

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

SHANNON WOOD and BRYAN)	
WOOD, her husband,)	
)	
Plaintiff,)	
)	
v.)	C.A. No.: N18C-12-025 SKR
)	
MATTHEW J. FAGAN, MD and)	TRIAL BY JURY OF
CHRISTIANA CARE HEALTH)	TWELVE DEMANDED
SYSTEMS, INC. a Delaware)	
corporation,)	
)	
Defendants.)	

ORDER

This 12th day of December, 2019, upon consideration of Plaintiff Shannon Wood’s (“Plaintiff”) Motion to Compel,¹ Defendants Dr. Matthew Fagan and Christiana Care Health Systems, Inc.’s (collectively “Defendants”) response,² and oral argument on the Motion, it appears to the Court that:

1. Between March 22, 2017 and June 7, 2017, Dr. Matthew Fagan treated Plaintiff in his capacity as an employee of Christiana Care Health Systems (“CCHS”).

¹ Transaction ID 64351704.

² Transaction ID 64414703.

2. On July 10, 2017, Plaintiff called Defendants' main service line to dispute medical bills relating to Dr. Fagan's treatment. On the call, Plaintiff reported the complications and suffering she endured throughout her treatment. CCHS personnel created a summary of the call and marked it as a "Red Flag Grievance".

3. During the 24 hours immediately following the call, a series of emails were sent among CCHS employees regarding Plaintiff's bills and treatment. During discovery, Plaintiff requested all of the emails that pertain to such correspondence. Defendants have provided all but two of the emails.

4. The two emails that were not provided appear as redacted emails within an email chain in Plaintiff's Exhibit 2 to the instant Motion. Plaintiff filed this Motion to Compel the Defendants to produce those emails in an un-redacted form.³

5. Defendants contend that the two emails in question are privileged as work-product material, pursuant to Delaware Superior Court Civil Rule 26(b)(3) ("Rule 26(b)(3)"), and therefore, are not discoverable by Plaintiff. Rule 26(b)(3) prohibits mandatory disclosure of documents that are prepared in anticipation of litigation by the opposing party or its representative.

6. In *Mullins v. Vakili*,⁴ the Delaware Supreme Court recognized the inconsistency in the application of the phrase, "in anticipation of litigation", and

³ Transaction ID 64351704.

⁴ 506 A.2d 192 (Del. Super. Ct. 1986).

developed a five-factor test to distinguish privileged work-product materials from other documents with some connection to the litigation of a case.⁵

7. Further, in *Hopkins v. Chesapeake Utilities Corp.*,⁶ this Court distinguished work-product materials from documents prepared according to an organization's general practice of investigating all accidents as soon as possible after they occur. *Hopkins* held that the latter type of documents are not prepared "in anticipation of litigation" even when they are routinely created to assist potential future litigation.⁷

9. It is clear that the redacted emails were initiated by CCHS's Risk Management team in response to Plaintiff's phone-complaint about the eventual subject matter of this case. However, in light of *Mullins* and *Hopkins*, the Court finds that the emails were prepared according to CCHS's ordinary and general practice of investigating accidents, and not protected from disclosure by the work-product doctrine.

⁵ The five factors set forth in *Mullins* are summarized as follows: (1) the nature of the event that prompted the preparation of the materials and whether it is an event that is likely to lead to litigation; (2) whether the requested materials contain legal analyses and opinions or simply factual information; (3) whether the material was requested or prepared by the party or their representative; (4) whether the materials were routinely prepared, and if so, what purpose that routine serves; and (5) whether specific claims were present or negotiation had occurred at the time the materials were prepared. *Mullins v. Vakili*, 506 A.2d at 198.


⁶ 300 A.2d. 12 (Del. Super. 1972).

⁷ *Id.* at 14.

10. The *in camera* review of the redacted material did not contradict the Court's findings based on the aforementioned legal principles.

11. For the foregoing reasons, Plaintiff's Motion to Compel is hereby GRANTED.

IT IS SO ORDERED.



Sheldon K. Rennie, Judge

Cc: Gary W. Aber, Esquire, Wilmington, DE
Joshua H. Meyeroff, Esquire, Morris James LLP, Wilmington, DE