

(1993). Presently before the Court are Motions for Summary Judgment by both Plaintiff and Defendants. For the following reasons, Plaintiff's Motion is GRANTED and Defendants' Motion is DENIED.

BACKGROUND

On February 3, 1998, Allentown State Hospital ("ASH") patient Dolores L. attempted to strangle herself with a pay telephone cord. She was taken to a local hospital, where five days later she died.

Plaintiff, Pennsylvania Protection & Advocacy, Inc. ("PP&A"), was notified of Dolores L.'s death in accordance with an agreement between PP&A and the Pennsylvania Department of Public Welfare. PP&A is a non-profit corporation designated by Pennsylvania to satisfy 42 U.S.C. § 6042(a). That statute requires Pennsylvania to "have in effect a system to protect and advocate the rights of individuals with developmental disabilities." *Id.* PP&A is accordingly the "eligible system" under the Protection and Advocacy for Individuals with Mental Illness Act ("PAIMI"), 42 U.S.C. §§ 10805-06, which guarantees it access to certain records. See 42 U.S.C. § 10806(a)(4)(A)-(B).¹

¹ Plaintiff's brief refers to the "PAIMI Act," whereas Defendants' brief refers to the "PAMII Act." The original title of the 1986 Act was the Protection and Advocacy for Mentally Ill Individuals Act - PAMII. See Historical and Statutory Notes to 42 U.S.C.A. § 10801 (1995). In 1991, the Act was amended to substitute the phrase "individuals with mental illness" for "mentally ill individuals" throughout the Act. *Id.* The title of the Act, as listed in the United States Code Annotated, continues to read "Protection and Advocacy for Mentally Ill Individuals" (PAMII). See Title to 42 U.S.C.A. § 10801 (1995). This is presumably because the title of the Act is not "part of" the Act, and accordingly was not affected by the 1991 Amendment. See Pennhurst State School & Hospital v. Halderman, 451 U.S. 1, 19 n.14 (1981). Since the 1991 Amendment, some courts have referred to the

PP&A, as part of its investigation, requested documents related to "peer review" committees formed by ASH to investigate Dolores L.'s death. A "peer review" committee is a committee of medical professionals who evaluate the medical care given by another medical professional. See, 63 P.S. § 425.2. Peer review is intended to improve medical care by encouraging medical professionals to evaluate one another candidly. See Morse v. Gerity, 520 F. Supp. 470, 471 (D. Conn. 1981).

ASH complied with PP&A's other document requests, but refused to produce the peer review reports on the grounds that they are protected by Pennsylvania's Peer Review Protection Act ("PRPA"), 63 PS § 425.1 et seq. The PRPA strongly limits the discoverability of "the proceedings and records of a [peer] review committee." 63 P.S. § 425.4 (1996). To encourage peer review, Pennsylvania, like with many other states, has passed this legislation to protect the confidentiality of peer review reports.

PP&A then sued ASH, arguing both that the PRPA does not apply to these documents, and more broadly that the federal PAIMI Act preempts Pennsylvania's PRPA.

DISCUSSION

I. Summary Judgment Standard

"PAMII Act," while others have chosen to refer to the "PAIMI Act." Compare Doe v. Stincer, 175 F.3d 879, 881 (11th Cir. 1999) ("PAMII Act") with Georgia Advocacy Office, Inc. v. Camp, 172 F.3d 1294, 1295 (11th Cir. 1999) ("PAIMI Act"). The phrase "individuals with mental illness" appears to be the preferred usage, and the clear intent of the 1991 Amendment was to change the usage of the phrase throughout the Act. Accordingly, this Court has chosen to refer to the act as the PAIMI Act.

Federal Rule of Civil Procedure 56(c) provides that a court may grant summary judgment where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The parties agree that the facts are undisputed in this case, and the Court is thus left with purely legal issues. Accordingly, summary judgment is appropriate in this case.

II. Applicability of the PAIMI Act

As the "eligible system" under 42 U.S.C. § 10801 et seq., PP&A "shall...have access to all records of...any individual who is a client of the system if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access." 42 U.S.C. § 10805(a)(4)(A). PP&A received a signed release to access the records of Dolores L. from her son, who is her next of kin. Both parties have agreed that this release is sufficient. See Complaint/Answer at ¶ 17.

Defendants acknowledge that the PAIMI Act gives PP&A a "qualified right of access to records generally," but argue that the PAIMI does not grant PP&A a right to access peer review reports in particular. Defendants' Summary Judgment Brief at 8.² Defendants' argument is based on a citation to legislative history that "[i]t is the Committee's intent that the PAIMI Act

² This argument is also a component of Defendants' Supremacy Clause analysis. The Supremacy Clause component is not be addressed in this section of this Memorandum. Rather, this section is limited to Defendants' argument as it bears on the applicability of the PAIMI Act in this case.

does not preempt State law regarding disclosure of peer review/medical review records relating to the proceedings of such committees." S. Rep. No. 102-114 at 5. Defendants use this legislative history to argue that the PAIMI Act does not require disclosure of peer review reports.

There are several problems with this argument. The cited legislative history purports to describe the intention only of a Senate Committee, not the intention of the Senators and Representatives who voted to make the proposed act into law. A passage from legislative history "does not itself have the force of law." United States v. Fisher, 10 F.3d 115, 120 (3d Cir. 1993).

