No.

IN THE

Supreme Court of the United States

ROYAL SUITES HEALTH CARE & REHABILITATION, *et al.*,

Petitioners,

v.

JOSEPH S. INGEMI, JR.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the patient privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320d, *et seq.*, and its regulations, protects against discovery of "individually identifiable health information" of non-parties to the pending litigation against a health care provider, where the information sought is at best tangentially relevant to the underlying claims of negligence against the provider, even though courts ostensibly have authority to direct disclosure of protected information that violates HIPAA?

PARTIES TO THE PROCEEDING

Petitioners, Royal Suites Health Care & Rehabilitation; Royal Suites Care Center, LLC; Royal Suites Care Center, LLC d/b/a Royal Suites Health Care & Rehabilitation; Abraham Mermelstein, individually, and an agent, servant, employee and/or administrator of Royal Suites Health Care & Rehabilitation and/or Royal Suites Care Center, LLC d/b/a Royal Suites Health Care & Rehabilitation; Ocean Health Care Management, LLC, as owner, operator and/or manager of Royal Suites Health Care & Rehabilitation and/or Royal Suites Care Center, LLC d/b/a Royal Suites Health Care & Rehabilitation; Dynamic Healthcare Management, LLC, as owner, operator and/or manager of Royal Suites Health Care & Rehabilitation and/or Royal Suites Care Center, LLC d/b/a Royal Suites Health Care & Rehabilitation; Dynamic Healthcare Management, LLC, as Owner, Operator and/or Manager of Royal Suites Health Care & Rehabilitation and/or Royal Suites Care Center, LLC d/b/a Royal Suites Health Care & Rehabilitation; ABC Companies (1-10); Def Partnerships (1-10); John Doe Physicians (1-10); Jane Doe Nurses (1-10); Jane Doe Technicians (1-10); Jim & Jane Doe Administrators (1-10); CNAS and Paramedical Employees (1-20) (Fictitious Names, the Real Names Being Unknown) i/j/s/a, were defendants in the trial court and appellants in the Superior Court Appellate Division of New Jersey and the Supreme Court of New Jersey.

Respondent, Joseph S. Ingemi, Jr., was plaintiff in the trial court and appellee in the Superior Court Appellate Division of New Jersey and the Supreme Court of New Jersey.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Petitioners/Defendants, Royal Suites Health Care & Rehabilitation; Royal Suites Care Center, LLC; Ocean Health Care Management, LLC; and Dynamic Healthcare Management, LLC, are privately-owned companies, and are not publically traded. Royal Suites Health Care & Rehabilitation does not have a parent company.

STATEMENT OF RELATED PROCEEDINGS

These cases directly relate to the following proceedings:

Ingemi v. Royal Suites Health Care & Rehabilitation, No. ATL L-001212-24, New Jersey Superior Court. Order entered Jan. 17, 2025.

Ingemi v. Royal Suites Health Care & Rehabilitation, No. AM-000294-24, New Jersey Superior Court Appellate Division. Order entered Feb. 20, 2025.

Ingemi v. Royal Suites Health Care & Rehabilitation, No. 090422, New Jersey Supreme Court. Order entered May 30, 2025.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Royal Suites Health Care & Rehabilitation; Royal Suites Care Center, LLC; Royal Suites Care Center, LLC d/b/a Royal Suites Health Care & Rehabilitation; Abraham Mermelstein, individually, and an agent, servant, employee and/or administrator of Royal Suites Health Care & Rehabilitation and/or Royal Suites Care Center, LLC d/b/a Royal Suites Health Care & Rehabilitation; Ocean Health Care Management, LLC, as owner, operator and/or manager of Royal Suites Health Care & Rehabilitation and/or Royal Suites Care Central d/b/a Royal Suites Health Care & Rehabilitation; Dynamic Healthcare Management, LLC, as owner, operator and/or manager of Royal Suites Health Care & Rehabilitation and/or Royal Suites Care Center, LLC d/b/a Royal Suites Health Care & Rehabilitation; Dynamic Healthcare Management, LLC, as Owner, Operator and/or Manager of Royal Suites Health Care & Rehabilitation and/or Royal Suites Care Center, LLC d/b/a Royal Suites Health Care & Rehabilitation; ABC Companies (1-10); Def Partnerships (1-10); John Doe Physicians (1-10); Jane Doe Nurses (1-10); Jane Doe Technicians (1-10); Jim & Jane Doe Administrators (1-10); CNAS and Paramedical Employees (1-20) (Fictitious Names, the Real Names Being Unknown) i/j/s/a, respectfully submit this Petition for a Writ of Certiorari to the Supreme Court of New Jersey.

The issues in this case concern the privacy rights of residents of a nursing home, and their responsible parties—who are unaffiliated with the lawsuit—regarding their sensitive healthcare information pursuant to the Health Insurance Portability and Accountability Act ("HIPAA").

Plaintiff/Respondent's Supplemental Interrogatory Requests for Written Discovery, specifically Supplemental Interrogatory #20, demands that Defendant/Petitioner Royal Suites Health Care & Rehabilitation and other defendants (hereinafter "Royal Suites" or "Petitioners") disclose "the names and addresses of all responsible parties for each resident that was in the defendant nursing home facility from August 5, 2022 through September 14, 2022," i.e., the personal information for the appointed guardians of *other* residents at the facility. Royal Suites objected to this request on the grounds that the information sought is protected by federal privacy laws, including HIPAA. On the other hand, the Plaintiff, Mr. Ingemi, asserted that this information is needed due to the wholly speculative theory that one of these responsible parties might have been passing by Mr. Ingemi's room at the time that he rolled out of his bed, thereby becoming a witness to the incident.

Despite Royal Suites' objection and opposition, the trial court granted Respondent's Motion to Compel and denied Petitioners' Cross Motion, ordering that the Petitioners must disclose this sensitive information. The trial court's cursory order requiring the disclosure of this protected information directly conflicts with long-standing federal privacy legislation, particularly HIPAA.

Royal Suites then sought review of these admittedly interlocutory orders, pursuant to New Jersey's procedures, to the Superior Court of New Jersey, Appellate Division, and then to the Supreme Court of New Jersey. In both instances the New Jersey appellate courts denied review without addressing the substantive HIPAA claims advanced by Royal Suites. Royal Suites argued to

both appellate courts that the names and addresses of responsible parties of the facility's residents who are not a party to this suit constitute "individually identifiable health information" under federal law. Furthermore, requiring Royal Suites to release this information would compel a clear violation of established federal law, placing them in an untenable position of disclosing confidential information that is protected by HIPAA. Indeed, as the Appellate Division noted in another case, "one of the primary purposes of [HIPAA] is to standardize and increase the efficiency of common electronic transactions in health care . . . as well as to protect the security and privacy of individually identifiable health information." *Smith v. Am Home Prods. Wyeth-Ayerst Pharm.*, 372 N.J. Super. 105, 110 (2003). Both New Jersey appellate courts denied review.

It does not appear that the Supreme Court of the United States has squarely addressed the issue concerning the obligations of courts to safeguard the federally-protected privacy rights of a party's fellow residents of a nursing home (non-parties to the litigation). More specifically, it also does not appear as though this Court has had the opportunity to weigh in regarding the implications of a discovery order requiring the disclosure of information protected by HIPAA, particularly with respect to the protected information involving non-parties, although other jurisdictions outside of New Jersey have addressed these privacy concerns, with varying results. The Court should now take this opportunity, in this case where the issue is so starkly framed, to resolve this important question to provide guidance to courts and litigants across the United States.

OPINIONS BELOW

The Supreme Court of New Jersey's order denying Petitioners' motion for leave to appeal (App.1-2) is unreported and available at 2025 WL 1589941. The Superior Court of New Jersey, Appellate Division's order denying Petitioners' petition for permission to appeal (App.3-5) and the Court of Common Pleas orders addressing Petitioners' objections to Respondents' discovery requests, and the potential HIPAA implications (App.6-8) are unreported.

JURISDICTION

The Supreme Court of New Jersey issued its decision on May 30, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a), to review the final decision of the highest court of a state "where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

REGULATORY PROVISIONS INVOLVED

45 C.F.R. § 164.502(a), provides:

> Standard. A covered entity or business associate may not use or disclose protected health information, except as permitted or required by this subpart or by subpart C of part 160 of this subchapter.

45 C.F.R. § 160.103, provides:

> Individually identifiable health information is information that is a subset of health information,

including demographic information collected from an individual, and:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

45 C.F.R. § 164.514(b)(2)(i), provides:

The following identifiers of the individual or of relatives, employers, or household members of the individual, are removed:

(A) Names;

(B) All geographic subdivisions smaller than a State, including street address, city, county, precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code if, according to the current publicly available data from the Bureau of the Census:

(1) The geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and

(2) The initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000.

(C) All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older;

(D) Telephone numbers;

(E) Fax numbers;

(F) Electronic mail addresses;

(G) Social security numbers;

(H) Medical record numbers;

(I) Health plan beneficiary numbers;

(J) Account numbers;

(K) Certificate/license numbers;

(L) Vehicle identifiers and serial numbers, including license plate numbers;

(M) Device identifiers and serial numbers;

(N) Web Universal Resource Locators (URLs);

(O) Internet Protocol (IP) address numbers;

(P) Biometric identifiers, including finger and voice prints;

(Q) Full face photographic images and any comparable images; and

> (R) Any other unique identifying number, characteristic, or code, except as permitted by paragraph (c) of this section[.]

