**[Cite as *Wengerd v. Summa Emergency Assocs., Inc.*, 2026-Ohio-4561.]**

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| STATE OF OHIO | ) | IN THE COURT OF APPEALS |
| | )ss: | NINTH JUDICIAL DISTRICT |
| COUNTY OF SUMMIT | ) | |

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| MELISSA S. WENGERD<br><br>Appellee<br><br>v.<br><br>SUMMA EMERGENCY ASSOCIATES, INC., et. al.<br><br>Appellants | C.A. No. 31785<br><br>APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CV 2023 12 5037 |

DECISION AND JOURNAL ENTRY

Dated: November 18, 2026

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MANNING, Judge.

**{¶1}** Defendant-Appellants, Summa Emergency Associates, Inc., Academic & Community Emergency Specialists, Inc., Dr. Donald Kennedy, Dr. Paul Cornici, and Dr. Jeffrey Wright (collectively, "Appellants"), appeal from the order of the Summit County Court of Common Pleas. This Court affirms in part and reverses in part.

I.

**{¶2}** The instant appeal stems from a discovery dispute between Plaintiff-Appellee, Melissa Wengerd, as Administratrix for the Estate of Edgar Gertsch ("the Estate"), and Summa Emergency Associates, Inc. and Academic & Community Emergency Specialists, Inc. (collectively, "ACES"). During the timeframe relevant to this appeal, ACES staffed the emergency department at Wooster Community Hospital ("Wooster Community"). Dr. Wright, the president of ACES, served as the Medical Director of the emergency department. Dr. Kennedy served as one of its treating physicians by virtue of his employment with ACES.

**{¶3}** On December 28, 2022, Dr. Kennedy treated Mr. Gertsch for severe pain in his right upper thigh/groin area. The Estate alleges that, while Mr. Gertsch was in the emergency department for over five and a half hours, Dr. Kennedy only briefly met with him, did not perform a physical exam, disregarded several abnormal lab results, and relied on an unremarkable x-ray. The Estate alleges that Dr. Kennedy diagnosed hip strain and discharged Mr. Gertsch despite the fact that morphine had not reduced his 10 out of 10 pain level. Dr. Kennedy provided Mr. Gertsch with a prescription for pain relievers and instructed him to return if his condition did not improve. Mr. Gertsch returned to the emergency department the following day when a rash appeared on his groin. He became septic that afternoon and went into cardiac arrest that evening. He died several hours later due to necrotizing fasciitis, an aggressive soft tissue bacterial infection.

**{¶4}** Relevant to this appeal, the Estate filed suit against Appellants and Wooster Community. The suit alleged claims for medical negligence and wrongful death. Additionally, as to ACES and Dr. Wright, it alleged claims for negligent hiring, training, retention, and supervision and punitive damages. A discovery dispute ensued after the Estate requested the production of certain documents. Those documents related to complaints that had been made about Dr. Kennedy.

**{¶5}** The Estate asked Wooster Community to produce any patient survey results, patient reviews, patient satisfaction results, or similar items for Dr. Kennedy. It also asked Wooster Community to produce any complaints and related documents received by the hospital's patient advocate(s) about Dr. Kennedy from 2014 to present as well as any follow-up communications. The Estate asked ACES to produce certain information sent to Dr. Wright's ACES email account. Specifically, it asked ACES to produce from that email account all communications related to concerns or complaints about Dr. Kennedy (1) from 2015 to present day, and (2) from 2015 to December 28, 2022 (i.e., the day Dr. Kennedy treated Mr. Gertsch).

**{¶6}** After Wooster Community and ACES refused to produce the requested documents, the Estate filed a motion to compel. It asked the trial court to conduct an in camera review of the requested documents and, following its review, to compel their production. Wooster Community and ACES opposed the motion to compel, and ACES moved for a protective order. Following additional briefing and argument, the trial court issued a decision.

