health care provider" as defined under the statute.

In stark contrast to the patient-psychiatrist privilege established under § 52-146e, the broader doctor-patient privilege under § 52-146o applies to civil, but not criminal, proceedings. *State* v. *Anderson*, 74 Conn. App. 633, 653-54, 813 A.2d 1039, cert. denied., 263 Conn. 901, 819 A.2d 837 (2003). Doctor-patient records may be obtained in civil and criminal cases pursuant to a subpoena that complies with General Statutes § 52-146o (b) the Health Insurance Portability and Accountability Act of 1996 (HIPAA).[6] See *Byrne* v. *Avery Center for Obstetrics and Gynecology, P.C.*, 327 Conn. 540, 175 A.3d 1 (2018) (describing HIPAA-compliant subpoena for medical

[6] Section 164.512 (e) (1) of title 45 of the Code of Federal Regulations provides in relevant part: "A covered entity may disclose protected health information in the course of any judicial or administrative proceeding: (i) In response to an order of the court or administrative tribunal provided that the covered entity discloses only the protected health information expressly authorized by such order; or (ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal . . . ." Subparagraph (ii), however, permits a disclosure only if the patient has received adequate notice of the request or a qualified protective order has been sought. See 45 C.F.R. § 164.512 (e); see also 45 C.F.R. § 164.512 (e) (1) (iv).

records). In civil cases in which the patient has not consented to the disclosure of their medical records, the party seeking the records must also satisfy § 52-146o (b).[7]

The heightened legal protection accorded patient-psychiatrist records versus doctor-patient records can, occasionally, lead to a problem like the one that gave rise to this civil action. The problem is this: Sometimes hospital medical records include a subset of records that enjoy a higher level of confidentiality than records of regular doctor-patient communications.

For example, consider a patient transported by ambulance to the emergency room of a local hospital for treatment after a car accident. The patient, who is intoxicated, meets with various non-psychiatric doctors and nurses and other hospital staff, who take tests, make diagnoses, administer treatment, and make records of their treatment and communications with the patient. General Statutes § 52-146o governs the disclosure of those records in civil cases and does not apply at all in criminal cases.[8]

Now suppose that the patient, while at the hospital, complains of experiencing depression before the accident and is referred to an in-house psychiatrist or similar mental health provider for evaluation. Records of the patient's communications with that provider are privileged under § 52-

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[7] General Statutes § 52-146o (b) provides: "Consent of the patient or the patient's authorized representative shall not be required for the disclosure of such communication or information (1) pursuant to any statute or regulation of any state agency or the rules of court, (2) by a physician, surgeon or other licensed health care provider against whom a claim has been made, or there is a reasonable belief will be made, in such action or proceeding, to the physician's, surgeon's or other licensed health care provider's attorney or professional liability insurer or such insurer's agent for use in the defense of such action or proceeding, (3) to the Commissioner of Public Health for records of a patient of a physician, surgeon or health care provider in connection with an investigation of a complaint, if such records are related to the complaint, or (4) if child abuse, abuse of an elderly individual, abuse of an individual who is physically disabled or incompetent or abuse of an individual with intellectual disability is known or in good faith suspected."

[8] A prosecutor seeking doctor-patient/hospital records in a criminal case must still comply with HIPAA, which includes a law enforcement exception for the disclosure of protected health information in criminal proceedings. 45 C.F.R. § 164.512 (f). The plaintiff does not challenge the disclosure of his mental health records as a HIPAA violation.

146e. As previously explained, even in a criminal case, a judge cannot order a hospital to release those records without the patient's express consent except in limited circumstances.

Further suppose that a state's attorney prosecuting a drunk driving case against the patient wants to subpoena the patient's hospital records for information concerning blood alcohol levels post-accident. The prosecutor may have no reason to suspect that the patient's hospital records include psychiatric records. The prosecutor prepares a HIPAA-compliant subpoena requesting the patient's "medical records." The prosecutor also asks a judge to sign and issue a standard order under General Statutes § 54-2a (a)[9] directing the respondent hospital to comply with the subpoena. The prosecutor serves the subpoena and court order on the hospital, which dutifully complies with the court order by collecting the patient's medical records, including the psychiatric record. The hospital places the records in a sealed envelope and has them delivered to the court,[10] where a

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[9] General Statutes § 54-2a (a) provides: "In all criminal cases the Superior Court, or any judge thereof, or any judge trial referee specifically designated by the Chief Justice to exercise the authority conferred by this section may issue (1) bench warrants of arrest upon application by a prosecutorial official if the court or judge determines that the affidavit accompanying the application shows that there is probable cause to believe that an offense has been committed and that the person complained against committed it, (2) subpoenas for witnesses, (3) capias for witnesses and for defendants who violate an order of the court regarding any court appearance, and (4) all other criminal process; and may administer justice in all criminal matters."