45 C.F.R. § 164.502(g)(1), provides:

> Standard: Personal representatives. As specified in this paragraph, a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the individual for purposes of this subchapter.

45 C.F.R. § 160.203, provides:

> A standard, requirement, or implementation specification adopted under this subchapter that is contrary to a provision of State law preempts the provision of State law.

STATEMENT OF THE CASE

In this nursing home malpractice case, Plaintiff/Respondent, Joseph S. Ingemi, Jr., contends that Defendant/Petitioner Royal Suites Health Care & Rehabilitation and other defendants (hereinafter "Royal Suites" or "Petitioners") failed to secure the bed rails on Plaintiff's bed, resulting in an unwitnessed fall and cervical fracture. Plaintiff initiated this suit upon the filing of a Complaint on June 7, 2024.

Mr. Ingemi is a seventy-four (74) year-old man who was admitted to Royal Suites on August 5, 2022 for sub-acute rehabilitation. On September 14, 2022, Mr. Ingemi sustained an unwitnessed fall. He was found by staff laying on the floor next to his bed and bleeding from his

head. Both side rails were noted to be up. Mr. Ingemi reportedly stated "I rolled out of bed." Mr. Ingemi was evaluated and found to be alert and oriented. Mr. Ingemi was sent to the emergency room of AtlantiCare Regional Medical Center for further evaluation. Importantly, there is no evidence that his fall was witnessed by any guardian or other "person responsible" for another resident; the discovery request at issue is therefore based on pure speculation.

On June 7, 2024, Mr. Ingemi filed his Complaint along with an initial demand for answers to supplemental interrogatories. Specifically, his Supplemental Interrogatory #20 asked Royal Suites to provide "the names and addresses of all responsible parties for each resident that was in the defendant nursing home facility from August 5, 2022 through September 14, 2022." On September 27, 2024, Royal Suites objected to this request as overly broad, unduly burdensome, vague and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, Royal Suites noted that the request sought information protected by federal privacy laws and HIPAA, and its disclosure would therefore violate federal law.

On October 29, 2024, Mr. Ingemi filed his Motion for an Order compelling the names of the responsible parties for other residents living in the same unit during his residency at Royal Suites. On November 19, 2024, Royal Suites opposed Plaintiff's Motion and cross-moved for an order denying Plaintiff's Motion to Compel and granting Defendant's Motion for a Protective Order. On November 22, 2024, the court granted Plaintiff's Motion to Compel discovery and denied Royal Suites' Cross-Motion for a

Protective Order. As part of its order, the trial court briefly opined that it believed that the information sought was relevant, and did not infringe on HIPAA privacy rights. App.9-12. Royal Suites subsequently filed a Motion for Reconsideration on December 4, 2024, of the court's November 22, 2024 order. On December 12, 2024, Royal Suites produced amended discovery responses to Mr. Ingemi's interrogatories while maintaining their objection to Supplemental Interrogatory #20, again explaining that the request sought protected health information of residents whose care was wholly irrelevant to the alleged care at issue in the matter at hand.

On January, 17, 2025, the trial court granted Royal Suites' Motion for Reconsideration in part and denied it in part, compelling them to provide Mr. Ingemi with a full and complete response to Plaintiff's Supplemental Interrogatory #20 (names of the responsible parties for other residents living in the same unit during his residency at Royal Suites Health Care & Rehabilitation from August 28, 2022—September 14, 2022) within thirty (30) days. App.6-8. The court made no further comment regarding Royal Suites' arguments.

Royal Suites then sought seek leave to appeal to the Superior Court of New Jersey, Appellate Division. On February 20, 2025, the Appellate Division denied the request to appeal. App.3-5. In its order, the Appellate Division did not discuss HIPAA, and only remarked that Royal Suites did not demonstrate "sufficient justification" to overcome the strong policies disfavoring piecemeal review of litigation, and that trial courts are afforded "substantial deference" in their ongoing management of discovery or other pretrial matters.

Royal Suites sought review with the Supreme Court of New Jersey. On May 30, 2025, the Court, without comment, denied Royal Suites' motion for leave to appeal. App.1-2.

REASONS FOR GRANTING THE PETITION

I. Introduction—How HIPAA should have been Applied in this Case by the New Jersey Courts to Protect the Privacy Rights of Non-Parties To This Litigation.

HIPAA was enacted in 1996 to provide a minimum national standard for the protection of private health information. HIPAA regulations specify that a covered entity may not use or disclose protected health information, except as permitted or required under the act. 45 C.F.R. § 164.502(a). Under its broad definitions, a covered entity includes a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a covered transaction. 45 C.F.R. § 160.103. HIPAA defines "individually identifiable health information" as follows:

> *Individually identifiable health* information is information that is a subset of health information, including demographic information collected from an individual, and:
>
> (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
>
> (2) Relates to the past, present, or future physical or mental health or condition of an

> individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
>
> **(i)** That identifies the individual; or
>
> **(ii)** With respect to which there *is a reasonable basis* to believe the information can be used to identify the individual.

45 C.F.R. 160.103 (emphasis added).

The significance of the "reasonable basis" language utilized by the statute is exemplified by the following response from the Department of Health and Human Services published in the Federal Register to suggestions that the broad "reasonable basis" language be replaced with the more restrictive "direct" language:

> *Comment*: Several commenters suggested modifying the definition of individually identifiable health information to state as a condition that the information provide a *direct* means of identifying the individual. They commented that the rule should support the need of those (e.g., researchers) who need "ready access to health information . . . that remains linkable to specific individuals."
>
> *Response*: The Congress included in the statutory definition of individually identifiable health information the modifier "*reasonable basis*" when describing the condition for

> determining whether information can be used to identify the individual. Congress thus intended to go beyond "*direct*" identification and to encompass circumstances in which a reasonable likelihood of identification exists. Even after removing "direct" or "obvious" identifiers of information, a risk or probability of identification of the subject of the information may remain; in some instances, the risk will not be inconsequential. Thus, we agree with the Congress that "reasonable basis" is the appropriate standard to adequately protect the privacy of individuals' health information.

Federal Register: December 28, 2000 (Volume 65, Number 250)] [Rules and Regulations] [Page 82611-82612]

The portion of HIPAA explaining how covered entities must de-identify health information illustrates how HIPAA defines "individually identifiable health information." Importantly, HIPAA is broadly written to protect a wide variety of information, and protects the identifying information of an individual's "*relatives, employers, or household members.*" 45 C.F.R. § 164.514(b)(2)(i) (emphasis added). Specifically, "[t]he following identifiers of the individual or of *relatives, employers, or household members of the individual* [must be] removed":

A. *Names*;

B. *All geographical identifiers smaller than a state, including street address, city, county, precinct, zip code*, and their equivalent geocodes, except for the initial three digits

of a zip code if, according to the current publicly available data from the Bureau of the Census:

1. The geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and

2. The initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000.

C. Dates (other than year) directly related to an individual;

D. Phone numbers;

E. Fax numbers;

F. Email addresses;

G. Social Security numbers;

H. Medical record numbers;

I. Health insurance beneficiary numbers;

J. Account numbers;

K. Certificate/license numbers;

L. Vehicle identifiers and serial numbers, including license plate numbers;

M. Device identifiers and serial numbers;

N. Web Uniform Resource Locators (URLs);

O. Internet Protocol (IP) address numbers;

P. Biometric identifiers, including finger, retinal and voice prints;

Q. Full face photographic images and any comparable images;

R. Any other unique identifying number, characteristic, or code except the unique code assigned by the investigator to code the data

45 C.F.R. § 164.514(b)(2)(i) (emphasis added).

Moreover, *HIPAA requires that covered entities are to treat an individual's responsible party as the individual*[1] when considering the individual's protected health information, as well as the individual's rights under HIPAA:

> Standard: Personal representatives. As specified in this paragraph, *a covered entity must*, except as provided in paragraphs (g)(3) and (g)(5) of this section, *treat a personal representative*[2] *as the individual for purposes of this subchapter.*

45 C.F.R. § 164.502(g)(1) (emphasis added).

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1. Except in cases of unemancipated minors or elder abuse. 45 C.F.R. § 164.502(g)(3); g(5).

2. Within the context of nursing home practice, personal representative means a resident's guardian, Power of Attorney, family member, or any other people designated as responsible for the care of the elder person.

Thus, the identity and information of personal representatives is protected, and Royal Suites is prohibited from providing this information.

New Jersey courts have recognized that these HIPAA's protections against the disclosure of protected health information are a "mandatory floor" for the protection of medical information. *In re Diet Drug Litig.*, 384 N.J. Super. 546, 553 (Law. Div. 2005). Further, the regulations are clear that any portion of HIPAA which is "contrary to a provision of State law preempts the provision of State law." 45 C.F.R. § 160.203. "These federally mandated Privacy Standards demonstrate a strong federal policy of protection for patient health information." *Smith v. Am. Home Products Corp. Wyeth-Ayerst Pharm.*, 372 N.J. Super. 105, 128 (Law. Div. 2003). This is because "privacy is a fundamental right." Standards for Privacy of Individually Identifiable Health Information, 65 FR 82462-01. American law has always emphasized a right to privacy as "it speaks to our individual and collective freedom." *Id.*

It is not disputed that Royal Suites is a "covered entity" and is bound by the provisions of HIPAA. The names and addresses of responsible parties of the facility's residents who are *not* parties to this litigation constitute "individually identifiable health information." *See* 45 C.F.R. § 164.514(b)(2)(i); 45 C.F.R. § 164.502(g)(1). Once the responsible parties are identified, it logically follows that a "reasonable basis" exists to believe this information can be used to identify the resident. Responsible parties are often relatives with the same last name, or friends that have a known connection to the resident. As a result, little effort would be needed to identify the resident once

the identity of the responsible party is revealed. Thus, releasing such names and/or addresses would be an egregious HIPAA violation.

