SJC-13749

QUINTEASHA DosSANTOS vs. BETH ISRAEL DEACONESS HOSPITAL-MILTON, INC., & others.[1]

Suffolk. September 5, 2025. - January 6, 2026.

Present: Budd, C.J., Gaziano, Kafker, Georges, Dewar, & Wolohojian, JJ.

Medical Malpractice, Expert opinion, Hospital, Standard of care, Tribunal. Impoundment. Uniform Rules on Impoundment Procedure. Evidence, Determination of medical malpractice tribunal, Medical record. Negligence, Medical malpractice, Hospital, Standard of care. Practice, Civil, Impoundment order, Offer of proof, Dismissal.

Civil action commenced in the Superior Court Department on December 24, 2019.

A motion to impound was heard by Robert B. Gordon, J.; a motion to dismiss was considered by Debra A. Squires-Lee, J., and entry of final judgment was ordered by her.

After review by the Appeals Court, 105 Mass. App. Ct. 83 (2024), the Supreme Judicial Court granted leave to obtain further appellate review.

[1] David J. Purcell; Jonathan Anderson; Lyn McKinney; Vanessa Martin; Suzzanne Merithew; Thomas E. Fitzgerald; and Associated Physicians of Harvard Medical Faculty Physicians at Beth Israel Deaconess Medical Center, Inc.

Krzysztof G. Sobczak for the plaintiff.
Megan M. Grew Pimentel for Thomas E. Fitzgerald.
John D. Bruce for Suzzanne Merithew.
John P. Puleo for Jonathan Anderson & others.
Daniel Braun for Vanessa Martin & others.

GAZIANO, J. After experiencing medical complications following a delayed appendectomy, the plaintiff, Quinteasha DosSantos, commenced a malpractice action against Beth Israel Deaconess Hospital-Milton, Inc., its corporate affiliate, and several health care providers. The plaintiff filed an offer of proof without her medical records, instead moving to impound the records before submitting them to the medical malpractice tribunal. A Superior Court judge denied her motion but provided her the opportunity to refile it with a more particularized description of the records she sought to impound. The plaintiff declined to do so and filed a motion for a protective order that would have restricted disclosure of her medical records, which the motion judge also denied without prejudice.

Multiple defendants filed demands for a medical malpractice tribunal pursuant to G. L. c. 231, § 60B (§ 60B), and Rule 73 of the Rules of the Superior Court (2020) (rule 73). A tribunal convened and reviewed the plaintiff's offer of proof, which consisted of an opinion letter from an expert physician but not the plaintiff's medical records. Following a hearing, the tribunal determined that the plaintiff's offer of proof was

insufficient. After the plaintiff failed to post the requisite bond pursuant to § 60B within thirty days of the tribunal's findings, another Superior Court judge dismissed her claims against the defendants.

The plaintiff appeals from the denial of her motion for impoundment and the judgment of dismissal. We conclude that the motion judge's denial of the plaintiff's motion to impound her medical records did not constitute an abuse of discretion. We further hold that the medical malpractice tribunal did not err in finding that the plaintiff's offer of proof was insufficient to raise a legitimate question of liability appropriate for judicial inquiry as to any of the defendants. Accordingly, we affirm the denial of the impoundment motion and the judgment of dismissal.

1. Background. a. Facts. "We summarize the evidence in the plaintiff's offer of proof in the light most favorable to the plaintiff." Bennett v. Collins, 496 Mass. 737, 738 (2025).

On January 5, 2017, the nineteen year old plaintiff went to the emergency department of Beth Israel Deaconess Hospital-Milton (hospital), complaining of abdominal pain, nausea, vomiting, and diarrhea. She was evaluated, diagnosed with a urinary tract infection, prescribed antibiotics, and discharged a few hours later.

The next night, on January 6, the plaintiff returned to the emergency department with worsening abdominal pain. Findings from a computed tomography (CT) scan of her abdomen and pelvis were consistent with acute appendicitis. The plaintiff did not receive an appendectomy for approximately twelve hours. During an attempted laparoscopy, the plaintiff was diagnosed with perforated appendicitis. The procedure was converted to an open laparotomy, and fluid was drained.

