STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: December 12, 2019)

STATE OF RHODE ISLAND,	:	
by and through,	:	
PETER NERONHA,	:	
Attorney General	:	
Plaintiff,	:	
	:	
v.	:	**C.A. NO. PC-2018-4555**
	:	
PURDUE PHARMA L.P.; PURDUE PHARMA INC.;	:	
THE PURDUE FREDERICK COMPANY, INC.;	:	
RHODES PHARMACEUTICALS L.P.; RHODES	:	
TECHNOLOGIES; RHODES TECHNOLOGIES	:	
INC.; RICHARD S. SACKLER;	:	
TEVA PHARMACEUTICALS USA, INC.;	:	
CEPHALON, INC.; MALLINCKRODT PLC;	:	
MALLINCKRODT, LLC; SPECGX, LLC;	:	
CARDINAL HEALTH, INC.; MCKESSON	:	
CORPORATION d/b/a MCKESSON DRUG	:	
COMPANY; and AMERISOURCEBERGEN DRUG	:	
CORPORATION,	:	
Defendants.	:	

DECISION

GIBNEY, P.J. Before this Court is the State of Rhode Island's Motion for Relief from the Decision Compelling More Complete Responses to Purdue's Requests for Production of Documents and Interrogatories (the Motion). The State brings this Motion pursuant to Rule 60(b) of the Superior Court Rules of Civil Procedure and moves for relief from this Court's August 30, 2019 decision (the Decision), compelling the State to produce confidential patient- and prescription-level healthcare information to Purdue Pharma L.P., Purdue Pharma Inc., and the Purdue Frederick Company, Inc. (collectively, Purdue) in an identified format. Purdue objects to

the State's Motion and brings a Cross-Motion to Compel. Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

This Motion arises from an ongoing discovery dispute between the State and Purdue regarding disclosure of confidential healthcare information. On June 25, 2018, the State, by and through its Attorney General Peter Neronha,[1] filed a Complaint against the manufacturers and distributors of prescription opioid pharmaceutical products, seeking recovery for alleged damages to the State that resulted from the opioid crisis. For a more complete recitation of the facts underlying this dispute, the Court refers to its decision in *State v. Purdue Pharma L.P.*, No. PC-2018-4555, 2018 WL 6074198 (R.I. Super. Nov. 15, 2018).

On May 16, 2019, Purdue moved to compel the State to produce more complete responses to its request for production of documents—specifically, individualized patient- and prescription-level healthcare records pertaining to allegedly improper opioid prescriptions. Purdue argued that it could not adequately defend itself against the State's claims without this information. On June 18, 2019, Defendants AmerisourceBergen Drug Company, Cardinal Health, Inc., McKesson Corporation d/b/a McKesson Drug Co., Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Mallinckrodt, LLC, and SpecGx, LLC (collectively, Distributor Defendants) joined Purdue's motion with respect to Purdue's request for this individualized healthcare data. On August 30, 2019, this Court granted Purdue's motion and ordered the State to provide Purdue with such

[1] Attorney General of Rhode Island Peter Kilmartin filed the Complaint in June 2018. He has since been succeeded by Peter Neronha.

records in an identified manner. *See State v. Purdue Pharma L.P.*, No. PC-2018-4555, 2019 WL 4248274 (R.I. Super. Aug. 30, 2019).

On October 28, 2019, the State filed the instant Motion pursuant to Super. R. Civ. P. 60(b). The State argues it cannot comply with the Court's Decision because disclosing confidential healthcare records without adhering to the requirements of G.L. 1956 § 5-37.3-6.1(a) would be in violation of Rhode Island law. Distributor Defendants object[2] to the State's Motion and brings a Cross-Motion to Compel, urging the Court to again order the State to produce the documents that were the subject of the Court's Decision and contending that the State is merely reasserting its arguments as to that initial Decision. This Court heard argument on November 15, 2019.

II

Standard of Review

Motions to modify or vacate a judgment are left to the sound discretion of the trial court justice. *Redmond v. Manufacturers Hanover Trust Co.*, 484 A.2d 906, 910 (R.I. 1984). As such, the justice's ruling "will not be disturbed [on appeal,] absent [a showing of] abuse of discretion." *Berman v. Sitrin*, 101 A.3d 1251, 1260 (R.I. 2014) (quoting *Malinou v. Seattle Savings Bank*, 970 A.2d 6, 10 (R.I. 2009)).