Furthermore, HIPAA explicitly demands covered entities treat an individual's responsible parties as the individual for the purposes of the security and privacy of health information. *See* 45 C.F.R. § 164.502(g)(1). Thus, the disclosure of the names and addresses of each resident's responsible parties is equivalent to disclosing the names and addresses of the individuals themselves, which strikes against the very core of HIPAA's purpose. In short, it is evident that the release of the requested information would result in a violation of federally protected HIPAA confidentiality rights of individuals and their responsible parties, who are not parties to this litigation.

The trial court's order compels the production of HIPAA-protected information about numerous individuals and their closest family members. These individuals have nothing to do with the ongoing lawsuit, and this order would disclose not only information about these responsible parties, but also easily reveal to the community that the residents have been admitted to a nursing home—something that is often a significant decision families must make. Such health information is "among the most sensitive" to individuals and their family. Standards for Privacy of Individually Identifiable Health Information, 65 FR 82462-01. The court's order therefore would compel Royal Suites to breach the privacy of all individuals, and their responsible parties, in direct violation their federally protected privacy rights.

II. The New Jersey Courts' Discovery Procedures, as applied in this Case, did not provide sufficient protection against violations of HIPAA

Royal Suites does not dispute, and, indeed, has never disputed, that the scope of discovery, in New Jersey, and elsewhere, is extremely broad in scope. Thus, in New Jersey, N.J. Civ. Rule 4:10-2(g) provides that the court may limit the use of the available discovery methods if "the discovery sought is unreasonably cumulative, duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive, . . . or the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case . . . and the importance of the proposed discovery in resolving the issues." *Id.*

The limiting factors underlying Rule 4:10-3 must be weighed against the presumptively broad scope of discovery authorized in Rule 4:10-2 and other discovery provisions in New Jersey's rules of court. Although "requests for discovery are to be liberally construed," "parties' discovery rights are not unlimited." *Piniero v. Div. of State Police*, 404 N.J. Super. 194, 204 (App. Div. 2008). The scope of discovery is limited to information that is relevant to the subject matter involved in the pending action. The parties are not permitted to use the discovery process to engage in roving expeditions without first showing a preliminary showing of relevance. Evidence is relevant if it has a tendency in reason to prove or disprove any fact material to the determination of the action. *K.S. v. ABC Professional Corp.*, 330 N.J.Super. 288, 291 (App. Div. 2000); *see also* N.J.R.E. 401. A material fact is one that has some bearing on the claims being advanced.

Korostynski v. State Division of Gaming Enforcement, 266 N.J. Super. 549, 555 (App. Div. 1993), disapproved on other grounds, *Payton v. New Jersey Turnpike Auth.*, 148 N.J. 524 (1997).

The trial court's discovery orders, left undisturbed by the New Jersey appellate courts, have permitted the HIPAA privacy protections described earlier to fall well-below the HIPAA "mandatory floor" of protection. This case involves only the nursing care provided to Respondent, and no one else. The bed he was provided was used solely by him. And there is no evidence suggesting that any of the personal representatives happened to be in Respondent's room at the time he fell. In order to be relevant, there must be a valid reason for such an overly broad and entirely irrelevant request—here there is none. Any minute benefit Respondent could allege does not justify the trial court's order which compels a grievous violation of HIPAA. This discovery demand not only violates the privacy rights of numerous residents and their responsible parties, but also could have a severe impact on Petitioners themselves. Respondent has wielded the rules of discovery improperly, with complete disregard for the damage it will do, and should not be rewarded for it. Such a discovery demand is a veiled attempt to harass Petitioners without having a reasonable basis, and to create an atmosphere where other individuals—who have no issue with Petitioners' services—question the services they received. Accordingly, the New Jersey courts, in compelling the production of names and addresses of responsible parties, have applied the New Jersey discovery rules in such a manner so as to eviscerate the mandatory privacy floor of HIPAA, to the detriment of both Royal Suites and of its residents.

III. This Case Presents Important Questions Concerning the Scope of HIPAA Privacy Protections Involving Disclosure of Protected Information of Non-Parties that have not been previously addressed by this Court. However, Many State and Federal Court Decisions have recognized that protected health information may not be disclosed.

Our research has not disclosed any prior case where this Court has had occasion to address the scope and breadth of HIPAA privacy protections, particularly in the context of the disclosure of protected information of non-parties, which in itself is a compelling reason why the Court should accept this case for review now. However, other state and federal court decisions have provided greater protection regarding the protection of health information in similar situations to the situation presented here. While these cases often rely on state statutes that provide greater protections than the "mandatory HIPAA floor" that New Jersey applies, *see In re Diet Drug Litig.*, *supra*, 384 N.J. Super. at 553, they also demonstrate that New Jersey's discovery procedures, as applied in this case, fall below the acceptable HIPAA standards to safeguard protected health information.[3]

Under HIPAA regulations, protected health information may be disclosed in the course of any judicial proceeding "[i]n response to an order of a court

3. HIPAA provides a floor for the confidentiality of protected health information, leaving states free to enact more stringent privacy protections than what HIPAA requires. *See Law. v. Zuckerman*, 307 F. Supp. 2d 705, 709 (D. Md. 2004) ("a state law is not preempted if it is 'more stringent' than a standard, requirement or implementation specification adopted under HIPAA").

or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order." 45 C.F.R. § 164.512(e)(1)(i). Significantly, the foregoing regulation is a "purely procedural" standard for disclosure of medical information in a judicial proceeding. *Northwestern Memorial Hosp. v. Ashcroft*, 362 F.3d 923, 926 (7th Cir. 2004). Indeed, "[t]he objection in court would often be based on a privilege—the source of which would be found elsewhere than in the regulations themselves." As the Supreme Judicial Court of Maine has stated, the HIPAA regulation does not address the circumstances under which a court may order the disclosure of a non-party patient's information. *Estate of Kennelly v. Mid Coast Hosp.*, 239 A.3d 604, 611 (Me. 2020). Indeed, HIPAA does not "directly address the judicial analysis of privilege in the context of discovery or the trial court's authority to order the disclosure of nonparty medical records." *Id.*

The Seventh Circuit Court of Appeals decision in *Northwestern* is instructive. In that case, the Court of Appeals examined whether the district court had properly entered an order to quash a subpoena issued to Northwestern Memorial Hospital seeking the production of medical records of certain patients on whom a doctor performed late-term abortions at the hospital using the controversial method of "D & X" (dilation and extraction) and "intact D & E" (dilation and evacuation). *Northwestern*, 362 F.3d at 924-25. The district court "ruled that the Illinois law, because it sets a 'more stringent' standard for disclosure than the HIPAA regulation, trumps that regulation by virtue of HIPAA's supersession provision." *Id.* at 925. Under Illinois law, "even redacted medical

records are not to be disclosed in judicial proceedings." *Id.* The 7th Circuit held that

> Illinois is free to enforce its more stringent medical records privilege (there is no comparable federal privilege) in suits in state court to enforce state law and, by virtue of an express provision in Fed.R.Evid. 501, in suits in federal court (mainly diversity suits) as well in which state law supplies the rule of decision. But the Illinois privilege does not govern in federal-question suits[.]

Id.

The 7th Circuit ultimately upheld the quashing of the subpoena in *Northwestern* on alternate grounds, quoting the district court:

> [T]he "government seeks these records on the possibility that it may find something therein which would affect the testimony of Dr. Hammond adversely, that is, for its potential value in impeaching his credibility as a witness. What the government ignores in its argument is how little, if any, probative value lies within these patient records."

Northwestern, 362 F.3d at 927. The appellate court went on to contrast "the dearth of probative value 'with the potential loss of privacy that would ensue were these medical records used in a case in which the patient was not a party' and concluded that 'the balance of harms resulting from disclosure severely out-weighs the loss to

the government through non-disclosure.'" *Id.* The same scenario is present here—the discovery sought in the instant matter is nothing more than a fishing expedition that will cause a loss of privacy for very little in return.

Other states have enacted more stringent protections of health information. *See, e.g., Roe v. Planned Parenthood Southwest Ohio*, 122 Ohio St.3d 399, 409 (Ohio 2009) (finding that Ohio law prevented the disclosure of medical records of non-litigants even if all identifying information was removed prior to disclosure); *Northwestern*, 362 F.3d at 924-25 (holding that "even redacted medical records are not to be disclosed in judicial proceedings."). The West Virginia Supreme Court of Appeals has also specifically weighed in on the balance required to preserve the privacy rights of non-litigant third parties over their health information and the requesting party's need to obtain the information in the context of class action certification. *State ex rel. Health Care Alliance, Inc. v. O'Briant*, 245 W.Va. 578 (W.Va. 2021). There, the plaintiff sought the names, addresses, and account information of non-litigant third parties. *Id.* at 586. The Court rejected this request, finding that the trial court committed clear error in ordering the disclosure of protected health information that was not relevant at the present stage of litigation. *Id.*

Similarly, a court in New York analyzed the balance required between protecting the health information of third parties and the requesting party's need. In *Rivera v. State*, 139 N.Y.S.3d 745 (Ct. Cl. N.Y. 2020) the plaintiff was a resident at a mental health center for developmental disabilities, where he was allegedly abused by staff. During their investigation of the abuse claim, a state run center dedicated to the protection of those with special

needs interviewed fellow residents who were witnesses to the alleged abuse. *Id.* at 747. After the conclusion of the investigation, the plaintiff sought a court order to require the state run center to disclose the identity, statements, and health and behavioral records of the witnesses. *Id.* Ultimately, the Court rejected any claim to the health and behavioral records, as such information had "no relevance to th[e] case, and [was] shielded against discovery by HIPAA and various provisions of New York law." *Id.* at 750 (citing *Lee v. New York City Transit Auth.*, 257 A.D.2d 611, 611, 685 N.Y.S.2d 84 (2d Dept. 1999)). Regarding the identity of the individuals, the Court authorized their disclosure subject to an "attorneys' eyes only" confidentiality order." *Id.* at 751.