**{¶7}** As to Wooster Community, the court ordered the hospital to produce any patient survey results, patient reviews, patient satisfaction results, or similar items for Dr. Kennedy that were created before December 28, 2022. The court found the request for documents received by the hospital's patient advocate(s) to be a more complex issue. It determined that Wooster Community had proven it had a peer review committee that conducted professional credentialing and "quality review activities involving the competence of, professional conduct of, or quality of care provided by health care providers." Before May 2022, complaints were maintained in a confidential file by the hospital's Quality Department. After May 2022, complaints were logged into a system called RLDatix. The court found that RLDatix contained a Feedback Manager function that the Quality Department/Grievance Committee used in its peer review process. Specifically, a Medical Review Committee within that department used the Feedback Manager to review complaints and take any necessary corrective action regarding the medical staff. The court found that any documents in the Feedback Manager were protected by the peer-review privilege as well as "any documents maintained and used solely by the Medical Review Committee prior to May 2022." The court also recognized, however, that not every document in the possession of the hospital's patient advocate was a document used in the peer review process. The court ordered Wooster Hospital to produce any patient complaints about Dr. Kennedy from 2014 through December 28, 2022 that (1) were made to the patient advocate(s), (2) were not contained in the

RLDatix Feedback Manager, and (3) were not maintained or used solely by the Medical Review Committee. Wooster Community did not appeal the trial court's order.

**{¶8}** As to ACES, the trial court noted that ACES had admitted it was in possession of emails that were responsive to the Estate's request for the production of documents. ACES claimed the documents were protected by the peer-review privilege because, in addition to being the president of ACES, Dr. Wright was a member of Wooster Community's Medical Executive Committee. ACES also claimed that the documents were protected by the physician-patient privilege, protected by HIPAA, and irrelevant to the litigation. The trial court found that it could not rule on ACES' arguments without inspecting the individual emails. Consequently, it ordered ACES to submit the emails for in camera review.

**{¶9}** ACES submitted 66 pages of emails for the trial court's inspection. Those pages were Bates Stamped 210 through 275. Following its review, the trial court found that two pages of the submitted emails were protected by the peer-review privilege. The court found the remaining 64 pages discoverable and granted the Estate's motion to compel as to those pages.

**{¶10}** Appellants now appeal from the trial court's order compelling the production of email pages Bates Stamped 210-214 and 217-275. They raise one assignment of error for review.

II.

**ASSIGNMENT OF ERROR**

> THE TRIAL COURT ERRED IN GRANTING [THE ESTATE'S] MOTION TO COMPEL AND DENYING [ACES'] MOTION FOR PROTECTIVE ORDER[.]

**{¶11}** In their assignment of error, Appellants argue that the trial court erred when it ordered ACES to produce email pages Bates Stamped 210-214 and 217-275. They argue that those pages are protected by the peer-review privilege as well as the physician-patient privilege/HIPAA.

**{¶12}** This Court generally reviews discovery orders under the abuse of discretion standard. *Li v. Du*, 2022-Ohio-917, ¶ 7 (9th Dist.). "However, if the discovery issue involves an alleged privilege, as in this case, it is a question of law that must be reviewed de novo." *Ward v. Summa Health Sys.*, 2010-Ohio-6275, ¶ 13. "The party claiming the privilege has the burden of proving that the privilege applies to the requested information." *Giusti v. Akron Gen. Med. Ctr.*, 2008-Ohio-4333, ¶ 17 (9th Dist.). "[A]ny statutory privilege must be strictly construed against the party seeking to assert it and may be applied only to those circumstances specifically named in the statute." *Ward* at ¶ 15.

**Peer-Review Privilege**

**{¶13}** "The peer-review privilege applies to '[p]roceedings and records within the scope of a peer review committee of a health care entity.'" *Stull v. Summa Health Sys.*, 2024-Ohio-5718, ¶ 17, quoting R.C. 2305.252(A). A "peer review committee" is

> a utilization review committee, quality assessment committee, performance improvement committee, tissue committee, credentialing committee, or other committee that does either of the following:
>
> (a) Conducts professional credentialing or quality review activities involving the competence of, professional conduct of, or quality of care provided by health care providers, including both individuals who provide health care and entities that provide health care;
>
> (b) Conducts any other attendant hearing process initiated as a result of a peer review committee's recommendations or actions.

R.C. 2305.25(E)(1)(a)-(b). Included within the definition of a peer review committee is a "board or committee of a hospital . . . or other health care entity when reviewing professional qualifications or activities of health care providers, including both individuals who provide health care and entities that provide health care[.]" R.C. 2305.25(E)(2)(c).