Following surgery, the plaintiff was admitted to the hospital's intensive care unit with an elevated heart rate likely resulting from abdominal sepsis. Another CT scan showed the plaintiff had an abdominal abscess. She then underwent a second surgery to drain the abscess. Several days later, the plaintiff developed a fever and chest pain, and she was diagnosed with a pleural effusion. This required another procedure to remove fluid from her pleural cavity, after which her symptoms improved. She was ultimately discharged twenty days after her initial emergency department visit.

b. Procedural history. In December 2019, the plaintiff brought this medical malpractice action in the Superior Court against six individuals -- three doctors, two nurses, and one physician assistant -- along with Beth Israel Deaconess Hospital-Milton, Inc. (the corporation operating the hospital), and its corporate affiliate, Associated Physicians of Harvard

Medical Faculty Physicians at Beth Israel Deaconess Medical Center, Inc. In her complaint, the plaintiff asserted claims of negligence against the individual defendants. She specifically alleged the following:

> "On or about January 5, 2017, at approximately 17:00, Plaintiff arrived to the [hospital's] emergency department for evaluation and care of persistent abdominal pain."
>
> "Plaintiff was discharged by the defendants and sent home."
>
> "The following day, January 6, 2017, at approximately 20:30 Plaintiff returned to the [hospital's] emergency department for evaluation and care of abdominal pain."
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> "On January 7, 2017 at approximately 00:30 [a] CT scan revealed appendicitis . . . ."
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> "[A]t approximately 13:00 Plaintiff underwent surgery . . . ."
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> "During an attempted laparoscopy, perforated appendicitis was diagnosed, and a large amount of murky fluid and extensive fibrinous exudate between bowel loops were present; thus the procedure was converted to open laparotomy."
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> "Plaintiff's post-operative care was complicated due to subsequent abdominal abscess, pleural effusion, and infections, with final discharge not coming until January 25, 2017."
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> "The delayed diagnosis and treatment of appendicitis resulted in the interval appendiceal rupture . . . and contributed to the adverse post-operative events, including the prolonged hospitalization."

The defendants denied any negligence in their respective answers.

On March 18, 2020, the plaintiff moved pursuant to the Uniform Rules on Impoundment Procedure (2015) (URIP) to impound

her medical records for "the duration of this matter (and any subsequent appeals)," with the parties to either return or destroy the impounded records at the conclusion of the case. In support of her motion, the plaintiff contended that (1) her negligence claims concerned medical malpractice, and thus the plaintiff's medical records would potentially have to be filed; (2) statutory, regulatory, and other sources establish that "information contained in medical records is private and protected and should be treated as confidential"; (3) Massachusetts courts "routinely and regularly allow" motions to impound medical records; and (4) "it would be impossible [or] impractical to partially redact the records, as the confidential/protected information [would] be relevant to the proceedings." One individual defendant opposed the motion. On May 6, 2020, in a margin endorsement, the motion judge denied the plaintiff's motion "without prejudice to a future filing of such a motion addressed to particularized documents shown to warrant the protection of impoundment," reasoning that she had "fail[ed] to make the showing of good cause required by the [URIP]."[2]

[2] The wording of the corresponding docket entry varies slightly from the handwritten order of the judge; we quote the order.

In June 2020, the plaintiff moved for a protective order pursuant to Mass. R. Civ. P. 26 (c), as amended, 474 Mass. 1401 (2016). Among other terms, the plaintiff's proposed protective order included restrictions on the disclosure and use of any documents designated as confidential by the parties -- including medical records. On June 15, 2020, the motion judge denied the motion for a protective order "without prejudice to the [p]laintiff's right to seek either a [r]ule 26 protective order or the impoundment of particularly identified medical records."[3]

In July 2020, the plaintiff filed a motion for clarification or reconsideration of the order denying her request for impoundment. The plaintiff sought to clarify whether (as a result of the denial of her request for impoundment) she did not need to file medical records as part of her offer of proof. In support of her alternative request for reconsideration, the plaintiff contended that "all medical records . . . should be impounded when filed in [c]ourt." The motion judge denied the plaintiff's motion on July 20, 2020, again reasoning that "the [p]laintiff has not demonstrated the 'cause' required for an order of impoundment under [the URIP]." Further, the motion judge stated that the plaintiff's "summarily asserted interest in the confidentiality of her medical records,

[3] The plaintiff does not appeal from the denial of her motion for a protective order, so we do not address this issue.

to the extent such interest survives the disclosures already made in her filed pleadings, may be reasonably safeguarded through a protective order."