The bottom line from these decisions is that other jurisdictions have provided far greater privacy protections than New Jersey has in this case, regardless of whether the source is HIPAA or state law. Discovery rules, liberal as they are, cannot be permitted to overrule established regulatory privacy protections, particularly where, as here, the requested information is of no probative value, and is likely going to be utilized by attorneys to contact these residents in order to harass Petitioners in order to perhaps obtain a more favorable settlement, and nothing more. This Court should therefore exercise its discretionary jurisdiction to examine the scope of HIPAA privacy protections, but also the interplay between these protections and liberal discovery rules. For all of these reasons, the Court should grant the Petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Counsel for Petitioners

July 16, 2025

APPENDIX

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APPENDIX A — ORDER OF THE SUPREME COURT OF NEW JERSEY, FILED MAY 30, 2025

SUPREME COURT OF NEW JERSEY

M-848/M-849 September Term 2024
090422

JOSEPH S. INGEMI, JR.,

Plaintiff-Respondent,

v.

ROYAL SUITES HEALTH CARE & REHABILITATION, ROYAL SUITES CARE CENTER, LLC, ROYAL SUITES CARE CENTER, LLC D/B/A ROYAL SUITES HEALTH CARE & REHABILITATION, ABRAHAM MERMELSTEIN, INDIVIDUALLY, AND AN AGENT, SERVANT, EMPLOYEE AND/OR ADMINISTRATOR OF ROYAL SUITES HEALTH CARE & REHABILITATION AND/OR ROYAL SUITES CARE CENTER, LLC D/B/A ROYAL SUITES HEALTH CARE & REHABILITATION, OCEAN HEALTH CARE MANAGEMENT, LLC, AS OWNER, OPERATOR AND/OR MANAGER OF ROYAL SUITES HEALTH CARE & REHABILITATION AND/OR ROYAL SUITES CARE CENTER, LLC D/B/A ROYAL SUITES HEALTH CARE & REHABILITATION, DYNAMIC HEALTHCARE MANAGEMENT, LLC, AS OWNER,

Appendix A

OPERATOR AND/OR MANAGER OF ROYAL SUITES HEALTH CARE & REHABILITATION AND/OR ROYAL SUITES CARE CENTER, LLC D/B/A ROYAL SUITES HEALTH CARE & REHABILITATION,

Defendants-Movants.

Decided May 28, 2025
Filed May 30, 2025

Honorable Stuart Rabner, Chief Justice.

ORDER

It is ORDERED that the motion for an extension of time in which to file a motion for leave to appeal (M-848) is granted; and it is further

ORDERED that the motion for leave to appeal (M-849) is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 28th day of May, 2025.

/s/ Heather Baker
CLERK OF THE SUPREME COURT

APPENDIX B — ORDER OF THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, FILED FEBRUARY 20, 2025

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO.: AM-000294-24T2
MOTION NO.: M-003147-24
BEFORE: PART G
JUDGES: LISA ROSE
PATRICK DEALMEIDA

JOSEPH S. INGEMI, JR.,

V.

ROYAL SUITES HEALTH CARE & REHABILITATION; ROYAL SUITES CARE CENTER, LLC; ROYAL SUITES CARE CENTER, LLC D/B/A ROYAL SUITES HEALTH CARE & REHABILITATION; ABRAHAM MERMELSTEIN, INDIVIDUALLY, AND AN AGENT, SERVANT, EMPLOYEE AND/OR ADMINISTRATOR OF ROYAL SUITES HEALTH CARE & REHABILITATION AND/OR ROYAL SUITES CARE CENTER, LLC D/B/A ROYAL SUITES HEALTH CARE & REHABILITATION; OCEAN HEALTH CARE MANAGEMENT, LLC, AS OWNER, OPERATOR AND/OR MANAGER OF ROYAL SUITES HEALTH CARE & REHABILITATION AND/OR ROYAL SUITES CARE CENTER, LLC D/B/A ROYAL SUITES

Appendix B

HEALTH CARE & REHABILITATION; DYNAMIC HEALTHCARE MANAGEMENT, LLC, AS OWNER, OPERATOR AND/OR MANAGER OF ROYAL SUITES HEALTH CARE & REHABILITATION AND/OR ROYAL SUITES CARE CENTER, LLC D/B/A ROYAL SUITES HEALTH CARE & REHABILITATION; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-10); JANE DOE TECHNICIANS (1-10); JIM & JANE DOE ADMINISTRATORS (1-10); CNAS AND PARAMEDICAL EMPLOYEES (1-20) (FICTITIOUS NAMES, THE REAL NAMES BEING UNKNOWN) I/J/S/A,

MOTION FILED: 02/14/2025

BY: ROYAL SUITES HEALTH CARE & REHABILITATION, ROYAL SUITES CARE CENTER, LLC, ABRAHAM MERMELSTEIN, OCEAN HEALTH CARE MANAGEMENT, DYNAMIC HEALTHCARE MANAGEMENT, LLC

ANSWER(S) FILED: 02/18/2025

BY: JOSEPH S. INGEMI JR.

SUBMITTED TO COURT: February 20, 2025

Appendix B

ORDER ON MOTION

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS 20th day of February, 2025, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION FOR LEAVE TO APPEAL
DENIED AND OTHER

SUPPLEMENTAL: Movant has not demonstrated sufficient justification to overcome the strong policies disfavoring piecemeal review of litigation. *Brundage v. Estate of Carambio*, 195 N.J. 575, 599 (2008). In addition, the trial court is afforded substantial deference in its ongoing management of discovery or other pretrial matters. *Payton v. N.J. Tpk. Auth.*, 148 N.J. 524, 559 (1997).

FOR THE COURT:

/s/ Lisa Rose
LISA ROSE, J.A.D.

APPENDIX C — ORDER OF THE SUPERIOR COURT OF NEW JERSEY FOR THE LAW DIVISION, ATLANTIC COUNTY, FILED JANUARY 17, 2025

PREPARED BY THE COURT

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY

DOCKET NO.: ATL-L-1212-24

JOSEPH S. INGEMI, JR.,

Plaintiff,

v.

ROYAL SUITES HEALTH CARE & REHABILITATION, *et als.*,

Defendants.

CIVIL ACTION

ORDER

THIS MATTER being opened to the Court, on January 17, 2025, by Clayton R. Fritsch, Esquire, of Burns White LLC attorney for Defendants, Royal Suites Health Care & Rehabilitation; Royal Suites Care Center, LLC; Royal Suites Care Center, LLC d/b/a Royal Suites Health Care & Rehabilitation; Abraham Mermelstein, individually,

and an agent, servant, employee and/or administrator of Royal Suites Health Care & Rehabilitation and/or Royal Suites Care Center, LLC d/b/a Royal Suites Health Care & Rehabilitation; Ocean Health Care Management, LLC, as owner, operator and/or manager of Royal Suites Health Care & Rehabilitation and/or Royal Suites Care Center, LLC d/b/a Royal Suites Health Care & Rehabilitation; Dynamic Healthcare Management, LLC, as owner, operator and/or manager of Royal Suites Health Care & Rehabilitation and/or Royal Suites Care Center, LLC d/b/a Royal Suites Health Care & Rehabilitation, for an Order for reconsideration, opposition having been filed, good cause having been shown, and for reasons set forth on the record today during oral argument;

IT IS ON THIS 17th day of January, 2025, **ORDERED** as follows:

1. Defendants' Motion for Reconsideration of the Court's November 22, 2024, Order granting Plaintiff's motion to compel and denying motion for a protective order is **GRANTED in part, DENIED in part**;

2. Within thirty (30) days of the date of this Order, Defendants shall provide Plaintiff with a full and complete response to Plaintiff's Supplemental Interrogatory #20 (names of the responsible parties for other residents living in the same unit during Plaintiff's residency at Royal Suites Health Care & Rehabilitation from August 28, 2022, through September 14, 2022);

3. The parties shall enter a qualified protective order which meets the requirements of 45 C.F.R. 164.512€(ii)(iv) and (v) and any and all other HIPAA and applicable law;

4. Defendants may put the responsible parties on notice of Plaintiff's request;

5. Plaintiff shall only be permitted to contact the responsible parties via letter which counsel shall work together with regard to the language of the letter and shall be completed by 4:30 p.m. on January 24, 2025;

6. Depositions of party and fact witnesses shall be completed by April 15, 2025;

7. A case management conference via zoom is scheduled for April 8, 2025, at 8:45 a.m.; and

IT IS FURTHER ORDERED that service of this Order shall be effectuated upon all parties upon its upload to eCourts and pursuant to R. 1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically within five (5) days of the date of this Order.