**{¶14}** The peer-review privilege protects proceedings and records "arising out of matters that are the subject of evaluation and review by the peer review committee." R.C. 2305.252(A).

The purpose of the statutory privilege "is to protect the integrity of the peer-review process in order to improve the quality of health care." *Giusti* at ¶ 14. Nevertheless, the privilege "does not necessarily expand to everything a peer-review committee touches." *Stull* at ¶ 20.

**{¶15}** The peer-review privilege does not protect information, documents, or records "otherwise available from original sources . . . merely because they were produced or presented during the proceedings of a peer review committee . . . ." R.C. 2305.252(A). Those items simply must be acquired from the original source rather than "from the peer review committee's proceedings or records." *Id.* Notably, "it is possible for the health care entity *itself* to be the original source . . . ." (Emphasis in original.) *Cousino v. Mercy St. Vincent Med. Ctr.*, 2018-Ohio-1550, ¶ 28 (6th Dist.). *Accord Spurgeon v. Mercy Health-Anderson Hosp., LLC*, 2020-Ohio-3099, ¶ 16 (1st Dist.).

> [A] health care entity must produce documents responsive to a document request if it created the document, the document was not generated by and/or exclusively for a peer review committee, and the document is available outside of any peer review committees' records (i.e., employees, affiliates, officers, or directors of the health care entity can access the document for non-peer review purposes).

(Emphasis omitted.) *Bansal v. Mt. Carmel Health Sys., Inc.*, 2009-Ohio-6845, ¶ 16, fn. 3 (10th Dist.). *Accord Large v. Heartland-Lansing*, 2013-Ohio-2877, ¶ 39 (7th Dist.) ("Documents that . . . were not originally prepared exclusively for the [peer review] committee and are also accessible to staff of the facility in their capacities as employees or managers of the facility, separate and apart from any role on a review committee, are not in any way protected by the privilege.").

**{¶16}** "A party claiming the peer-review privilege . . . must show that a peer-review committee existed and that it actually investigated the incident." *Giusti* at ¶ 17. The party also must "show that each of the documents over which it asserts the privilege is a ''record[ ] within the scope of a peer review committee.''" *Meade v. Mercy Health-Regional Med. Ctr., LLC*, 2019-

Ohio-438, ¶ 11 (9th Dist.), quoting *Bansal v. Mt. Carmel Health Sys., Inc., et al.*, 2009-Ohio-6845, ¶ 15 (10th Dist.), quoting R.C. 2305.252(A). "[D]etails about the creation, purpose, and use of a record, rather than the content of the record itself, indicate whether it is a 'record[] within the scope of a peer review committee,' R.C. 2305.252(A)." *Stull* at ¶ 32. "When a party fails to present this evidence, it fails to carry its burden[,] and the peer review privilege does not apply." *Meade* at ¶ 11.

**{¶17}** Before turning to the Bates Stamped pages the trial court ordered ACES to produce, we begin by summarizing the evidence upon which the parties relied in the trial court. Jarrod Stahl submitted an affidavit as Wooster Community's Director of Quality Management; a role he had held since September 2022. Mr. Stahl averred that the hospital used a computer software program named RLDatix to log and track patient complaints. He explained that RLDatix had a Feedback Manager function that the hospital used for quality and peer review purposes. According to Mr. Stahl, every staff member at Wooster Community had access to RLDatix for the purpose of entering patient complaints into its Feedback Manager. Once a complaint was entered, however, only certain users could view it and information related to it. Mr. Stahl averred that, for physician complaints, only users with a Ticket Manager role had access to all uploaded complaints. That role was assigned to members of the hospital's Quality Department/Grievance Committee and its Risk Manager. Mr. Stahl further averred that individual users could gain access to a specific complaint if assigned an Investigator role as part of the peer-review process. He explained that the Investigator role would give the user access to an assigned physician complaint for the purpose of performing work on behalf of the Grievance Committee or other peer review committee.