The plaintiff submitted an offer of proof consisting of an expert opinion letter from Dr. George Kasotakis, a licensed physician and practicing surgeon with board certifications in general surgery and surgical critical care. Notably, the offer of proof did not include the plaintiff's medical records. In his letter, Kasotakis listed the sources he reviewed in forming his opinions, including the plaintiff's medical records. He then offered a three-page description of the plaintiff's emergency department visits and subsequent appendicitis treatment and complications. Kasotakis concluded that there were "several instances where the standard of care was not met," including the following:

> "1. Failure to diagnose and manage acute appendicitis, and misdiagnosis of a urinary tract infection upon [the plaintiff's] initial presentation. A physician's note . . . clearly states absence of dysuria, and despite an unremarkable urinalysis . . . and presence of significant gastrointestinal symptoms, the erroneous diagnosis of a urinary tract infection was made. At the same time, the unusually high white blood cell count, elevated amylase (which can be elevated in appendicitis or other gastrointestinal tract conditions) and abdominal pain were not worked up further to rule out appendicitis. The above led to an inappropriate discharge from the emergency department.
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> "2. An abdominal CT scan was not obtained until [the plaintiff's] second visit to the [e]mergency [d]epartment, over [twenty-four] hours after the initial presentation,

> leading to a significant delay in the diagnosis of acute appendicitis. To a reasonable degree of medical certainty, this delayed diagnosis resulted in the interval appendiceal rupture, and increased the probability of adverse sequelae, such as development of abdominal sepsis; difficult appendectomy with a high likelihood of conversion to an open operation; need for transfer to a higher level of care; intra-abdominal abscess formation; reactive inflammatory changes to other organ-systems; [and] prolonged hospital stay and recovery.
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> "3. After the diagnosis of appendicitis was made, there was failure to timely pursue surgical management as indicated. . . . [An approximately twelve-hour] delay took place despite signs of significant physiologic derangement . . . . To a reasonable degree of medical certainty, the delayed diagnosis resulted in the interval appendiceal rupture, and likely set her up for the aforementioned adverse events."

The letter does not identify any individual health care providers or their job titles.

The six individual defendants and Beth Israel Deaconess Hospital-Milton, Inc., demanded a medical malpractice tribunal pursuant to § 60B and rule 73. A tribunal hearing was held on June 16, 2021. At the hearing, the plaintiff's counsel sought to "renew" the impoundment motion, arguing that the plaintiff's medical records had to be impounded by statute -- without citing any statutory authority. The tribunal declined to revisit the issue, reasoning that the plaintiff's counsel was raising "the same arguments that [he had] raised earlier in the motion to impound." That same day, the tribunal issued its findings, concluding that the plaintiff's offer of proof did not present

sufficient evidence to raise a legitimate question of liability appropriate for judicial inquiry as to any of the defendants.

After the tribunal issued its findings, the defendants moved to increase the amount of the medical malpractice bond. The plaintiff opposed the motion and filed a cross motion to reduce or eliminate the bond. After both motions were denied, a different Superior Court judge notified the plaintiff that failure to post bond within thirty days would result in dismissal pursuant to § 60B. The plaintiff failed to do so, and in November 2021, the judge entered a judgment of dismissal as to all defendants.

The plaintiff appealed to the Appeals Court, which affirmed both the order granting dismissal and the motion judge's denial of her motion for impoundment. See DosSantos v. Beth Israel Deaconess Hosp.-Milton, Inc., 105 Mass. App. Ct. 83, 89-90 (2024). We granted the plaintiff's application for further appellate review.