/s/ Danielle J. Walcoff
DANIELLE J. WALCOFF, J.S.C.

☒ Opposed
☐ Unopposed

APPENDIX D — ORDER OF THE SUPERIOR COURT OF NEW JERSEY FOR THE LAW DIVISION, ATLANTIC COUNTY, FILED NOVEMBER 22, 2024

PREPARED BY THE COURT

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY

DOCKET NO.: ATL-L-1212-24

JOSEPH S. INGEMI, JR.,

Plaintiff,

v.

ROYAL SUITES HEALTH CARE & REHABILITATION, *et als.*,

Defendants.

Filed November 22, 2024

CIVIL ACTION

ORDER

THIS MATTER being opened to the Court, on November 22, 2024, by Michael S. Ringold, Esquire, of Dansky, Katz, Ringold, P.C., attorneys for Plaintiff, Joseph S. Ingemi, Jr., for an Order to compel discovery, and by

Appendix D

Clayton Fritsch, Esquire of Burns White, LLC, attorneys for Defendants, on a Cross-Motion for a protective order, and good cause having been shown;

IT IS ON THIS 22nd day of November, 2024, **ORDERED** as follows:

1. Plaintiff's Motion to compel discovery is **GRANTED***;

2. Defendants' motion for a protective order is **DENIED**;

3. Within thirty (30) days of the date of this Order, Defendants shall provide Plaintiff with a full and complete response to Plaintiff's Supplemental Interrogatory #20 (names of the responsible parties for other residents living in the same unit during Plaintiff's residency at Royal Suites Health Care & Rehabilitation from August 5, 2022, through September 14, 2022);

4. The parties shall enter a qualified protective order which meets the requirements of 45 C.F.R. 164.512(e)((ii)(iv) and (v) and any and all other HIPAA and applicable law;

5. Defendants may put the responsible parties on notice of Plaintiff's request;

6. Plaintiff shall only be permitted to contact the responsible parties via letter with defense counsel

copied as set forth in Exhibit G of Plaintiff's moving papers; and

IT IS FURTHER ORDERED that service of this Order shall be effectuated upon all parties upon its upload to eCourts and pursuant to R. 1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically within seven (7) days of the date of this Order.

/s/ Danielle J. Walcoff
DANIELLE J. WALCOFF, J.S.C.

☐ Opposed
☒ Unopposed

***The Court reviewed Plaintiff's motion to compel, Defendant's Cross-motion for a protective order (filed on 11-19-24), and Plaintiff's opposition letter (filed on 11-21-24). The Court did not grant oral argument (pursuant to R. 1:6-2(e)) as the motion involves pre-trial discovery and the Court finds the issues were clearly defined in the written submissions and further arguments made orally would not have added any further relevant or probative information or aided the court with its analysis and decision.**

Plaintiff alleges nursing home negligence and violation of resident's rights related to Plaintiff's fall and resultant injuries suffered while a resident in Defendants' facility. Plaintiff seeks the names of the responsible parties for other residents living in the same unit during Plaintiff's residency at Royal Suites Health

Appendix D

Care & Rehabilitation from August 5, 2022, through September 14, 2022. Plaintiff does not seek to obtain any medical information regarding other residents of Defendants' facility. The information sought is relevant and falls under our broad discovery rules and R. 4:10-2(a) as the information would permit Plaintiff opportunity to investigate if others complained about their family members' care (as is alleged Plaintiff's family did) and/or witnessed staffing and resident care issues and/or information regarding Plaintiff's fall. Privacy concerns regarding HIPAA are balanced and protected by way of a Qualified Protective Order.

APPENDIX E — EXCERPTS FROM REGULATIONS

45 CFR § 164.502(a)

§ 164.502 Uses and disclosures of protected health information: General rules.

(a) Standard. A covered entity or business associate may not use or disclose protected health information, except as permitted or required by this subpart or by subpart C of part 160 of this subchapter.

Appendix E

45 CFR § 160.103

§ 160.103 Definitions.

Individually identifiable health information is information that is a subset of health information, including demographic information collected from an individual, and:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Appendix E

45 CFR § 164.514(b)(2)(i)

§ 164.514 Other requirements relating to uses and disclosures of protected health information.

(2)(i) The following identifiers of the individual or of relatives, employers, or household members of the individual, are removed:

(A) Names;

(B) All geographic subdivisions smaller than a State, including street address, city, county, precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code if, according to the current publicly available data from the Bureau of the Census:

(1) The geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and

(2) The initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000.

(C) All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older;

(D) Telephone numbers;

(E) Fax numbers;

(F) Electronic mail addresses;

(G) Social security numbers;

(H) Medical record numbers;

(I) Health plan beneficiary numbers;

(J) Account numbers;

(K) Certificate/license numbers;

(L) Vehicle identifiers and serial numbers, including license plate numbers;

(M) Device identifiers and serial numbers;

(N) Web Universal Resource Locators (URLs);

(O) Internet Protocol (IP) address numbers;

(P) Biometric identifiers, including finger and voice prints;

(Q) Full face photographic images and any comparable images; and

(R) Any other unique identifying number, characteristic, or code, except as permitted by paragraph (c) of this section[.]

Appendix E

45 CFR § 164.502(g)(1)

§ 164.502 Uses and disclosures of protected health information: General rules.

(g)(1) Standard: Personal representatives. As specified in this paragraph, a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the individual for purposes of this subchapter.

Appendix E

45 CFR § 160.203

§ 160.203 General rule and exceptions.

A standard, requirement, or implementation specification adopted under this subchapter that is contrary to a provision of State law preempts the provision of State law.

APPENDIX F — EXCERPTS OF BRIEF OF APPELLANTS IN SUPPORT OF MOTION FOR LEAVE, DATED APRIL 7, 2025

NEW JERSEY SUPREME COURT

DOCKET NO.: 090422

ON APPEAL FROM
Superior Court of New Jersey, Law Division—Civil Part, Atlantic Vicinage; Superior Court of New Jersey, Appellate Division

JOSEPH S. INGEMI, JR.,

Plaintiff,

v.

ROYAL SUITES HEALTH CARE & REHABILITATION; ROYAL SUITES CARE CENTER, LLC; ROYAL SUITES CARE CENTER, LLC d/b/a ROYAL SUITES HEALTH CARE & REHABILITATION;

DOCKET NO.: ATL-L-001212-24; AM-294-24

SAT BELOW

Hon. Danielle Walcoff, J.S.C.

Hon. Lisa Rose, J.A.D.,
Hon. Patrick DeAlmedia, J.A.D

Appendix F

ABRAHAM MERMELSTEIN, INDIVIDUALLY, AND AN AGENT, SERVANT, EMPLOYEE AND/OR ADMINISTRATOR OF ROYAL SUITES HEALTH CARE & REHABILITATION AND/OR ROYAL SUITES CARE CENTER, LLC D/B/A ROYAL SUITES HEALTH CARE & REHABILITATION; OCEAN HEALTH CARE MANAGEMENT, LLC, AS OWNER, OPERATOR AND/OR MANAGER OF ROYAL SUITES HEALTH CARE & REHABILITATION AND/OR ROYAL SUITES CARE CENTER, LLC D/B/A ROYAL SUITES HEALTH CARE & REHABILITATION; DYNAMIC HEALTHCARE MANAGEMENT, LLC, AS OWNER, OPERATOR AND/OR MANAGER OF ROYAL SUITES HEALTH CARE & REHABILITATION AND/OR ROYAL SUITES CARE CENTER, LLC D/B/A ROYAL SUITES HEALTH CARE & REHABILITATION; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-10); JANE DOE TECHNICIANS (1-10); JIM & JANE DOE ADMINISTRATORS (1-10); CNAS AND PARAMEDICAL EMPLOYEES (1-20) (FICTITIOUS NAMES, THE REAL NAMES BEING UNKNOWN) I/J/S/A,

Defendants.

BRIEF OF APPELLANTS IN SUPPORT OF APPELLANTS' MOTION FOR LEAVE TO FILE AN INTERLOCUTORY APPEAL

prevent irreparable injury[.]" R. 2:2-2(a) (emphasis added). This Court may grant review

> if the appeal presents a question of general public importance which has not been but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court; if the decision under review is in conflict with any other decision of the same or a higher court or calls for an exercise of the Supreme Court's supervision and in other matters if the interest of justice requires.

[R. 2:12-4.]

I. Matter of First Impression of General Public Importance

This matter presents an issue of first impression that must be decided to safeguard the federally-protected privacy concerns of fellow residents of Respondent's nursing home, who are non-parties to this action. This matter is one of general public importance given the privacy concerns present. As the Appellate Division has noted, "[o]ne of the primary purposes of [HIPAA] is to standardize and increase the efficiency of common electronic transactions in health care . . . as well as to *protect the security and privacy of individually identifiable health information*." *Smith v. Am. Home Prods. Corp. Wyeth-Ayerst Pharm.*, 372 N.J. Super.