Pursuant to Super. R. Civ. P. 60(b), the Court "may relieve . . . a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (3) [f]raud, misrepresentation, or other misconduct of an adverse party; . . . or (6) [a]ny other reason justifying

[2] Though the Purdue Defendants were the subject of the Court's August 30, 2019 Order, the Purdue and Rhodes Defendants did not join in the response because Purdue and its affiliates filed voluntary bankruptcy on September 15, 2019. Subsequently, Judge Drain of the U.S. Bankruptcy Court for the Southern District of New York issued a temporary injunction enjoining the commencement or continuation of all litigation against the Purdue Defendants and related parties through April 8, 2020.

relief from the operation of the judgment." Super. R. Civ. P. 60(b)(3)-(6). Rule 60(b)(6) "vest[s] the Superior Court with broad power to vacate judgments whenever that action is appropriate to accomplish justice." *Brown v. Amaral*, 460 A.2d 7, 11 (R.I. 1983).

III

Analysis

The State argues that producing the identified patient- and prescription-level healthcare records that were the subject of the Court's Decision would require it to violate the requirements of the Rhode Island Confidentiality of Health Care Communications and Information Act (CHCCIA), G.L. 1956 §§ 5-37.3-1 *et seq*. Specifically, the State contends that the Court's Decision does not factor in the requirements of § 5-37.3-6.1(a), which requires it to provide notice to all individuals whose records would be disclosed to Purdue in an identified manner. Therefore, the State seeks this Court to modify its Decision pursuant to Rule 60(b)(6), instead ordering it to produce *de-identified* healthcare records.

The State further submits that Purdue made misrepresentations before the Court as to these CHCCIA notice requirements, because it did not discuss applicable case law relevant to § 5-37.3-6.1. Specifically, the State argues that while Purdue repeatedly stressed that the Rhode Island Supreme Court declared the notice requirements of CHCCIA provision § 5-37.3-6 unconstitutional, it failed to clarify that this constitutional infirmity was later cured by § 5-37.3-6.1, which was upheld by our Supreme Court. Thus, the State seeks the Court to modify or vacate the Decision pursuant to Rule 60(b)(3).

In opposing the State's Motion, Purdue argues that the State cannot show the extraordinary remedy of Rule 60(b)(6) is justified because the State is essentially seeking a "do-over," re-submitting the same arguments in the instant Motion as it submitted in its opposition to Purdue's

Motion to Compel. Furthermore, Purdue maintains that it made no misrepresentations such that relief under Rule 60(b)(3) is warranted.

In *Bartlett v. Danti*, our Supreme Court first held that the notice requirements of CHCCIA provision § 5-37.3-6[3] were unconstitutional because they impermissibly "preclude[d] the court from obtaining relevant evidence through the use of its subpoena power . . . ." 503 A.2d 515, 518 (R.I. 1986); *see also State v. Almonte*, 644 A.2d 295, 297-99 (R.I. 1994) (affirming § 5-37.3-6 as unconstitutional). Subsequently, the General Assembly amended CHCCIA, adding new notice requirements for disclosure of healthcare records in § 5-37.3-6.1. *In re Doe Grand Jury Proceedings*, 717 A.2d 1129, 1132 (R.I. 1998).

The relevant portion of § 5-37.3-6.1 provides:

> "Except as provided in § 5-37.3-6, a health care provider or custodian of healthcare information may disclose confidential healthcare information in a judicial proceeding if the disclosure is pursuant to a subpoena and the provider or custodian is provided written certification by the party issuing the subpoena that:
>
> "(1) A copy of the subpoena has been served by the party on the individual whose records are being sought on or before the date the subpoena was served, together with a notice of the individual's right to challenge the subpoena; or, if the individual cannot be located within this jurisdiction, that an affidavit of that fact is provided; and
>
> "(2) Twenty (20) days have passed from the date of service on the individual and within that time period the individual has not initiated a challenge; or
>
> "(3) Disclosure is ordered by a court after [a] challenge." Sec. § 5-37.3-6.1(a)(1)-(3).

[3] The original text of § 5-37.3-6(a) stated: "[e]xcept as provided in subsection (b), confidential healthcare communications shall not be subject to compulsory legal process in any type of judicial proceeding, and a patient or his or her authorized representative has the right to refuse to disclose, and to prevent a witness from disclosing, his or her confidential healthcare communications in any judicial proceedings."

Our Supreme Court considered the constitutionality of this new provision and found that "this newly amended provision adequately addresse[d] the heretofore recognized constitutional infirmities and strikes a permissible balance between a party's interest in maintaining the confidentiality of his or her personal health care records and the court's need to access relevant information." *In re Doe*, 717 A.2d at 1133 (holding that grand jury must comply with requirements of § 5-37.3-6.1 when issuing a subpoena for medical records).

