

# Superior Court Reviews Discoverability of Mental Health Records

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By Brad E. Haas

The Superior Court of Pennsylvania recently analyzed two cases related to the disclosure of a plaintiff's mental health records in the context of personal injury litigation. Specifically, the court discussed when and how certain allegations within a complaint or deposition testimony could require such disclosure.

In sum, the Superior Court held that a personal injury lawsuit alleging some emotional or mental harm, in and of itself, is insufficient to waive the statutory psychiatrist/psychologist-patient privilege or the protections of the Pennsylvania Mental Health Procedures Act, which precludes the disclosure of certain mental health records. See *Boyle v. Main Line Health, Inc.*, 2022 Pa. Super. Unpub. LEXIS 71 (Jan. 10, 2022) (non-precedential decision); *Tavella Zirilli v. Ratner Companies, L.C.*, 2021 Pa. Super. 240 (Dec. 8, 2021).

Both the *Boyle* and *Tavella* opinions began with a discussion of the 2010 case of *Gormley v. Edgar*, 995 A.2d 1197 (Pa. Super. 2010). In *Gormley*, the Superior Court determined that when a plaintiff directly places their mental condition at issue in a lawsuit, they waive any statutory privileges related to the disclosure of mental health records, making them subject to disclosure. Conversely, the court held that general assertions of mental issues

alone are insufficient to place a party's mental condition at issue.

While *Gormley* laid out a general framework of review, the intricacies of mental health allegations and the potential discoverability of such allegations were further expanded upon in the *Boyle* and *Tavella* opinions.

In *Boyle*, the plaintiffs brought suit on behalf of their minor son for injuries which occurred during his birth. The amended complaint sought damages based on professional negligence for the minor's injuries, as well as for past and future "emotional pain and suffering" and a loss of consortium claim on behalf of Mr. Boyle. During discovery, the defendants served subpoenas on two of Mr. Boyle's psychiatrists. The plaintiffs objected, arguing the records contained privileged mental health information. The trial court ruled that Mr. Boyle waived any privilege related to the mental health records by placing his mental and emotional health at issue. The trial court based its decision on two allegations. The first, from the amended complaint was an allegation that Mr. Boyle would in the future suffer from emotional pain and mental distress associated with parenting his son who suffered permanent injuries. The second was from the deposition of Mr. Boyle where he testified to feeling anxious, frightened, and confused in the delivery room.

On appeal the plaintiffs argued they did not allege Mr. Boyle suffered any mental injury, severe emotional trauma requiring treatment, or any specific psychiatric/psychological condition, as would be required to waive the mental health records privileges. Instead, they argued the allegations were general assertions of emotional and mental pain. The Superior Court agreed with the plaintiffs and reversed the trial court. In doing so, they distinguished *Gormley* on the basis that the plaintiff in that case specifically alleged she suffered from anxiety, a recognized mental condition, as a result of an accident. As such, the Superior Court appeared to differentiate between a plaintiff alleging to have experienced anxiety during an incident as opposed to a plaintiff specifically claiming an incident factually caused anxiety or some other specific mental health disorder.

The *Tavella* court dealt with a different situation involving a similar analysis under *Gormley*. In *Tavella*, the plaintiff filed a negligence action, claiming personal injuries after receiving a hair color treatment. The injuries included chemical burns and scarring to the scalp, which spread to the plaintiff's neck, face, arms, and chest. The plaintiff also alleged the hair color treatment caused headaches, neuropathy, mental anguish, and emotional distress. Initial discovery included medical records from the plaintiff's primary care physician. These records revealed the physician observed pre-accident issues to the plaintiff's skin, as well as a mental health condition that affected the skin. An IME doctor also concluded that the plaintiff's mental health conditions might have affected her skin, scalp, and hair before the incident. Based on this information, the defendants

sought discovery of all of the plaintiff's mental health records.

On appeal, the defendants argued that the plaintiff had placed her mental and physical health at issue by filing a personal injury action claiming her skin condition was caused by the hair color treatment. The defendants further argued that evidence of the plaintiff's mental health diagnoses were directly relevant to the source of the skin and scalp issues and contained potentially exculpatory evidence to suggest the skin color treatment was not a substantial factor in causing her alleged injuries.

The Superior Court held that, while the plaintiff's general averments in her complaint of loss of life's pleasures, mental anguish, and emotional distress did not result in a waiver, the nature of the injuries alleged and the investigation thereof did require the disclosure of the mental health records. The court recognized that although the complaint did not raise allegations of mental injuries as a result of the hair color treatment, the defenses to liability were connected to the plaintiff's mental health to such an extent that necessitated disclosure.

The court stated the plaintiff "knew or should have known that by commencing suit and alleging Ms. Tavella-Zirilli's injuries were caused by Appellees negligence in coloring and treating her hair, they were placing any condition that affects the skin, scalp, or hair at issue as to causation." However, the court limited its holding and determined that, despite evidence that a mental condition may be relevant to liability, the plaintiff had not waived all protections against disclosure due to the fact that she was not alleging the incident caused a specific mental condition.

In doing so, the court stated, “What is relevant are records showing a treatment provider believes Ms. Tavella-Zirilli has skin, scalp, or hair injuries caused by her mental health and when those injuries occurred, not Ms. Tavella-Zirilli’s innermost thoughts about her mental health, regardless of whether those communications are about her skin, scalp, or hair.” As such, the court allowed for the discovery of the plaintiff’s mental health records containing information related to causation, but required redaction of any unrelated communications between the plaintiff and her mental health providers.

These two cases are instructive in several respects. First, pursuant to both *Gormley* and *Boyle*, if a plaintiff alleges an accident caused a specific mental condition, such as anxiety, mental health records will likely be discoverable. If, however, the allegations are general emotional trauma or if a plaintiff merely alleges experiencing anxiety at some point, the records will likely not be discoverable. The *Tavella* holding demonstrates that the door to discoverability

of mental health records can be opened not only by a plaintiff’s allegations, but also by potential causation defenses. Additionally, it can be expected that even in situations where mental health records discovery is permitted, courts will generally still require some level of redaction. Based upon these cases, a detailed analysis of a plaintiff’s complaint, testimony, and potential defenses is critical in order to demonstrate the need for mental health records that could contain valuable information for defendants.



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*Brad E. Haas is an associate in the Casualty Department in the Pittsburgh office of Marshall Dennehey Warner Coleman & Goggin. He concentrates his practice on the defense of companies and individuals in a wide array of civil litigation matters involving personal injury claims. He has successfully litigated cases involving automobile and trucking liability, premises liability, property damage, insurance coverage/bad faith litigation, and general liability matters. He may be reached at [behaas@mdwcg.com](mailto:behaas@mdwcg.com).*