[10] General Statutes § 4-104 provides in relevant part that, if a hospital is "served with a subpoena issued by competent authority directing the production of such hospital record" the hospital may "deliver such record or at its option a copy thereof to the clerk of such court. Such clerk shall give a receipt for the same, shall be responsible for the safekeeping thereof, shall not permit the same to be removed from the premises of the court and shall notify the hospital to call for the same when it is no longer needed for use in court. Any such record or copy so delivered to such clerk shall be sealed in an envelope which shall indicate the name of the patient, the name of the attorney subpoenaing the same and the title of the case referred to in the subpoena. No such record or copy shall be open to inspection by any person except upon the order of a judge of the court concerned, and any such record or copy shall at all times be subject to the order of such judge." (Emphasis added).

A Superior Court has held that HIPAA preempts § 4-104 because it permits disclosure of protected health information in response to a subpoena that does comply with HIPAA. *State* v. *La Cava*, Superior Court, judicial district of Danbury, Docket No. CR-06-0128258-S (May 17, 2007, *Markle, J.*). Unlike the subpoena at issue in *State* v. *La Cava*, however, a court order accompanied

judge reviews them in camera. Unless the judge has medical training, they are unlikely to notice that one of the records is a psychiatric evaluation that is privileged under General Statutes § 52-146e. In all probability, the judge will sign an order unsealing all of the records as to the prosecutor and defense counsel. And now the proverbial cat is out of the bag.

The court's hypothetical closely tracks the actual facts of this case.

B

The court draws the following facts from the Appellate Court's opinion in *Harvin* and other documents in the record.

The plaintiff was arrested in 2014 for driving under the influence and causing an accident that resulted in serious injuries. He was treated at Lawrence and Memorial Hospital after the accident. During his treatment, the plaintiff met with a psychiatric mental health care provider, as defined under § 52-146d (7).

During the criminal prosecution, the state served a subpoena duces tecum on the hospital for the plaintiff's medical records pertaining his treatment after the accident. A court order issued pursuant to General Statutes § 54-2a accompanied the subpoena. The court order stated: "The matter of State of Connecticut v. Marcus Terrel HARVIN, K10KCR12-0378650T, is pending in the Superior Court, Judicial District of New London. The Court, pursuant to Section 54-2a(a)(2), Connecticut General Statutes and Section 40-2 of the Connecticut Practice Book, orders compliance with the attached subpoena as to the medical records concerning Marcus Terrell Harvin." Docket Entry No. 233, Exhibit 3 to Exhibit A. The subpoena directed the hospital to produce "medical records for Marcus Harvin (B/M, DOB [. . .]) that was treated at L&M Hospital

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the subpoena served on the hospital in this case. As previously noted, the plaintiff has never argued that the subpoena, coupled with a court order, did not comply with HIPAA.

on May 25, 2014." The subpoena included the following HIPAA certification: "This is to certify as follows. The information sought in this subpoena is relevant and material to a legitimate law enforcement inquiry. This request is specific and limited in scope to the extent reasonably practicable in light of the law enforcement purpose for which the information is sought. De-identified information cannot reasonably be used for the law enforcement purpose." Docket Entry No. 233, Exhibit 3 to Exhibit A.

The state sought the plaintiff's medical records to establish that they included admissible evidence of his blood alcohol level after the accident. Docket Entry No. 233, Exhibit A, pp. 69-70. However, apparently unbeknownst to the prosecutor who issued the subpoena and to the judge who signed the accompanying order, the plaintiff's medical records included the psychiatric mental health provider's evaluation.