105, 110 (2003) (emphasis added). This Court has not previously weighed in on the implications of a discovery order requiring the disclosure of information protected by HIPAA.[1]

It is clear here that disclosure of the information ordered to be produced would violate HIPAA. The names of the responsible parties for other residents living in the same unit during Plaintiff's residency at Royal Suites Health Care & Rehabilitation from August 28, 2022—September 14, 2022, is protected "individually identifiable health information." Indeed, HIPAA defines "individually identifiable health information" as follows:

> ***Individually identifiable health*** information is information that is a subset of health information, including demographic information collected from an individual, and:
>
> **(1)** Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
>
> **(2)** Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future

1. In *Keyworth v. CareOne at Madison Avenue*, 258 N.J. 359 (2024), one appellant raised privilege claims regarding a "resident's identity and medical records pursuant to HIPAA." *Keyworth*, 258 N.J. at 378. This Court declined to review that issue because "[t]hose claims [were] not before the Court." *Id.* at 375 n.6.

payment for the provision of health care to an individual; and

(i) That identifies the individual; or

(ii) With respect to which there *is a reasonable basis* to believe the information can be used to identify the individual.

[45 C.F.R. 160.103 (emphasis added).]

HIPAA regulations specify that a covered entity may not use or disclose protected health information, except as permitted or required under the act. 45 C.F.R. 164.502(a).

Importantly, HIPAA is broadly written to protect a wide variety of information, and protects the identifying information of an individual's "*relatives, employers, or household members*" 45 C.F.R. 164.514(b)(2)(i) (emphasis added). Specifically, "[t]he following identifiers of the individual or of *relatives, employers, or household members of the individual* [must be] removed":

A. *Names*;

B. *All geographical identifiers smaller than a state, including street address, city, county, precinct, zip code*, and their equivalent geocodes, except for the initial three digits of a zip code if, according to the current publicly available data from the Bureau of the Census:

1. the geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and

2. The initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000.

C. Dates (other than year) directly related to an individual;

D. Phone numbers;

E. Fax numbers;

F. Email addresses;

G. Social Security numbers;

H. Medical record numbers;

I. Health insurance beneficiary numbers;

J. Account numbers;

K. Certificate/license numbers;

L. Vehicle identifiers and serial numbers, including license plate numbers;

M. Device identifiers and serial numbers;

N. Web Uniform Resource Locators (URLs);

O. Internet Protocol (IP) address numbers;

P. Biometric identifiers, including finger, retinal and voice prints;

Q. Full face photographic images and any comparable images;

R. Any other unique identifying number, characteristic, or code except the unique code assigned by the investigator to code the data

[45 C.F.R. 164.514(b)(2)(i) (emphasis added).]

Moreover, *HIPAA requires that covered entities are to treat an individual's responsible party as the individual* when considering the individual's protected health information, as well as the individual's rights under HIPAA:

> Standard: Personal representatives. As specified in this paragraph, *a covered entity must*, except as provided in paragraphs (g)(3) and (g)(5) of this section, *treat a personal representative as the individual for purposes of this subchapter.*

[45 C.F.R. 164.502(g)(1) (emphasis added).]

Because this Court has never published an opinion concerning the interplay of the foregoing regulations and discovery orders, this matter presents a timely question for this Court's consideration.

II. Conflict with Other Decisions

In addition to being a matter of first impression for this Court that involves the potential disclosure of the aforementioned protected "individually identifiable health information," the Appellate Division's refusal to consider this appeal on the merits conflicts with other decisions regarding privacy protections.

For example, in Kinsella v. NYT Television, 382 N.J. Super. 102 (2005), the Appellate Division granted leave to consider an interlocutory appeal to consider "whether the names of hospital patients were protected from disclosure by the Hospital Patients Bill of Rights Act, N.J.S.A. 26:2H–12.7 to 12.11." Kinsella, 382 N.J. Super. at 104. The Appellate Division "reject[ed] plaintiff's argument that

* * * *

APPENDIX G — EXCERPTS OF BRIEF OF APPELLANTS IN THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, FILED FEBRUARY 6, 2025

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

ON APPEAL FROM Superior Court of New Jersey,
Law Division – Civil Part, Atlantic Vicinage

DOCKET NO.: ATL-L-001212-24

JOSEPH S. INGEMI, JR.,

Plaintiff,

v.

ROYAL SUITES HEALTH CARE & REHABILITATION; ROYAL SUITES CARE CENTER, LLC; ROYAL SUITES CARE CENTER, LLC d/b/a ROYAL SUITES HEALTH CARE & REHABILITATION; ABRAHAM MERMELSTEIN, INDIVIDUALLY, AND AN AGENT, SERVANT, EMPLOYEE AND/OR ADMINISTRATOR OF ROYAL SUITES HEALTH CARE & REHABILITATION AND/OR ROYAL SUITES CARE CENTER, LLC d/b/a ROYAL SUITES HEALTH CARE &REHABILITATION; OCEAN HEALTH CARE MANAGEMENT, LLC, AS OWNER, OPERATOR AND/OR MANAGER OF ROYAL SUITES HEALTH CARE & REHABILITATION AND/OR ROYAL SUITES CARE CENTER,

Appendix G

LLC d/b/a ROYAL SUITES HEALTH CARE & REHABILITATION; DYNAMIC HEALTHCARE MANAGEMENT, LLC, AS OWNER, OPERATOR AND/OR MANAGER OF ROYAL SUITES HEALTH CARE & REHABILITATION AND/OR ROYAL SUITES CARE CENTER, LLC d/b/a ROYAL SUITES HEALTH CARE & REHABILITATION; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-10); JANE DOE TECHNICIANS (1-10); JIM & JANE DOE ADMINISTRATORS (1-10); CNAS AND PARAMEDICAL EMPLOYEES (1-20) (FICTITIOUS NAMES, THE REAL NAMES BEING UNKNOWN) i/j/s/a,

Defendants.

SAT BELOW:

Hon. Danielle Walcoff, J.S.C.

Filed February 6, 2025

BRIEF OF APPELLANTS IN SUPPORT OF APPELLANTS' MOTION FOR LEAVE TO FILE AN INTERLOCUTORY APPEAL

BURNS WHITE LLC
457 Haddonfield Road, Suite 510
Cherry Hill, New Jersey 08002
(856) 382-6006/Fax (856) 382-6007

* * *

Motion to Compel Discovery; denying Defendants' Motion for Protective Order; and denying Defendants' Motion for Reconsideration in-part.

III. LEGAL ARGUMENT

A. LEGAL STANDARD

Pursuant to *Rule* 2:2-4 "the Appellate Division may grant leave to appeal, in the interest of justice, from an interlocutory order of a court." Granting leave for an interlocutory appeal is appropriate where there is the possibility of "some grave damage or injustice" resulting from the trial court's order. *Brundage v. Est. of Carambio*, 195 N.J. 575, 599 (2008) (further citation omitted). The moving party must establish "that the desired appeal has merit and that 'justice calls for [an appellate court's] interference in the cause.'" *Id.* at 599. The Appellate Court enjoys great discretion in determining whether the "interest of justice" standard has been satisfied and, therefore, whether to grant a motion for leave to file an interlocutory appeal. *Id.* at 599-600.

The Court is presented here with an evidentiary decision, and when "reviewing a trial court's evidential ruling, an appellate court is limited to examining the decision for abuse of discretion." *Hisenaji v. Kuehner*, 194 N.J. 6, 12 (2008). "Evidentiary decisions are reviewed under the abuse of discretion standard because, from its genesis, the decision to admit or exclude evidence is one firmly entrusted in the trial court's discretion." *Estate of Hanges v. Metropolitan Property & Cas. Inc. Co.*,

202 N.J. 369, 383 (2010). An appellate court may review a trial judge's action and reverse it when based on the circumstances it appears judicial discretion was not properly exercised and injuriously affected the substantial rights of the party. *Annichiarico v. Mobilite, Inc.*, 19 N.J. Super. 492, 496–97 (App. Div. 1952).

This interlocutory appeal satisfies the interest of justice standard because the trial court abused its discretion when it ordered Appellants to violate HIPAA and the federally protected privacy rights of their resident's and their responsible parties. Such discovery would injuriously affect the essential rights of Appellants, their residents, and their residents responsible parties.

B. THE NAMES AND ADDRESSES OF RESPONSIBLE PARTIES CONSTITUTES CONFIDENTIAL FEDERALLY PROTECTED "INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION" AS DEFINED BY HIPAA.

HIPAA was enacted in 1996 to provide a minimum national standard for the protection of private health information. HIPAA regulations specify that a covered entity may not use or disclose protected health information, except as permitted or required under the act. 45 C.F.R. 164.502(a). Under its broad definitions, a covered entity includes a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a covered transaction. 45 CFR 160.103. HIPAA defines "individually identifiable health information" as follows:

Appendix G

> *Individually identifiable health* information is information that is a subset of health information, including demographic information collected from an individual, and:
>
> **(1)** Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
>
> **(2)** Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
>
> > **(i)** That identifies the individual; or
> >
> > **(ii)** With respect to which there *is a reasonable basis* to believe the information can be used to identify the individual.
>
> [45 C.F.R. 160.103 (emphasis added).]

The significance of the "reasonable basis" language utilized by the statute is exemplified by the following response from the Department of Health and Human Services published in the Federal Register to suggestions that the broad "reasonable basis" language be replaced with the more restrictive "direct" language:

Appendix G

Comment: Several commenters suggested modifying the definition of individually identifiable health information to state as a condition that the information provide a *direct* means of identifying the individual. They commented that the rule should support the need of those (e.g., researchers) who need "ready access to health information . . . that remains linkable to specific individuals."

Response: The Congress included in the statutory definition of individually identifiable health information the modifier "*reasonable basis*" when describing the condition for determining whether information can be used to identify the individual. Congress thus intended to go beyond "*direct*" identification and to encompass circumstances in which a reasonable likelihood of identification exists. Even after removing "direct" or "obvious" identifiers of information, a risk or probability of identification of the subject of the information may remain; in some instances, the risk will not be inconsequential. Thus, we agree with the Congress that "reasonable basis" is the appropriate standard to adequately protect the privacy of individuals' health information.