**{¶18}** Dr. James Mooney submitted an affidavit as Wooster Community's Medical Director of Quality; a role he had held since May 2022. He explained that he was involved in the

peer-review process and would oversee physician complaints. For about 14 months before he became Medical Director of Quality, Dr. Mooney assisted the former Vice President of Quality in the handling of such matters. He identified at least four other members of the Quality Department: the Vice President of Quality Management, the Director of Quality Management (i.e., Mr. Stahl), the Quality Coordinator, and the Patient Experience and Relations Coordinator (formerly known as the Patient Advocate). He averred that patient complaints reported to the Quality Department were treated as confidential peer review and quality assurance materials.

**{¶19}** Dr. Mooney averred that Wooster Community formalized the patient complaint process following his appointment as Medical Director in May 2022. He stated that, before that time, the Quality Department confidentially maintained and handled all physician complaints. If the complaint warranted remediation, corrective action, or suspension of a medical staff member, an additional committee became involved. Dr. Mooney explained that, before December 2022, the Medical Review Committee was responsible for investigating and addressing those complaints. He stated that the Medical Review Committee was a subcommittee of the Medical Executive Committee, the governing body for physicians. Dr. Mooney averred that, after December 2022, the Medical Executive Committee began directly addressing complaints formerly handled by the subcommittee.

**{¶20}** Dr. Mooney averred that, after the patient complaint process became formalized in the wake of his appointment, the Quality Department/Grievance Committee relied on RLDatix. He stated that physician complaints reported to the Patient Advocate would be entered into RLDatix's Feedback Manager. Dr. Mooney averred that the Quality Department/Grievance Committee reviewed every complaint entered by the Patient Advocate for purposes of reviewing physician competence, professional conduct, and/or quality of care. Physician complaints would

then be forwarded to him and the Quality Coordinator for further action. He stated that he and the Quality Coordinator would review all reported physician complaints on a weekly basis to determine the appropriate track for handling the complaint. He averred that some complaints warranted further investigation "by the Quality Department/Grievance Committee via referral to the appropriate peer review committee." He stated that, "[b]ased on the complaint, any investigation, and outcome of that investigation process, the matter [could] then be referred to the Department Head with instructions for addressing the matter with the physician including awareness or coaching or it [could] be referred to Medical Executive Committee[] if formal intervention by it [was] necessary." Regarding the documents the Estate asked Wooster Community to produce, Dr. Wright averred that any documentation related to and all complaints received by the Patient Advocate about Dr. Kennedy were treated as confidential under quality assurance and peer-review statutes.

**{¶21}** Dr. Jeffrey Wright, the President of ACES, testified by deposition and later completed an affidavit. Dr. Wright testified that ACES staffed Wooster Community. Although he was employed by ACES, Dr. Wright served as the Medical Director of Wooster Community's Emergency Department by virtue of the staffing contract. In that role, he would act as a liaison between the hospital and ACES, handle staffing complaints, review quality issues, and oversee the medical care in the department. He testified that he was also a member of the hospital's Medical Executive Committee due to his role as Medical Director (i.e., the department head for the Emergency Department). He stated that the Medical Executive Committee met monthly to "go[] over stuff with the hospital and . . . coordinat[e] care between the different departments and things like that."

**{¶22}** Dr. Wright testified that Wooster Community had a peer review committee for the department, a quality committee for the entire hospital, and a Medical Review Committee. While he would receive feedback from peer-review, Dr. Wright testified that he was "not on the peer-review committee, per se." If an official complaint was filed against a physician in the emergency department, Dr. Wright testified that he would be notified through his ACES email account. He testified that he would receive those emails from Dr. Mooney "or the people on his staff for quality, which would be [the Vice President of Quality Management] or [the Quality Coordinator] . . . ." He testified that he sometimes also received informal complaints from the nursing staff and other departments who might have an issue with one of his staff. He confirmed that he had received informal complaints about every physician in his group, including Dr. Kennedy.

**{¶23}** Dr. Wright testified that, if he received an email with a formal complaint, he would review the complaint, review the chart, usually speak with those involved, and possibly follow up with the patient or the patient's family. Afterwards, he would report back to the Quality Department to notify the department that he had spoken with those involved. For informal complaints, Dr. Wright testified that he would generally speak with the chair of the department that raised the complaint.

