

**[J-110-2018] [MO: Todd, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT**

IN RE: FORTIETH STATEWIDE	:	No. 85 WM 2018
INVESTIGATING GRAND JURY	:	
	:	
	:	
PETITION OF: R.M.L.	:	SUBMITTED: December 14, 2018
	:	
	:	

DISSENTING OPINION

JUSTICE MUNDY

DECIDED: NOVEMBER 20, 2019

Petitioner waived confidentiality of his mental health treatment reports when he unconditionally submitted the reports to the Diocese. Thus, the order of the supervising judge permitting the inclusion of information from these reports in Report 1 of the 40th Investigating Grand Jury was not in error. Accordingly, I dissent from the Majority’s Opinion reversing the order of the supervising judge.

Petitioner avers that release of the information from these reports violates Section 7111 of the Mental Health Procedures Act (MHPA) which states, “All documents concerning persons in treatment shall be kept confidential and, without the person’s written consent, may not be released or their contents disclosed to anyone[.]” 50 P.S. § 7111(a).¹ As noted by the Majority, Petitioner signed the Release, authorizing the Facility by written consent to disclose confidential information acquired during the course of Petitioner’s treatment. Majority Op. at 2. The scope of this disclosure is critical to addressing Petitioner’s claim.

¹ This section is subject to four exceptions, which are inapplicable herein.

Petitioner views the Release as “limited in nature, only and explicitly permitting” the Facility “to disclose [his] confidential mental health treatment information to three [diocesan officials].” Petitioner’s Brief at 17-18. The Majority acknowledges the Release authorized the disclosure of confidential information to “various officials of the Diocese.” *Id.* As noted in Petitioner’s brief, the supervising judge found the release was a general release to the Diocese. Thus, the divergent views agree on the existence of a written release, to multiple individuals, but not on its inherent effect.

In my view, a written Release authorizing full dissemination, without limitation, of the sensitive information to multiple diocesan officials waives the confidentiality protections of Section 7111. Further, although, as noted, the Release remains sealed, from the information made known by the parties, the Release did not limit the Diocese from sharing the records, nor did it specify the records were to remain confidential. The Majority concludes, “the Release did not authorize diocesan officials to further disclose Petitioner’s records to the public at large.” Majority Op. at 18. In fact, the Release did not contain specificity at all, supporting the supervising judge’s conclusion it was a general release to the Diocese of the records. Absent written consent, Section 7111 mandates confidentiality of documents relating to mental health treatment. In this case, we are left to reconcile the unconditional written release of the records to a third party, the Diocese, with Petitioner’s assertion that the Section 7111 privilege prevents dissemination of the material. In my view, Petitioner waived all future privilege in those records when he released them to the Diocese over twenty years ago.

Additionally, I find the cases cited by the Majority inapposite. In *Zane v. Friends Hospital*, 836 A.2d 25 (Pa. 2003), this Court explained that under Section 7111, “release of the [mental health] documents is contingent upon the person’s written consent and the documents may not be released ‘to anyone’ without such consent.” *Id.* at 32. We

expressly noted, “[t]he only exceptions to this prohibition [of disclosure of treatment documents] is if the person at issue has given written consent to the disclosure of the documents or if the disclosure falls into one of the four exceptions to the prohibition against disclosure.” *Id.* As there was no written consent to release of records in that case, and none of the exceptions applied, the hospital had no duty to disclose the documents at issue. Similarly, in *Octave ex rel. Octave v. Walker*, 103 A.3d 1255 (Pa. 2014), we addressed a situation in which the person claiming Section 7111 protection, initiated the civil lawsuit which placed his mental health before the court. Accordingly, this Court permitted *in camera* review for purposes of resolving the matter based on implicit waiver. *Id.* at 1264. However, *Octave* is inapplicable because it did not involve a written waiver.

Instantly, the issue is neither an absence of waiver nor a finding of implicit waiver. Rather, Petitioner executed the Release, an express, written, unconditional waiver. Section 7111 does not speak to the specific intent of the person executing written consent of release of the treatment records, and I would decline to impose additional criteria as suggested by the Majority requiring post hoc review of intended recipients of the information. See Majority Op. at 17 (“we find nothing to indicate Petitioner intended to waive his privilege against disclosure of his mental health treatment records generally, so as to allow third parties not employed by the Diocese to view them.”)

Therefore, I respectfully dissent.²

² As the Majority’s resolution of Issue 1 under the MHPA is ultimately dispositive, I decline to express further opinion on Petitioner’s remaining issues.