[*See* Federal Register: "Standards for Privacy of Individually Identifiable Health Information," December 28, 2000 (Volume 65, Number 250), 82462, Pages 82611-82612; Pa292-Pa293.]

Appendix G

The portion of HIPAA which explains how covered entities must de-identify health information illustrates how HIPAA defines "individually identifiable health information." Importantly, HIPAA is broadly written to protect a wide variety of information, and protects the identifying information of an individual's "*relatives, employers, or household members.*" 45 C.F.R. 164.514(b)(2)(i) (emphasis added). Specifically, "[t]he following identifiers of the individual or of *relatives, employers, or household members of the individual* [must be] removed":

A. *Names*;

B. *All geographical identifiers smaller than a state, including street address, city, county, precinct, zip code*, and their equivalent geocodes, except for the initial three digits of a zip code if, according to the current publicly available data from the Bureau of the Census:

1. the geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and

2. The initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000.

C. Dates (other than year) directly related to an individual;

D. Phone numbers;

E. Fax numbers;

F. Email addresses;

G. Social Security numbers;

H. Medical record numbers;

I. Health insurance beneficiary numbers;

J. Account numbers;

K. Certificate/license numbers;

L. Vehicle identifiers and serial numbers, including license plate numbers;

M. Device identifiers and serial numbers;

N. Web Uniform Resource Locators (URLs);

O. Internet Protocol (IP) address numbers;

P. Biometric identifiers, including finger, retinal and voice prints;

Q. Full face photographic images and any comparable images;

R. Any other unique identifying number, characteristic, or code except the unique

> code assigned by the investigator to code the data
>
> [*See* 45 C.F.R. 164.514(b)(2)(i) (emphasis added).]

Moreover, *HIPAA requires that covered entities are to treat an individual's responsible party as the individual*[1] when considering the individual's protected health information, as well as the individual's rights under HIPAA:

> Standard: Personal representatives. As specified in this paragraph, *a covered entity must*, except as provided in paragraphs (g)(3) and (g)(5) of this section, *treat a personal representative*[2] *as the individual for purposes of this subchapter.*
>
> [*See* 45 C.F.R. 164.502(g)(1).]

Thus, the identity and information of personal representatives is protected, and Appellants are prohibited from providing this information. These HIPAA protections against the disclosure of protected health information are a "mandatory floor" for the protection

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1. Except in cases of unemancipated minors or elder abuse. 45 C.F.R. 164.502(g)(3); g(5)

2. Within the context of nursing home practice, personal representative means a resident's guardian, Power of Attorney, family member, or any other people designated as responsible for the care of the elder person.

of medical information. *In re Diet Drug Litig.*, 384 N.J. Super. 546, 553 (Law. Div. 2005). Further, the regulations are clear that any portion of HIPAA which is "contrary to a provision of State law preempts the provision of State law." 45 C.F.R. 160.203. "These federally mandated Privacy Standards demonstrate a strong federal policy of protection for patient health information." *Smith v. Am. Home Products Corp. Wyeth-Ayerst Pharm.*, 372 N.J. Super. 105, 128 (Law. Div. 2003). This is because "privacy is a fundamental right." 65 FR 250, pg. 82464; Pa145. American law has always emphasized a right to privacy as it "it speaks to our individual and collective freedom." *Ibid.*

It is not in dispute that Royal Suites is a "covered entity" and is bound by the provisions of HIPAA. The names and addresses of responsible parties of the facility's residents who are *not* parties to this litigation constitutes "individually identifiable health information." *See* 45 C.F.R. 164.514(b)(2)(i); 45 C.F.R. 164.502(g)(1). Once the responsible parties are identified, it logically follows that a "reasonable basis" exists to believe this information can be used to identify the resident. The responsible parties are often relatives with the same last name, or friends that have a known connection to the resident. As a result, little effort would be needed to identify the resident once the identity of the responsible party is revealed. Thus, releasing such names and/or addresses would be an egregious HIPAA violation.

Furthermore, HIPAA explicitly demands covered entities treat an individual's responsible party as the individual for the purposes of the security and privacy of

health information. *See* 45 C.F.R. 164.502(g)(1). Thus, the disclosure of the names and addresses of each resident's responsible parties is equivalent to disclosing the names and addresses of the individuals themselves, which strikes against the very core of HIPAA's purpose. In short, it is evident that the release of the requested information would result in a violation of federally protected HIPAA confidentiality rights of individuals and their responsible parties, who are not parties to this litigation.

The trial court's order compels the production of HIPAA protected information about numerous individuals and their closest family members. These individuals have nothing to do with the ongoing lawsuit, and this order would disclose not only information about these responsible parties, but also easily reveal to the community that the residents have been admitted to a nursing home— something that is often a significant decision families must make. Such health information is "among the most sensitive" to an individual and their family. 65 FR 250, pg. 82464; Pa145. The court's order would compel Royal Suites to breach the privacy of every individual, and their responsible parties in direct violation their federally protected privacy rights.

C. THE BENEFIT OF THIS DISCOVERY DOES NOT JUSTIFY SUCH AN EGREGIOUS BREACH OF HIPAA AND THE PRIVACY PROTECTIONS IT AFFORDS

Rule 4:10-2(g) provides that the court may limit the use of the available discovery methods if "the discovery

sought is unreasonably cumulative, duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive, . . . or the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case . . . and the importance of the proposed discovery in resolving the issues." *Ibid.*

The limiting factors underlying *Rule* 4:10-3 must be weighed against the presumptively broad scope of discovery authorized in *Rule* 4:10-2 and other discovery provisions in our rules of court. Although "requests for discovery are to be liberally construed," a "parties' discovery rights are not unlimited." *Piniero v. Div. of State Police*, 404 N.J. Super. 194, 204 (App. Div. 2008). The scope of discovery is limited to information that is relevant to the subject matter involved in the pending action. The parties are not permitted to use the discovery process to engage in roving expeditions without first showing a preliminary showing of relevance. Evidence is relevant if it has a tendency in reason to prove or disprove any fact material to the determination of the action. *K.S. v. ABC Professional Corp.*, 330 N.J.Super. 288, 291 (App. Div. 2000); *see also* N.J.R.E. 401. A material fact is one that has some bearing on the claims being advanced. *Korostynski v. State Division of Gaming Enforcement*, 266 N.J. Super. 549, 555 (App. Div. 1993), disapproved on other grounds, *Payton v. New Jersey Turnpike Auth.*, 148 N.J. 524 (1997).

This case solely involves the nursing care provided to the Plaintiff, specifically focusing on how secure Plaintiff's

side rails. Pa9–Pa10. The arguments made by the parties in this case are so particular and center on the security of Mr. Ingemi's side rails at the time of his fall. The bed he was provided was used solely by him. There is no evidence suggesting that any of the personal representatives happened to be in Mr. Ingemi's room at the time he fell. There must be a valid reason for this overly broad and entirely irrelevant request—here there is none. Any minute benefit Respondent could allege does not justify the trial court's order which compels a grievous violation of HIPAA.

Moreover, this discovery is simply a fishing expedition—an effort to stir up extraneous information. Simply put, the Rules of Discovery cannot be used to compel a defendant to violate federal privacy law. This is particularly so when the discovery is made without reasonable basis and for an improper purpose. Plaintiff/ Respondent's motives here are questionable. This discovery demand not only violates the privacy rights of numerous residents and their responsible parties, but also could have a severe impact on Appellants themselves. Further, this discovery would have a chilling effect on the relationship between the nursing home and its residents and their responsible parties because it would lead that population to question the quality of the services that are being provided.

The trial court has ordered the Appellants to release highly sensitive and private information, in violation of federal law, for Respondent to have only a speculative chance of discovering irrelevant information. Accordingly,

it is evident that the trial court abused its discretion in compelling the production of names and addresses of responsible parties because it constitutes a gross violation of HIPAA, and the privacy of Appellants' residents and their responsible parties. Such a violation of HIPAA and privacy rights cannot be overcome by the assertion that discovery is broad. Rather, Plaintiff/Respondent's request and the trial court's decision go far beyond the boundaries of what is allowed under our discovery rules and federal law.

IV. CONCLUSION

Based on the foregoing, Appellants respectfully requests that this Court grant Defendants/Appellants motion for interlocutory appeal, and reverse the trial court's November 2022, 2024 Order Compelling Discovery and Denying Appellants' Motion for a Protective Order.

APPENDIX H — EXCERPTS OF DEFENDANTS' CROSS MOTION FOR PROTECTIVE ORDER AND OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY, DATED NOVEMBER 19, 2024

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY

DOCKET NO.: ATL-L-001212-24

CIVIL ACTION

JOSEPH S. INGEMI, JR.,

Plaintiff,

v.