2. Discussion. We address two issues in this appeal. First, we determine whether the motion judge abused his discretion in denying the plaintiff's motion to impound her medical records. Second, we consider whether the medical tribunal erred in finding that the evidence presented in the plaintiff's offer of proof, "if properly substantiated," was not "sufficient to raise a legitimate question of liability

appropriate for judicial inquiry." G. L. c. 231, § 60B. We address each issue in turn.

a. Impoundment. i. Standard. We review a judge's decision on a motion to impound for abuse of discretion or legal error. See Care & Protection of Adele, 495 Mass. 710, 721 (2025). A judge abuses his or her discretion only where the judge makes "a clear error of judgment in weighing the factors relevant to the decision . . . such that the decision falls outside the range of reasonable alternatives" (quotation omitted). Id., quoting L.L. v. Commonwealth, 470 Mass. 169, 185 n.27 (2014).

When ruling on a motion to impound, a judge must determine whether the movant has met the "good cause" standard set forth in Rule 7(b) of the URIP.[4] See Care & Protection of Adele, 495 Mass. at 720; H.S. Gere & Sons, Inc. v. Frey, 400 Mass. 326, 332 (1987). The "good cause" standard requires the motion judge to "consider all relevant factors, including, but not limited to, (i) the nature of the parties and the controversy, (ii) the type of information and the privacy interests involved, (iii) the extent of community interest, (iv) constitutional rights, and (v) the reason(s) for the request." Rule 7(b) of the Uniform

[4] The URIP "govern impoundment of otherwise public case records that are filed in civil and criminal proceedings in each Department of the Trial Court." Rule 1(a) of the Uniform Rules on Impoundment Procedure.

Rules on Impoundment Procedure. We also consider the extent to which the information sought to be impounded "has already been disclosed." Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 608 (2000). In considering these factors, the judge must "balance the rights of the parties based on the particular facts of [the] case" (citation omitted). Care & Protection of Adele, supra. See H.S. Gere & Sons, Inc., supra at 329 (in exercising discretion to impound court files, "a judge must balance the privacy issues against the general principle of publicity" [quotation and citation omitted]).

The party seeking impoundment "bears the burden of demonstrating the existence of good cause" (quotation and citation omitted), New England Internet Café, LLC v. Clerk of the Superior Court for Criminal Business in Suffolk County, 462 Mass. 76, 83 (2012). In meeting that burden, a movant is required by the URIP to "describe with particularity . . . the material sought to be impounded." Rule 2(a)(1) of the Uniform Rules on Impoundment Procedure. This requirement, among others, "must be followed if an order of impoundment is to issue." H.S. Gere & Sons, Inc., 400 Mass. at 332.

Where a movant has met his or her burden, this overcomes the "presumption of publicity of judicial records." New England Internet Café, LLC, 462 Mass. at 83. See Republican Co. v. Appeals Court, 442 Mass. 218, 223 (2004) ("The public's right of

access to judicial records . . . may be restricted, but only on a showing of 'good cause'" [citation omitted]). However, particularly given the various ways in which the presumption of public access "enhances public confidence in the judicial system," Commonwealth v. Chism, 476 Mass. 171, 178 (2017), S.C., 495 Mass. 358 (2025), we are mindful that "impoundment is always the exception to the rule, and the power to deny public access to judicial records is to be strictly construed in favor of the general principle of publicity" (quotation and citation omitted), Republican Co., supra.

ii. Application. As discussed supra, the motion judge denied the plaintiff's motion to impound because she failed to demonstrate good cause for impoundment pursuant to the URIP, at least in part because she did not show that the records contained information that had not already been disclosed in the pleadings. Although the motion judge did so "without prejudice to a future filing of such a motion addressed to particularized documents," the plaintiff declined to present a more particularized description of the documents. Instead, she filed a motion for a protective order in which she made essentially the same arguments as in her original impoundment motion. The judge again denied her motion without prejudice to her "right to seek . . . the impoundment of particularly identified medical records." Rather than filing a more detailed motion

demonstrating good cause to impound her medical records, the plaintiff filed a motion for reconsideration that asserted no new grounds for impoundment. The motion judge also denied this motion, reasoning in part that a protective order may have reasonably safeguarded any interests in her medical records that survived the disclosures already made in her filed pleadings.