On August 14, 2024, the hospital provided the plaintiff's hospital records to Sarah Bowman, the prosecuting attorney. As state law requires, the hospital placed the records in a sealed envelope, which Attorney Bowman delivered unopened to the trial court. The court then issued an order unsealing the records as to Attorney Bowman and defense counsel. Docket Entry No. 233, Exhibit 6 to Exhibit A. Thus, without the plaintiff's consent, his highly confidential psychiatric record was disclosed to the state during the criminal prosecution.

During the plaintiff's criminal trial, a registered nurse and a physician, both of whom worked for the hospital room, testified regarding the plaintiff's diagnosis, medical treatment and related medical records.

A jury convicted the plaintiff of multiple offenses. After sentencing, the plaintiff appealed. *State* v. *Marcus H.*, 190 Conn. App. 332, 337, 210 A.3d 607, cert. denied, 332 Conn. 910, 211 A.3d 71, cert denied, ___ U.S. ___, 140 S. Ct. 540, 205 L.Ed. 2d 343 (2019). According to the

Appellate Court's opinion in that case, the plaintiff did not raise the disclosure of his mental health records as an issue on appeal. Id., 610.

The plaintiff commenced this civil action in 2017. His complaint alleged multiple claims, all premised on the hospital's allegedly unlawful disclosure of his medical information, particularly his mental health records, and the testimony of hospital employees at the criminal trial. The parties engaged in extensive motion practice, including, on August 22, 2022, a motion to dismiss in which the defendants raised the litigation privilege. The trial court, *Connors, J.*, denied the motion on the ground that the defendants had failed to provide an evidentiary foundation showing what documents the hospital had actually produced to Attorney Bowman and how the documents were actually delivered. The defendant hospital appealed.[11]

On appeal, the plaintiff conceded that the litigation privilege barred his claims based on the testimony of the hospital's employees at the criminal trial about his medical information. However, he pressed his argument that the litigation privilege did not bar his claims that the hospital unlawfully disclosed his medical records, including the psychiatric evaluation. As to that claim, the Appellate Court explained, "[u]nlike with statements made by witnesses during testimony, our jurisprudence regarding the application of the litigation privilege in the context of the disclosure of documents is not as well developed. Nevertheless, our Supreme Court has stated that '[t]he privilege extends to pleadings *and other papers made a part of a judicial or quasi-judicial proceeding*, as long as the statements relate sufficiently to issues involved in a proposed or ongoing judicial proceeding . . . with the test for relevancy described as generous .... This is true even if the communications are false, extreme, outrageous, or malicious.' ... Moreover, in *Bruno* v. *Travelers Cos.* . . . this court concluded that the defendants, who had produced

[11] The trial court had previously granted summary judgment in favor of defendant Yale New Haven Health Services Corporation. The plaintiff did not appeal that ruling.

documents and provided testimony specifically in response to a duly issued subpoena, were protected by the doctrine of absolute immunity as applied to the litigation privilege. In reaching that conclusion, the court noted that 'the defendants are not alleged to have acted outside of the subpoena or to have done anything more than answer questions and produce documents that were asked or requested of them during the hearing.'" (Emphasis in original; citation omitted.) *Harvin*, supra, 225 Conn. App. 189-90.

Ultimately, the court agreed with the trial court's assessment that the hospital had failed to provide an evidentiary foundation for its motion to dismiss based on the litigation privilege. "[The hospital has] failed to present the court with evidentiary support for its varying arguments as to why this matter should not proceed to trial. Unlike in *Bruno*, in which there was no indication that the defendants had done anything other than comply with a valid subpoena issued as part of judicial proceedings; see *Bruno* v. *Travelers Cos.*, supra, 172 Conn. App. at 727–28, 161 A.3d 630; here, the allegations of the complaint, read broadly and in the light most favorable to the plaintiff, indicate that the defendant could have potentially disclosed confidential information in excess of that required under the subpoena. The burden certainly will be on the plaintiff at trial to produce evidence in support of such an allegation. The defendant, simply by virtue of evidence demonstrating that it produced sealed medical records in compliance with the subpoena and accompanying court order, does not, however, negate the possibility that the defendant also disclosed other records to the state's attorney.

"As the plaintiff notes in his appellate brief, despite six years of litigation, the defendant has not filed an answer to the complaint admitting or denying his allegations, which, in the context of a motion to dismiss, we must accept as true. Furthermore, there has never been an evidentiary hearing in this matter. We, like the trial court, cannot, on the basis of the scant factual record developed thus far, conclude that the plaintiff's claims should be barred by absolute immunity

under the litigation privilege. Accordingly, we reject the defendant's claim that the court improperly denied its motion to dismiss on the basis of evidentiary insufficiency.