ROYAL SUITES HEALTH CARE & REHABILITATION; ROYAL SUITES CARE CENTER, LLC; ROYAL SUITES CARE CENTER, LLC D/B/A ROYAL SUITES HEALTH CARE & REHABILITATION; ABRAHAM MERMELSTEIN, INDIVIDUALLY, AND AN AGENT, SERVANT, EMPLOYEE AND/OR ADMINISTRATOR OF ROYAL SUITES HEALTH CARE & REHABILITATION AND/OR ROYAL SUITES CARE CENTER, LLC D/B/A ROYAL SUITES HEALTH CARE & REHABILITATION; OCEAN HEALTH CARE MANAGEMENT, LLC, AS OWNER, OPERATOR AND/OR MANAGER OF ROYAL SUITES HEALTH CARE & REHABILITATION AND/OR ROYAL SUITES CARE CENTER, LLC D/B/A ROYAL SUITES

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HEALTH CARE & REHABILITATION; DYNAMIC HEALTHCARE MANAGEMENT, LLC, AS OWNER, OPERATOR AND/OR MANAGER OF ROYAL SUITES HEALTH CARE & REHABILITATION AND/OR ROYAL SUITES CARE CENTER, LLC D/B/A ROYAL SUITES HEALTH CARE & REHABILITATION; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-10); JANE DOE TECHNICIANS (1-10); JIM & JANE DOE ADMINISTRATORS (1-10); CNAS AND PARAMEDICAL EMPLOYEES (1-20) (FICTITIOUS NAMES, THE REAL NAMES BEING UNKNOWN) I/J/S/A,

Defendants.

CERTIFICATION OF COUNSEL AND LEGAL ARGUMENT IN SUPPORT OF DEFENDANTS' CROSS MOTION FOR A PROTECTIVE ORDER AND OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY

I, Clayton R. Fritsch, Esquire, of full age, being duly sworn upon my oath, do hereby certify as follows:

1. I am an attorney-at-law, licensed to practice in the State of New Jersey, and an attorney with the firm Burns White, LLC. I am fully familiar with the facts and circumstances of the above-captioned matter.

2. This matter involves a nursing home malpractice action against the Defendants based upon allegedly negligent care provided to Joseph Ingemi, while he was a resident of Royal Suites. See Plaintiff's Complaint, attached hereto as Exhibit A.

3. Moving Defendants filed an Answer to Plaintiff's Complaint on July 17, 2024. See Defendants' Answer to Complaint, attached hereto as Exhibit B.

4. On June 7, 2024, Plaintiff served Moving Defendant with several discovery requests, including Supplemental Interrogatories, within their initial Complaint. See Exhibit A.

5. Moving Defendant produced responses to Plaintiff's initial discovery requests, including Supplemental Interrogatories on September 27, 2024 Royal Suites' Answer to Complaint, attached hereto as Exhibit C.

Accordingly, for the reasons set forth in more detail below, it is evident that this is the type of situation which warrants the issuance of a protective order to limit the extent of discovery.

In the instant matter, justice also requires that the court issue a protective order preventing Plaintiff to obtain the names and addresses of the responsible parties of residents, who are not parties to this litigation. The identity of these responsible parties constitutes confidential health information as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

This discovery request essentially asks Defendant to violate federal law and trample on the federally protected confidentiality rights of these residents. Additionally, this breach in confidentiality would be a violation of the federal and state privacy rights for these residents as articulated in the federal Nursing Home Reform Act (NHRA), which is part of the Omnibus Budget Reconciliation Act of 1987 and The New Jersey Nursing Home Bill of Rights Act, N.J.S.A. 30:13-1 et seq. The confidential and private nature of the information sought justifies the issuance of a protective order.

A. THE CONFIDENTIAL AND PRIVATE NATURE OF THE INFORMATION SOUGHT JUSTIFIES THE ISSUANCE OF A PROTECTIVE ORDER

i. The identity of responsible parties constitutes confidential federally protected "individually identifiable health information" as defined by HIPAA.

HIPAA was enacted in 1996 to provide a minimum national standard for the protection of private health information. HIPAA regulations specify that a covered entity may not use or disclose protected health information, except as permitted or required under the act. 45 C.F.R. 164.502(a). Under its broad definitions, a covered entity includes a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a covered transaction. 45 *CFR* 160.103. HIPAA defines "individually identifiable health information" as follows:

Appendix H

> *Individually identifiable health* information is information that is a subset of health information, including demographic information collected from an individual, and:
>
> **(1)** Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
>
> **(2)** Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
>
> **(i)** That identifies the individual; or
>
> **(ii)** With respect to which there *is a reasonable basis* to believe the information can be used to identify the individual.
>
> 45 C.F.R. 160.103. (emphasis added)

The significance of the "reasonable basis" language utilized by the statute is exemplified by the following response from the Department of Health and Human Services published in the Federal Register to suggestions that the broad "reasonable basis" language be replaced with the more restrictive "direct" language:

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Comment: Several commenters suggested modifying the definition of individually identifiable health information to state as a condition that the information provide a *direct* means of identifying the individual. They commented that the rule should support the need of those (e.g., researchers) who need "ready access to health information... that remains linkable to specific individuals."

Response: The Congress included in the statutory definition of individually identifiable health information the modifier "*reasonable basis*" when describing the condition for determining whether information can be used to identify the individual. Congress thus intended to go beyond "*direct*" identification and to encompass circumstances in which a reasonable likelihood of identification exists. Even after removing "direct" or "obvious" identifiers of information, a risk or probability of identification of the subject of the information may remain; in some instances, the risk will not be inconsequential. Thus, we agree with the Congress that "reasonable basis" is the appropriate standard to adequately protect the privacy of individuals' health information.

See: [Federal Register: December 28, 2000 (Volume 65, Number 250)] [Rules and Regulations] [Page 82611-82612] Attached as ***Exhibit F.***

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The portion of HIPAA which explains how covered entities must de-identify health information illustrates how HIPAA broadly defines "individually identifiable health information." HIPAA dictates that 18 potential identifiers of the "individual, relatives, employers, or household members of the individual", must be removed before the health information meets the deidentification standard:

1. Names;

2. All geographical identifiers smaller than a state, except for the initial three digits of a zip code if, according to the current publicly available data from the Bureau of the Census: the geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and [t]he initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000;

3. Dates (other than year) directly related to an individual;

4. Phone numbers;

5. Fax numbers;

6. *Email* addresses;

7. *Social Security numbers;*

8. Medical record numbers;

9. *Health insurance* beneficiary numbers;

10. Account numbers;

11. Certificate/license numbers;

12. Vehicle identifiers and serial numbers, including license plate numbers;

13. Device identifiers and serial numbers;

14. Web *Uniform Resource Locators* (URLs);

15. Internet Protocol (IP) address numbers;

16. *Biometric* identifiers, including finger, retinal and voice prints;

17. Full face photographic images and any comparable images;

18. Any other unique identifying number, characteristic, or code except the unique code assigned by the investigator to code the data

See: 45 C.F.R. 164.514.

Notably, HIPAA requires covered entities to treat an individual's responsible party as the individual with respect to uses and disclosures of the individual's

protected health information, as well as the individual's rights under HIPAA. 45 *C.F.R.* 164.502(g).

It is not in dispute that Royal Suites is a "covered entity" and is bound by the provisions of HIPAA. The names and addresses of responsible parties of the facility's residents who are *not* parties to this litigation constitutes "individually identifiable health information." Once the responsible parties are identified, it logically follows that a "reasonable basis" exists to believe this information can be used to identify the resident. The responsible parties are often relatives with the same last name, or friends that have a known connection to the resident. As a result, little effort would be needed to identify the resident once the identity of the responsible party is revealed. Thus, releasing such names and/or addresses would be an egregious HIPAA violation.

In short, it is evident that the release of the requested information would result in a violation of federally protected HIPAA confidentiality rights of individuals who are not parties to this litigation. Consequently, a protective order must be issued preventing Plaintiff from obtaining this information.

ii. The release of the names and addresses of responsible parties would violate the federally and state protected privacy rights of residents at Royal Suites.

The rights of nursing home residents are protected under the federal law known as the Nursing Home

Reform Act (NHRA). The NHRA, part of the Omnibus Budget Reconciliation Act of 1987, is codified at 42 *U.S.C.* §§1395 i-3 and 1396r. With regard to privacy rights, 42 *U.S.C.* §§1395 i-3(c)(1)(A)(iii) provides as follows:

> "Privacy The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and *meetings of family* and of resident groups".
>
> *See:* 42 *U.S.C.* §§1395 i-3(c)(1)(A)(iii) (emphasis added)

The privacy rights of New Jersey nursing home residents are also protected by The New Jersey Nursing Home Bill of Rights which is codified by statute in *N.J.S.A.* 30:13-1 et seq. This statute specifically states that residents "have the right to privacy." *N.J.S.A.* 30:13-5(f).

Responsible parties are individuals who are most likely involved in "visits" with the residents and those participating in "meetings of family." Providing the names and addresses of these individuals specifically violates the federally protected right to privacy articulated in 42 *U.S.C.* §§1395 i-3(c)(1)(A)(iii). It is also a violation of the more general right to privacy referred to in *N.J.S.A.* 30:13-5(f) to reveal the identity of the individuals who have been given the sensitive task of taking responsibility for these residents. In order to adequately protect the privacy rights of the residents that are the subject of this discovery request, Defendants submit that it is necessary

for this Court to issue a protective order barring access to this information.[1]

B. A PROTECTIVE ORDER IS WARRANTED BECAUSE THE INFORMATION SOUGHT IS NOT RELEVANT OR DISCOVERABLE

* * * *

1. Indeed, Rule of Professional Conduct 4.4, entitled "*Respect for Rights of Third Persons*," recognizes that a lawyer must not violate the rights of third parties in their representation: **(a) In representing a client, a lawyer shall not use means that have substantial purpose other than to embarrass, delay or burden a third person, or use methods of obtaining evidence that violate the legal rights of such person.** RPC 4.4 (Emphasis added).