

**STATE OF LOUISIANA
COURT OF APPEAL, SECOND CIRCUIT
430 Fannin Street
Shreveport, LA 71101
(318) 227-3700**

No. 56,522-CW

LORA MONTGOMERY, SURVIVOR OF
DONZETTA MONTGOMERY

VERSUS

PATHWAY MANAGEMENT COMPANY OF LOUISIANA, LLC AND SOUTHERN
HILLS, LLC D/B/A SOUTHERN HILLS HEALTHCARE
AND REHABILITATION

FILED: 04/30/25

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On application of Southern Hills, LLC d/b/a Southern Hills Healthcare and Rehabilitation for SUPERVISORY WRIT in No. 644,646 on the docket of the First Judicial District, Parish of CADDO, Judge Brady D. O'Callaghan.

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-and-
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Southern Hills, LLC d/b/a Southern
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Lora Montgomery

Before STONE, COX, and MARCOTTE, JJ.

WRIT GRANTED IN PART; DENIED IN PART; REMANDED.

Applicant Southern Hills, LLC, seeks review of four rulings of the trial court contained in an April 7, 2025, “Judgment” issued on a motion to compel discovery. Specifically, applicant challenges those portions of the trial court’s judgment which granted in part Plaintiff’s motion to compel selected responses to Interrogatory 1 and otherwise granted Plaintiff’s motion to compel a response to 29 Interrogatory Nos. 14 and 15, to identify each resident and sponsor at the facility for a six-month period, a response to Request for Production No. 16 regarding any and all policies in effect during the time of Plaintiff’s admission to Southern Hills, and a response to Request for Production Nos. 20, 21 and 24 seeking the production of all written minutes for resident council members as well as all complaints, grievances, and comments regarding the facility’s nursing case and staffing of nursing personnel.

We first address the trial court’s order compelling Southern Hills, LLC to respond to Interrogatories number 14 and 15 as propounded by Plaintiff. These requests seek to obtain the names and addresses of unidentified residents of Southern Hills, LLC during the time that Donzetta Montgomery was also a resident to gain information from former

residents related to the administrative negligence of Southern Hills, LLC. In granting Plaintiff's request, the trial court ruled as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff's motion to compel responses to Plaintiff's Interrogatory [numbers] 14 and 15 is GRANTED. The Court adopts Plaintiff's proposal to utilize a third-party mailing house to send the letter and response card at Exhibit 8 to Plaintiff's motion to any such responsive individuals, at the sole expenses of Plaintiff, notifying them that their names and contact information by returning the response card, or they may call counsel directly. The first sentence of Plaintiff's proposed enclosure letter must be revised to read as follows: "A lawsuit has been filed naming Southern Hills Health Care and Rehabilitation as a defendant."

This issue must be analyzed under both the Health Insurance Portability and Accountability Act ("HIPAA,") as well as Louisiana law governing privilege and disclosure of medical information in any litigation in Louisiana. The issue of whether to order the disclosure of the information at issue hinges on whether compliance with both statutory schemes which protect the privacy interests of medical patients, including residents of nursing and rehabilitation centers, occurred. With certain limited exceptions, HIPAA requires that patients provide consent prior to the release of their health information. *See*, 42 C.F.R. § 164.512(e)(1)(i); 42 C.F.R. § 164.512(e)(1)(v); 45 C.F.R. § 164.512(e)(1)(ii); 45 C.F.R. § 164.512(e)(1)(vi). Here Southern Hills, LLC is clearly a covered entity. 45 C.F.R. § 160.103. Further, a review of the applicable law shows that residents' names and addresses are "protected health information" that cannot be disclosed per Federal regulation without the express consent of the resident or when certain limited exceptions apply to authorize the release of this information. 45 C.F.R. § 160.103. In this matter, we find that the ruling of the trial court failed to properly follow the procedures required for application of any of the exceptions outlined in 42 C.F.R. § 164.512, and that compliance with the trial court's April 7, 2025, order to disclose the information would cause Southern Hills, LLC to violate HIPAA. Moreover, we find a lack of compliance with Louisiana's statutory scheme. The names and addresses of patients are covered under the patient privilege set forth in La. C.E. art. 510 and are generally not discoverable under La. C.C.P. art. 1422 regardless of actual or potential relevance. Because Plaintiff is seeking these names and addresses to support her claim of administrative negligence, a standard tort claim, the medical malpractice exception set forth in La. C.E. art. 510(F) does not apply to authorize release of the information. Nevertheless, La. R.S. 13:3715.1(B) allows an order for the production and disclosure of a patient's medical records to issue, regardless of whether the patient is a party to the litigation, only after a contradictory hearing with the patient, or, if represented, with his counsel of record, or, if deceased, with those persons identified, and after a finding by the court that the release of the requested information is proper or with consent of the patient. La. R.S. 13:3715.1(B). In this case, although a contradictory hearing occurred, because the unnamed residents whose information Plaintiff sought were not present at the hearing, compliance with the procedural safeguards of La. R.S. 13:3715.1 did not occur.

Furthermore, Plaintiff sought were not present at the hearing, compliance with the procedural safeguards of La. R.S. 13:3715.1 did not occur.

Furthermore, we find that the release of the requested information in this case is not proper. The Louisiana Supreme Court clearly set out in *Moss v. State*, 05-1963 (La. 4/4/06), 925 So. 2d 1185, what circumstances would make such a release proper as follows:

Each case must be resolved on its own facts. Nevertheless, there are guidelines the courts should follow in assessing the propriety of disclosure in any particular case. In light of the significant policy reasons supporting the legislatively established health care provider-patient privilege and the constitutional dimensions of the privacy expectations protected thereby, the burden is on the party seeking to overcome the privilege to establish the propriety of disclosure. In light of those same considerations, the privilege should not be subject to casual breach by every litigant in single-minded pursuit of the last piece of evidence which may marginally contribute to his or her case. There should be a substantial showing of relevance and need, *i.e.* lack of ability to obtain the evidence elsewhere, by the party seeking disclosure. Further, any exception to the privilege should be narrowly tailored and should extend only to information necessary and relevant to the condition relied on as a defense or claim. In other words, it is “proper” to disregard the privilege only to the limited extent necessary to access information which is directly related to determining the truth. Following these guidelines, the courts can ensure that both the privacy interests of the patient and the due process rights of the litigant seeking disclosure are respected.

Moss, 925 So. 2d at 1201.

In this matter, Plaintiff's broad request for legally protected medical information of unidentified individuals is not a circumstance sufficient to satisfy these requirements.

Accordingly, we grant the writ in part to reverse that portion of the trial court’s April 7, 2025, “Judgment” granting plaintiff’s motion to compel Southern Hills, LLC to respond to Interrogatories 14 and 15. Regarding the remaining claims, the writ is denied in part. This matter is remanded to the trial court for further proceedings.

Shreveport, Louisiana, this 3 day of July, 2025.

Com JSC

SDS STONE, J. would deny.

FILED: July 3, 2025

Molly Melton

DEPUTY CLERK