"Although the policy considerations that underlie the litigation privilege could, under the right circumstances, support its application to lawsuits alleging the unlawful disclosure of confidential medical information, including by the production of documents in response to a subpoena duces tecum and court order, we leave that issue to be decided in the first instance by the trial court in this matter on a more complete record and in accordance with the guidance provided by our Supreme Court in *Dorfman* v. *Smith*, supra, 342 Conn. at 592–94 [271 A.3d 53].

"Finally, although we conclude that a determination regarding the applicability of the litigation privilege can be made only after developing the necessary record, including precisely what documents and information were disclosed, what evidence the plaintiff has that the defendant exceeded its obligations under the subpoena, and how, to whom and when documents were disclosed, we are not persuaded that the court abused its discretion by not conducting, *sua sponte*, an evidentiary hearing to resolve these factual issues. Whether the litigation privilege applies in the present case largely turns on whether the defendant disclosed records that were not covered by the subpoena and court orders, which is an issue that is clearly intertwined with the merits of the action. See *Conboy* v. *State*, 292 Conn. 642, 653–54, 974 A.2d 669 (2009). Furthermore, the defendant never requested an evidentiary hearing, despite the court having indicated, when it denied the defendant's summary judgment motion, that issues of material fact existed regarding the facts surrounding the disclosure of documents in this matter. It was well within the discretion of the court not to resolve a jurisdictional issue by ordering an evidentiary hearing but to leave the matter for resolution following additional discovery or a trial on the merits. See id. The defendant is not precluded from renewing its claim—either at trial or in a renewed motion to dismiss based

on a more fulsome record—that liability, if it exists on these facts, should be barred by the litigation privilege." *Harvin*, supra, 225 Conn. App. 191–93.

C

On remand, the hospital has opted to renew its motion to dismiss, albeit on a more complete record. First, the hospital closed the pleadings by answering the plaintiff's first amended complaint and denying all material factual allegations therein.

Second, the hospital took the deposition of Attorney Sarah Bowman and issued a subpoena duces tecum pursuant to which she produced a copy of the medical records that the hospital produced to her in a sealed envelope in response to the subpoena and court order during the criminal trial.[12] The plaintiff's counsel attended the deposition and also questioned Attorney Bowman. Accordingly, the court now knows exactly what documents she requested in the subpoena and court order, and exactly what documents the hospital produced in response during the criminal proceedings. It is undisputed that the hospital produced nothing more than what the subpoena and court order directed it to produce, viz, the plaintiff's medical records concerning his treatment at the hospital on May 25, 2014. The hospital did not produce documents "in excess" of what the subpoena and court order directed it to produce.[13]

Third, the trial court held an evidentiary hearing on January 21, 2025, at which the hospital introduced into evidence, without objection, the transcript of Attorney Bowman's deposition.[14]

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[12] The plaintiff argues that the hospital could, and should, have obtained relevance evidence from Attorney Bowman when it filed and pursued its first motion to dismiss, and that the hospital is legally precluded from relying on such evidence now. This argument is without merit.

[13] Any argument that the request for the plaintiff's "medical records" can reasonably be interpreted to exclude records reflecting communications with a mental health provider at the hospital is without merit.

[14] The hospital had previously attached the deposition transcript to its motion to dismiss. The plaintiff did not object to the deposition at that time either. In a supplemental brief submitted after the January 22, 2025, evidentiary hearing, the plaintiff argued for the very first time that the court erred in considering the transcript because it was hearsay. Docket Entry No. 239, pp. 3-4. However,

Attorney Bowman's deposition testimony confirmed that the only medical records the hospital produced were the ones she received from the hospital in a sealed envelope on August 14, 2015. Docket Entry No. 233, Exhibit A, pp. 28, 55.[15]

D

Given the undisputed facts set forth above, the court must now determine whether the litigation privilege bars the plaintiff's claim that the hospital unlawfully disclosed his mental health records without his consent, in violation of General Statutes § 52-146e.