On appeal, the plaintiff principally relies on statutory sources concerning the confidentiality or use of medical records, including G. L. c. 111, § 70 (hospital and clinic records are not subject to public records requests); G. L. c. 111, § 70E (b) ("Every patient or resident of a facility shall have the right . . . to confidentiality of all records and communications to the extent provided by law"); and G. L. c. 233, § 79 (hospital records produced in court must be returned to hospital upon completion of trial or hearing when no longer required). She also relies on a court form used for filing impounded information, which identifies G. L. c. 111, §§ 70 and 70E (b), as sources of authority for the impoundment of medical records. The plaintiff argues that -- by virtue of their confidential nature -- "every medical record in publicly available cases should be subject to impoundment" (emphasis omitted). In other words, the plaintiff requests a blanket rule that all medical records warrant impoundment.

We have recognized "a legislatively created policy favoring the confidentiality of medical records." Commonwealth v. Senior, 433 Mass. 453, 457 n.5 (2001). A judge could exercise discretion to impound medical records based on that policy. But this does not mean that the motion judge here was foreclosed from denying the request to impound based on the facts presented to him. See Civil Beat Law Ctr. for the Pub. Interest, Inc. v. Maile, 117 F.4th 1200, 1211 (9th Cir. 2024) (rejecting categorical sealing rule for all medical and health records because "the privacy interest implicated by a particular medical or health record can be protected . . . by a case-by-case determination").

We review impoundment decisions on a case-by-case basis. See Boston Herald, Inc., 432 Mass. at 604 ("To determine whether good cause is shown, a judge must balance the rights of the parties based on the particular facts of each case"); Newspapers of New England, Inc. v. Clerk-Magistrate of the Ware Div. of the Dist. Court Dep't, 403 Mass. 628, 639 (1988) (Wilkins, J., concurring), cert. denied, 490 U.S. 1066 (1989) ("No general principle, articulated in support of impoundment, can justify an impoundment without case-specific fact-finding").

Here, in light of the case-specific facts and circumstances, the motion judge's denial of the plaintiff's motion for impoundment was within "the range of reasonable

alternatives" (citation omitted). Care & Protection of Adele, 495 Mass. at 721. The motion judge found that the plaintiff had failed to establish "good cause" for impoundment and provided the plaintiff with an opportunity to file a more particularized motion specifying the information she sought to protect, notwithstanding the disclosures in her pleadings. She declined to do so and instead asserted that certain medical record statutes and regulations provided a general basis for impoundment. In the absence of more particularized information concerning the plaintiff's medical records -- indeed, without knowing even the types of records at issue -- we are unwilling to speculate whether the medical records, or any portion thereof, should have been impounded. See Chokel v. Genzyme Corp., 449 Mass. 272, 279 (2007) ("When a party fails to include a document in the record appendix, an appellate court is not required to look beyond that appendix to consider the missing document").[5] At a minimum, the plaintiff should have provided enough information to allow the motion judge to conduct a good cause analysis "based on the particular facts of [the] case" (citation omitted). New England Internet Café, LLC, 462 Mass.

[5] Moreover, even if the plaintiff had attempted to submit such particularized information for the first time on appeal, it would not be properly before us. See Jeevanandam v. Bharathan, 496 Mass. 103, 104 n.2 (2025).

at 83. The plaintiff did not do so. We thus conclude that the motion judge did not abuse his discretion in denying the plaintiff's motion to impound.

b. Offer of proof. We next consider whether the medical malpractice tribunal erred in finding that the evidence presented in the plaintiff's offer of proof, "if properly substantiated," was not "sufficient to raise a legitimate question of liability appropriate for judicial inquiry." G. L. c. 231, § 60B.