**{¶24}** In his affidavit, Dr. Wright averred that ACES was responsible for various duties related to Wooster Community's Emergency Department, including risk management, corporate compliance, accreditation functions, and "Medical Staff quality performance improvement activities . . . ." He wrote that, "[a]s part of its quality performance improvement obligations, ACES [had] adopted a formal complaint resolution process by which it [would] receive, investigate, and address patient complaints, and take action as warranted." Dr. Wright did not

clearly explain whether that formal complaint resolution process existed separate and apart from the process Wooster Community employed.

**{¶25}** Dr. Wright averred that, as part of his duties as Medical Director of the Emergency Department, he served on the hospital's Medical Executive Committee. He stated that the committee met monthly to discuss a variety of issues. According to Dr. Wright, one function of the committee was to review physician complaints that had been filed by patients and forwarded to the committee via the quality and peer-review process. He indicated that, following its review, the committee would make a recommendation as to how to handle those complaints.

**{¶26}** Dr. Wright averred that, in his role as Medical Director, he sometimes received physician complaints formally through the quality and peer-review process or informally through oral statements. Regarding formal complaints, Dr. Wright indicated that he would either be notified of the final outcome of a complaint or asked to "take further action in connection with [the hospital's] quality and peer review process." Such actions entailed reviewing all information sent through peer review, reviewing any charts or labs, conducting any interviews, following up with the complainant, and communicating any resolution.

**{¶27}** Finally, Dr. Wright averred that formal patient complaints could be a factor the Medical Executive Committee considered when deciding whether to grant a practitioner clinical privileges at the hospital. He explained that those complaints still would have had to be presented to the Medical Executive Committee through the quality and peer-review process. According to Dr. Wright, any formal patient complaints about Dr. Kennedy were "maintained in a separate and confidential file which [he] did not have access to unless provided to [him] through [the hospital's] quality and peer review process, or to be considered by the [Medical Executive Committee] as part of the credentialing process."

**{¶28}** Registered Nurse Brett Connors, the former Patient Advocate for Wooster Community, testified by deposition. He testified that the hospital created a full-time Patient Advocate position in January of 2022. For two years before that point, Nurse Connors worked as a part-time Patient Advocate in addition to his other duties. He testified that, at that time, he aided the former Vice President of Quality, who was the only other individual who performed patient advocate work. He testified that, in his role as Patient Advocate, he would act in an ombudsman role for the hospital by speaking with patients, directors, and staff, addressing patient concerns, and attempting to find resolutions for those patients.

**{¶29}** Nurse Connors testified that, in October 2022, he was given additional responsibilities through the Quality Department. Specifically, he was asked to screen medical charts and pass along any concerns to Dr. Mooney, the Medical Director of Quality. Nurse Connors testified that the Quality Department would notify him which charts they wanted him to review. He stated that he eventually began receiving feedback from Dr. Mooney and emailing letters to physicians on his behalf. He testified that Dr. Mooney would be cc'd on those emails, and the emails would include a standard reference to the content being protected/privileged. Nurse Connors did not recall sending any such emails/letters before 2023.

**{¶30}** Nurse Connors testified that he could be alerted to patient concerns by several means, including phone calls, in person conversations, emails, patient surveys, and Google alerts. He testified that he would enter patient complaints into RLDatix "for the most part" but "wouldn't necessarily enter something that was able to be resolved in real[-]time with a quick conversation." He denied that he would directly notify a physician when he received a formal complaint about the physician and entered it into RLDatix. Nevertheless, he acknowledged that he had addressed real-time complaints directly with physicians and supervisors. He testified that, for real-time

physician complaints, he had both spoken to the physician "as the advocate" and had entered the complaints into RLDatix. He stated that he essentially "wore two hats" during his time as Patient Advocate. He explained that he would receive complaints as an advocate but enter complaints into the RLDatix while fulfilling his duties to the Quality Department.

**{¶31}** Nurse Connors testified that he never served on a peer review committee, was not familiar with Wooster Community's peer review committees, and was not involved with anything related to the Medical Executive Committee or its former subcommittee, the Medical Review Committee. Nurse Connors also was not aware of Dr. Wright being on any committee outside of being head of the Emergency Department. He could not recall any time before 2023 when he notified Dr. Wright of a complaint about Dr. Kennedy.