But more importantly, it is inappropriate to use legislative history in interpreting this section of the PAIMI Act. The text of the statute says that an eligible system shall

- (4) in accordance with section 10806 of this title, have access to all records of -
 - (A) any individual who is a client of the system if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access...

42 U.S.C. § 10805(a)(4)(A) (emphasis added). In interpreting this statute, the Court takes notice of what one court has called "the unequivocal force of the word[] 'all.'" Madrid v. Gomez, 150 F.3d 1030, 1037 n.11 (9th Cir. 1998). When the text of a statute is unambiguous, a court should very rarely consider legislative history in interpreting that statute. As the Third Circuit has stated, "[w]e look to the text of a statute to determine congressional intent, and look to legislative history only if the text is ambiguous." United States v. Sherman, 150 F.3d 306, 313 (3d Cir. 1998).

The only exception to this 'plain meaning' rule is where the "literal application of a statute will produce a result demonstrably at odds with the intention of its drafters." New Rock Asset Partners, L.P. v. Preferred Entity Advancements, Inc., 101 F.3d 1492, 1498 (3d Cir. 1996). In this case, Defendants support their argument that literal application of the plain meaning of this statute would produce a result demonstrably at odds with then intention of the PAIMI Act's drafters by citing legislative history that postdates the enactment of the statute. The legislative history cited by Defendants comes from a 1991 re-authorization of the Act, in which no amendments were made relevant to the statutory provisions at issue in this case. This postdated legislative history, by a different Congress than originally passed the Act, and expressing only the opinion of a committee of that Congress, is simply not evidence of the intent of Congress when it passed the PAIMI Act. Defendants have not shown that the literal application of the word "all records" would produce a result demonstrably at odds with the intention of the PAIMI Act's drafters.

Accordingly, this Court will follow the plain language of the PAIMI Act, and interpret "all records" to include peer review reports.

III. Applicability of the PRPA

This case comes to this Court under federal question jurisdiction. Unlike in a diversity case, a federal court does not apply state privilege law in a federal question case. See Fed. R. Evid. 501. The Advisory Committee Notes to Rule 501 state that "in criminal and Federal question civil cases, federally evolved rules on privilege should apply since it is

Federal policy which is being enforced." Advisory Committee Notes to Fed. R. Evid. 501.

That said, a federal court may recognize a state privilege in a federal question case where doing so would not prejudice a federal interest. "Courts can look to state privilege law for guidance...but are free to depart from it." Dunn v. Warhol, 1992 WL 328897 at *1 (E.D.Pa.). As another court has stated, "a strong policy of comity between state and federal sovereignties impels federal courts to recognize state privileges where this can be accomplished at no substantial cost to federal substantive and procedural policy." United States v. King, 73 F.R.D. 103, 105 (E.D.N.Y. 1976). But when the federal interest is strong, the state law of privilege should not be applied. Where the PRPA has come into conflict with strong federal interests in federal question cases, the PRPA has been held not to apply. See Swarthmore Radiation Oncology, Inc. v. Lapes, 1993 WL 517722 at *3-4 (E.D.Pa.); Dunn v. Warhol, 1992 WL 328897 at *1-2 (E.D.Pa.) (holding the PRPA not to apply in a federal question case where "a potentially meritorious federal claim with strong public policy implications may be effectively undermined by the exclusion of relevant evidence.").

The federal interest at issue in this case is very strong. The PAIMI Act was passed because Congress found that "individuals with mental illness are vulnerable to abuse and serious injury," and further that "[s]tate systems for monitoring compliance with respect to the rights of individuals with mental illness vary widely and are frequently inadequate." 42 U.S.C. § 10801(a)(1)-(4). 'Eligible systems,' including PP&A, play an important role in the monitoring system established by the PAIMI Act. The goal

of the Act is for these eligible systems to “investigate incidents of abuse and neglect of individuals with mental illness....” 42 U.S.C. § 10801(b)(2)(B). The PAIMI Act’s grant of access to “all records” is clearly crucial to fulfilling this goal.

Given the importance of the federal interest in this case, it would be inappropriate to recognize the state law peer review privilege in this federal question case. Thus, the Pennsylvania peer review privilege, embodied in the PRPA, will not be applied in this federal question case.

IV. Preemption of PRPA by PAIMI

PP&A argues that the PAIMI Act preempts the PRPA. Although some components of the preemption argument overlap with the issues discussed above, this Court declines to address the preemption issue in this case. The Court has found that the PAIMI Act does apply to peer review reports, and that the PRPA should not be applied in this federal question case. Plaintiff’s preemption argument is therefore no longer necessary to decide this case.

CONCLUSION

The PAIMI Act’s use of the phrase “all records” grants Plaintiff a right to access ASH’s peer review reports related to the death of Dolores L. The PRPA, as a state law privilege, will not be recognized in this federal question case because it conflicts with an important federal interest. Accordingly, Defendants must produce to Plaintiff all documents relating to the death of Dolores L., including peer review reports.

An appropriate Order follows.

Defendants on the basis of the Pennsylvania Peer Review
Protection Act, 63 PS § 425.1 et seq.

BY THE COURT:

J. CURTIS JOYNER, J.