The court begins by discussing the trial court order pursuant to § 54-2a that directed the hospital to comply with the subpoena for the plaintiff's medical records. As previously stated, the court seriously doubts that the judge who signed that order, and the prosecutor who requested it, had any reason to believe that the plaintiff's hospital records included a psychiatric evaluation protected from disclosure pursuant to General Statutes § 54-146e without the plaintiff's express consent. However, the court will assume, based on *State* v. *Jenkins*, supra, 73 Conn. App. 150, that the court order violated, albeit unintentionally, the plaintiff's statutory right to keep his mental health records private.

The problem with the plaintiff's claims, however, is that the court order was valid on its face. In the court's view, that fact, coupled with the additional undisputed facts set forth in Part I.C. of this opinion, brings this case within the ambit of *Bruno* v. *Travelers Cos.*, 172 Conn. App. 717, 161 A.3d 630 (2017). In that case the Appellate Court held that the litigation privilege

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by failing to assert a timely objection at the evidentiary hearing, if not earlier, the plaintiff has waived any right to object now.

[15] At oral argument on the motion to dismiss, plaintiff's counsel speculated that an earlier production of the plaintiff's medical records may have occurred because the subpoena and court order were served on the hospital on May 13, 2015, and directed the hospital to produce the requested medical records to the court on May 19, 2015. Attorney Bowman's deposition testimony contradicts this unsupported speculation.

protected the defendants from liability for responding to a duly issued subpoena by producing nothing more than what the subpoena requested, provided that the documents met the "very generous test for relevance" that the litigation privilege requires. Id., 727.

Although the court has reservations (discussed below) about the scope of *Bruno* v. *Travelers Cos.*, if the litigation privilege protects a party who produces relevant documents in response to a duly issued subpoena, it necessarily follows that the privilege also protects a party who produces relevant documents in response to a facially valid court order accompanying the subpoena—*and* a subsequent judicial order unsealing the documents—so long as the document production does not exceed the scope of what the subpoena requested.

There is reason to question the *legal* relevance of the plaintiff's mental health records to his criminal prosecution, although the *factual* relevance seems inarguable. According to Attorney Bowman's deposition testimony, the state sought the plaintiff's medical records not only to establish the admissibility of blood alcohol evidence, but also to determine whether the plaintiff made any factual statements or admissions concerning the drunk driving incident. Such statements may well have appeared in records of communications with the in-house mental health professional.

At the same time, however, the law concerning § 52-146e is clear that patient-psychiatric records are legally inadmissible—and not even discoverable—without a patient's express consent, regardless of the contents of those records. A criminal defendant could admit his guilt to a mental health provider, yet the records of that admission would still be privileged from disclosure without the defendant's consent. The very strong legal protection for mental health records indicates that whatever their factual relevance, such records are legally irrelevant and, hence, inadmissible in a criminal proceeding.

So, which test of relevance should govern for litigation privilege purposes? The court concludes that factual relevance controls.

In sum, (i) because the hospital produced the plaintiff's medical records in response to a facially valid court order, (ii) because the hospital's production did not exceed the scope of the court order and subpoena, and (iii) because the documents produced were factually relevant to the criminal prosecution, the court concludes that the litigation privilege bars the plaintiff's claims against the hospital.

E

Notwithstanding the above conclusion, the court has concerns about the potential implications of this decision in future cases, both civil and criminal, in which the state or a private party issues a HIPAA-compliant subpoena to a hospital for a patient's medical records. The court's concerns warrant a brief discussion and some suggestions for ameliorating them.

Although this case involved a subpoena and court order issued in a criminal proceeding, parties in civil cases frequently issue subpoenas, without court orders, to hospitals for medical records. This is routine in personal injury cases. It also happens in family court cases, particularly when custody is disputed. Undoubtedly, it occurs in juvenile cases too. If the subpoenaed hospital records include psychiatric mental health records, and if the hospital produces all of a patient's records in response to a subpoena for the patient's "medical records," highly privileged mental health records may be disclosed to an adverse party who cares not a whit for the privacy of the party whose records were requested. Although a party whose hospital records have been subpoenaed has a right to object to the subpoena, that party may not be aware that some records are privileged under § 52-146e and, thus, may not raise that statute as grounds for the objection.