**{¶32}** The privilege log ACES submitted with its initial motion for protective order/brief in opposition to the motion to compel was extremely limited. It only consisted of three columns: (1) a Bates Stamp column identifying groups of Bates Stamped pages by number, (2) a privilege/objection column listing the statutes under which ACES was claiming privilege, and (3) a column identifying the specific request for production to which ACES was responding. The log consisted of two rows with the Bates Stamped pages being split into two groupings. ACES did not offer any description of the Bates Stamped pages, either by individual page or grouping. Nor did its affiants/witnesses specifically address any of the Bates Stamped pages in their respective affidavits/depositions. With that in mind, we turn to the Bates Stamped pages.

Bates Stamped Pages 210-213

**{¶33}** Bates Stamped Pages 210-213 consist of an email and related attachments. The email was sent by Nurse Connors to Dr. Wright. It was dated after May 2022, the point at which Wooster Community began using RLDatix. The email notified Dr. Wright that a patient had left

negative comments on the hospital's public website and on a survey. The email was not labeled confidential, did not reference quality, peer review, the Medical Executive Committee, or Dr. Mooney, and did not ask Dr. Wright to take any action. By comparison, the only email pages the trial court found to be privileged (i.e., Bates Stamped Pages 215-216) contained an explicit reference to the fact that the pages had been generated for peer-review purposes and were privileged/protected. Bates Stamped Pages 210-213 contained no such reference.

**{¶34}** As previously noted, a party claiming peer-review privilege bears the burden of showing that a peer review committee *actually investigated* an incident and that *each* allegedly privileged document is a record within the scope of the committee. *Giusti*, 2008-Ohio-4333, at ¶ 17 (9th Dist.); *Meade*, 2019-Ohio-438, at ¶ 11 (9th Dist.). ACES essentially sought to fulfill that burden by producing evidence that, in general, Wooster Community kept confidential all formal patient complaints reported to the Quality Department and/or entered into the RLDatix Feedback Manager. Their affiants/witnesses testified extensively about that process. Yet, no affiant or witness testified as to whether the complaint at issue in Bates Stamped Pages 210-213 was actually investigated or whether the email sent by Nurse Connors to Dr. Wright was a record within the scope of the peer review committee.

**{¶35}** Nurse Connors indicated that, in his role as Patient Advocate, he "wore two hats" because he would input information for the Quality Department but also speak with patients and hospital staff, address patient concerns, and attempt to find resolutions for those patients. While he would enter patient complaints into RLDatix "for the most part," he admitted there were instances where he had addressed real-time complaints informally. He also indicated that, even if he entered a complaint into RLDatix, he also might address it directly with a physician while acting "as the advocate." Nurse Connors confirmed that he did not have any role on the peer review

committee or the Medical Executive Committee. He also confirmed that he was not aware of any role Dr. Wright played at the hospital apart from being head of the Emergency Department.

**{¶36}** Upon review, ACES failed to set forth evidence that a peer review committee actually investigated the complaint referenced in Bates Stamped Pages 210-213 or that those pages were a record within the scope of that committee. *See Giusti*, 2008-Ohio-4333, at ¶ 17 (9th Dist.); *Meade*, 2019-Ohio-438, at ¶ 11 (9th Dist.). When examining whether a record is within the scope of a peer review committee, details about its creation, purpose, and use are critical. *Stull*, 2024-Ohio-5718, at ¶ 32. Neither Nurse Connors nor any other witness provided any details about the purpose or use of the email Nurse Connors sent to Dr. Wright. There was no evidence that the email was generated in connection with RLDatix or was sent on behalf of Dr. Mooney. There was no evidence that the email was generated in connection with the Medical Executive Committee. Moreover, there was no evidence that Dr. Wright, who admitted he was not a member of the peer review committee, had been assigned an Investigator role in connection with the complaint referenced in the email. Even if the complaint resulted in a confidential investigation, the peer-review privilege does not protect documents that were not generated by and/or exclusively for a peer review committee and are available from an outside source. *Bansal*, 2009-Ohio-6845, at ¶ 16, fn. 3 (10th Dist.); R.C. 2305.252(A). ACES failed to establish that Nurse Connors' email was created by or for a peer review committee such that it did not constitute an original source. *See Spurgeon*, 2020-Ohio-3099, at ¶ 16 (1st Dist.); *Cousino*, 2018-Ohio-1550, at ¶ 28 (6th Dist.) (hospital itself can be an original source). Accordingly, the trial court did not err by concluding that Bates Stamped Pages 210-213 were not protected by the peer-review privilege.