Accordingly, this Court must ensure parties comply with the requirements of § 5-37.3-6.1 when it compels the disclosure of confidential healthcare information—in pertinent part, providing patients who are the subject of that information with the requisite notice and an opportunity to contest the subpoena. However, the Court's Decision did not take these requirements into account when it granted Purdue's Motion to Compel and ordered the State to disclose thousands of patient- and prescription-level healthcare records in an identified manner. As the State points out in its Motion, it is left "with little option but to either violate this Court's order or violate CHCCIA . . ."

Purdue argues that it cannot comply with the notice requirements of § 5-37.3-6.1 because it does not know the identities of the individuals to whom notice would be afforded, and that therefore the patients "cannot be located within this jurisdiction" and notice is not required. However, our Supreme Court previously addressed a similar factual issue in *Pastore v. Samson*, 900 A.2d 1067 (R.I. 2006). In *Pastore*, the plaintiff requested healthcare information but could not comply with § 5-37.3-6.1 because "the individuals whose records defendants assert are privileged have not been identified to plaintiff," and thus "[t]he plaintiff cannot be expected to serve a copy of a subpoena on an unknown putative patient or to obtain his or her acquiescence to access an as-yet-unidentified document." *Pastore*, 900 A.2d at 1085.

The Court's solution was to affirm that the trial court should review the documents at issue *in camera*, redact personally identifying patient information, and then determine if the records could be produced after the redactions. *Id.* at 1086. Likewise, the State now asks the Court to modify its Decision and require the State to produce *de-identified* healthcare records. In its Motion to Compel, Purdue conceded that "the State can produce patient- and prescription-level data in a de-identified format using unique identifiers that will allow Purdue to identify all prescriptions to a specific patient."

Therefore, the Court vacates its earlier Decision and holds that the State could not comply with that Decision without violating the patient notice requirements of § 5-37.3-6.1(a). This case thus presents the Court with the "unique or extraordinary circumstances" whereby modifying its judgment under Rule 60(b)(6) is necessary "to prevent manifest injustice." *McLaughlin v. Zoning Board of Review of Town of Tiverton*, 186 A.3d 597, 609 (R.I. 2018) (quoting *Bailey v. Algonquin Gas Transmission Co.*, 788 A.2d 478, 482 (R.I. 2002)). The Court thereby grants the State's Motion and modifies its earlier Decision, ordering that the State produce the documents that Purdue requested in a de-identified format.

The State also seeks relief under Rule 60(b)(3), arguing that Purdue misrepresented the applicable law before the Court by focusing on the invalidated requirements of § 5-37.3-6 without discussing the updated, constitutional provision of § 5-37.3-6.1 or caselaw discussing that provision. To the extent that Purdue failed to discuss the requirements of § 5-37.3-6.1 or the applicable caselaw, the Court finds that the Purdue did not "substantially interfere[]" with the State's ability to "fully and fairly" present its case. *Roger Edwards, LLC v. Fiddes & Son Ltd.*, 427

F.3d 129, 135 (1st Cir. 2005).[4] Therefore, relief under Super. R. Civ. P. 60(b)(3) is not warranted in this instance.

IV

Conclusion

For the foregoing reasons, the State's Motion is granted pursuant to Super. R. Civ. P. Rule 60(b)(6). The State must still reply to Purdue's outstanding discovery requests but will produce the information in a de-identified format.

[4] It is well settled in Rhode Island that "where the federal rule and our state rule of procedure are substantially similar, we will look to the federal courts for guidance or interpretation of our own rule." *Smith v. Johns-Manville Corp.*, 489 A.2d 336, 339 (R.I. 1985). Here, Super. R. Civ. P. 60(b)(3) and Federal Rule of Civil Procedure 60(b)(3) are substantially similar. Therefore, this Court will look to federal case law in applying Rule 60(b)(3).

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**State of Rhode Island v. Purdue Pharma L.P., et al.**
CASE NO:	**PC-2018-4555**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**December 12, 2019**
JUSTICE/MAGISTRATE:	**Gibney, P.J.**

ATTORNEYS:

For Plaintiff:	**See attached**
For Defendant:	**See attached**

State of Rhode Island, by and through, Peter F. Neronha, Attorney General v. Purdue Pharma L.P., et al.
C.A. No. PC-2018-4555

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