When a plaintiff brings a medical malpractice action against a health care provider, to proceed with her claims, she must present an offer of proof to a "tribunal consisting of a single justice of the superior court, a physician licensed to practice medicine in the commonwealth . . . and an attorney authorized to practice law in the commonwealth." G. L. c. 231, § 60B. The tribunal determines if the offer of proof "is sufficient to raise a legitimate question of liability appropriate for judicial inquiry." Id. A plaintiff's offer of proof will meet this standard if it contains "sufficient evidence that (1) the defendant is a health care provider as defined in § 60B, (2) the defendant's performance did not conform to good medical practice, and (3) damage resulted therefrom" (quotations and citations omitted). Bennett, 496 Mass. at 742.

While the evidence a plaintiff can submit as part of his or her offer of proof can include, inter alia, "hospital and medical records, nurses' notes, x-rays and other records kept in the usual course of the practice of the health care provider," G. L. c. 231, § 60B, "[e]xtrinsic evidence is not required to substantiate the factual statements in an expert's opinion," Feliciano v. Attanucci, 95 Mass. App. Ct. 34, 39 (2019). In fact, "a factually based statement by a qualified expert, without more, is sufficient to meet the tribunal standard" if it is "rooted in the evidence rather than based on assumptions unsupported by the record" (quotation and citations omitted). Bennett, 496 Mass. at 742, 744.

In evaluating the offer of proof, the tribunal applies a "standard comparable to a motion for a directed verdict, that is, in a light most favorable to the plaintiff." Blake v. Avedikian, 412 Mass. 481, 484 (1992), citing Kopycinski v. Aserkoff, 410 Mass. 410, 415, 417–418 (1991). This standard requires the tribunal to determine whether "anywhere in the evidence, from whatever source derived, any combination of circumstances could be found from which a reasonable inference could be drawn in favor of the plaintiff" (citation omitted). Dobos v. Driscoll, 404 Mass. 634, 656, cert. denied, 493 U.S. 850 (1989). Unlike the evidence presented on a motion for a directed verdict, "the offer of proof before the tribunal is

made without the benefit of discovery and at the earliest stage in the life of the litigation" (citation omitted). Bennett, 496 Mass. at 742. Therefore, "the tribunal has a narrow task of examin[ing] the evidence proposed to be offered on behalf of the patient to determine whether that evidence, if properly substantiated, is sufficient to raise a legitimate question of liability appropriate for judicial inquiry" (quotations and citation omitted). Id.

Here, the plaintiff's offer of proof consisted of an opinion letter from Kasotakis, a qualified expert physician, based on his review of the plaintiff's medical records. Kasotakis did not name the defendants, identify their professions, or specify their roles in the plaintiff's medical care. In the absence of such information, it is difficult to discern from Kasotakis's letter how each defendant "failed to adhere to the standard of care and skill of the average member of the profession" practicing in his or her specialty (quotation and citation omitted). Bradford v. Baystate Med. Ctr., 415 Mass. 202, 206 (1993). This falls short of raising a legitimate question of liability appropriate for judicial inquiry as to each defendant. The plaintiff's offer of proof accordingly was insufficient.

At the tribunal hearing, the plaintiff maintained that the offer of proof would be "complete" with her impounded medical

records, reasoning that if the medical records were "combined with the expert's opinion letter, it [would] identify each of the individual [defendants'] specific roles and . . . [would] show how each of them violated particular standards of care." In other words, the plaintiff asserted that the medical records would serve as an answer key that would allow the tribunal to fill in missing information, such as the defendants' names and titles.

Since the plaintiff did not submit her medical records, we are unable to determine whether the plaintiff's offer of proof would have been sufficient if considered in tandem with her records. See Chokel, 449 Mass. at 279. Accordingly, we affirm the tribunal's finding that the plaintiff's offer of proof was insufficient and affirm the judgment of dismissal.

3. Conclusion. We hold that the motion judge did not abuse his discretion or commit legal error in denying the plaintiff's motion to impound. Additionally, we conclude that the plaintiff's offer of proof was insufficient. We thus affirm the order denying the motion to impound and the judgment of dismissal.

So ordered.