Just as attorneys have an obligation to assert and protect the attorney-client privilege on behalf of their clients, hospitals have a duty to assert and protect the confidential medical records

of their patients. When a hospital is presented only with a HIPAA-compliant subpoena for a patient's "medical records," i.e., if no court order accompanies the subpoena, it is incumbent upon the hospital to review the requested records carefully to determine whether they include mental health records protected under General Statutes § 52-146e (or any other statue that offers heighted privacy protection). If such records are present, the hospital should file a motion to quash the subpoena as to those records. In the court's view, a hospital's failure to follow this procedure should preclude a subsequent assertion of the litigation privilege, even if the disclosed records are used in, and are relevant to, a judicial proceeding.

Even in a criminal case like the one that preceded this action, it behooves a hospital to review and identify privileged mental health records before placing them in the sealed envelope and delivering them to the court. At a bare minimum, the hospital should include a clear notice affixed to the outside of the sealed envelope informing the judge that the records may include privileged mental health records. Such a notice would alert the judge, who could then hold a hearing before unsealing the records and disclosing them to the prosecutor.

The hospital argues that requiring all hospitals not only to collect requested medical records, but also to review them and identify privileged mental health records, and file a motion to quash to protect those records, would impose an undue burden on hospitals. The court acknowledges this additional burden, but it is one that hospitals must bear. The court reiterates that all medical providers have an obligation to protect the confidential healthcare information of their patients. A HIPAA-compliant subpoena for a patient's "medical records" is sufficient to compel the disclosure of doctor-patient records protected under General Statutes § 52-146o. Without an accompanying court order, however, such a subpoena is not sufficient to justify the disclosure of mental health records privileged under § 52-146e or similar statutes.

Finally, the court respectfully suggests that when state's attorneys issue subpoenas to hospitals for a defendant's "medical records," the subpoenas should expressly *exclude* records subject to enhanced protection under statutes like § 52-146e. Similarly, court orders issued pursuant to General Statutes § 54-2a should contain the same limitation—unless the court has determined that one of the narrow circumstances in which a defendant's mental health records can be disclosed without consent is present.

II

ORDER

For the foregoing reasons, the hospital's motion to dismiss (#233) is GRANTED.

/s/ 439604
Daniel J. Klau, Judge

Checklist for Clerk

Docket Number: HHD-CV17-5045594-S

Case Name: Marcus T. Harvin v. Yale New Haven Health Services Corp., Et Al.

Memorandum of Decision dated: 6/24/25

File Sealed: **Yes** **No** X

Memo Sealed: **Yes** **No** X

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HHD-CV17-5045594-S HARVIN, MARCUS T. v. YALE NEW HAVEN HEALTH SERVICES CORP Et Al

Prefix: HD3 **Case Type:** T90 **File Date:** 08/01/2017 **Return Date:** 08/08/2017

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Case Information

Case Type: T90 - Torts - All other
Court Location: HARTFORD JD
List Type: JURY (JY)
Trial List Claim: 05/10/2018
Last Action Date: 05/27/2025 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date:
Disposition:
Judge or Magistrate:

Party & Appearance Information

Party			No Fee Party	Category
P-01	**MARCUS T HARVIN #403853**			Plaintiff
	Attorney: ALEXANDER TIVA TAUBES (437388) 470 JAMES STREET SUITE 007 NEW HAVEN , CT 06513	File Date: 06/21/2022		
	Attorney: TURLEY LAW PLLC (444346) 63 WALL STREET 1B MADISON , CT 06443	File Date: 09/30/2024		
D-01	**YALE NEW HAVEN HEALTH SERVICES CORP**			Defendant
	Attorney: STOCKMAN O'CONNOR PLLC (439250) ONE ENTERPRISE DRIVE SUITE 310 SHELTON , CT 06484	File Date: 01/07/2019		
D-02	**LAWRENCE AND MEMORIAL HOSPITAL**			Defendant
	Attorney: STOCKMAN O'CONNOR PLLC (439250) ONE ENTERPRISE DRIVE SUITE 310 SHELTON , CT 06484	File Date: 01/07/2019		
L-01	**APPELLATE COURT DOCKET #46339** Non-Appearing			For Notice Only or Proposed Intervenor

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If there is an in front of the docket number at the top of this page, then the file is electronic (paperless).

- Documents, court orders and judicial notices in electronic (paperless) civil, housing and small claims cases with a return date on or after January 1, 2014 are available publicly over