Bates Stamped Page 214

**{¶37}** Bates Stamped Page 214 consists of an email. The email was sent by Nurse Connors to Dr. Wright. It was dated after May 2022, the point at which Wooster Community began using RLDatix. The email notified Dr. Wright that Nurse Connors had received a phone complaint. It also provided details about the complaint. The email was not labeled confidential, did not reference quality, peer review, the Medical Executive Committee, or Dr. Mooney, and did not ask Dr. Wright to take any action.

**{¶38}** For the same reasons outlined above, we must conclude that ACES did not satisfy their burden with respect to Bates Stamped Page 214. They did not set forth any evidence that a peer review committee actually investigated the complaint referenced in Nurse Connors' email or that his email was a record within the scope of that committee. *See Giusti*, 2008-Ohio-4333, at ¶ 17 (9th Dist.); *Meade*, 2019-Ohio-438, at ¶ 11 (9th Dist.). Neither Nurse Connors nor any other witness provided any details about the purpose or use of the email Nurse Connors sent to Dr. Wright beyond merely notifying him that a patient had complained. There was no evidence that the email was generated in connection with RLDatix or the Medical Executive Committee. Even if the complaint referenced in the email resulted in a confidential investigation, ACES failed to establish that the email was created by or for a peer review committee such that it did not constitute an original source. *See Spurgeon*, at ¶ 16 (1st Dist.); *Cousino*, 2018-Ohio-1550, at ¶ 28 (6th Dist.) (hospital itself can be an original source). Accordingly, the trial court did not err by concluding that Bates Stamped Page 214 was not protected by the peer-review privilege.

Bates Stamped Pages 217-222

**{¶39}** Bates Stamped Pages 217-222 consist of an email thread. The thread included emails between Nurse Connors, Dr. Wright, and Dr. Kennedy. It began with an email from Nurse

Connors, sharing a complaint he received from a patient. The thread included related responses from Dr. Wright and Dr. Kennedy. The emails were dated before May 2022, the point at which Wooster Community began using RLDatix. None of the emails were labeled confidential or referenced quality, peer review, the Medical Executive Committee, or Dr. Mooney.

**{¶40}** For the same reasons outlined above, we must conclude that ACES did not satisfy their burden with respect to Bates Stamped Pages 217-222. They did not set forth any evidence that a peer review committee actually investigated the complaint referenced in the email thread or that the email thread was a record within the scope of that committee. *See Giusti* at ¶ 17; *Meade* at ¶ 11. Neither Nurse Connors nor any other witness provided any details about the purpose or use of the email thread. There was no evidence that the thread was generated in connection with the Quality Department or Medical Executive Committee. Even if the complaint referenced in the thread resulted in a confidential investigation, ACES failed to establish that the email thread was created by or for a peer review committee such that it did not constitute an original source. *See Spurgeon* at ¶ 16; *Cousino* at ¶ 28 (hospital itself can be an original source). Accordingly, the trial court did not err by concluding that Bates Stamped Pages 217-222 were not protected by the peer-review privilege.

Bates Stamped Pages 223-237

**{¶41}** Bates Stamped Pages 223-237 consist of email threads. The threads included emails between Wooster Community's Director of Marketing & Public Relations, Dr. Wright, Nurse Connors, another staff member, and Dr. Kennedy. The threads began with an email from the Director of Marketing & Public Relations, forwarding a negative review to Nurse Connors and another staff member. The latter forwarded the original email to Dr. Wright who in turn forwarded it to Dr. Kennedy while also corresponding with Nurse Connors. Each of the emails in the thread

were dated before May 2022, the point at which Wooster Community began using RLDatix. None of the emails were labeled confidential or referenced quality, peer review, the Medical Executive Committee, or Dr. Mooney.

**{¶42}** Upon review, ACES did not satisfy their burden with respect to Bates Stamped Pages 223-237. They did not set forth any evidence that a peer review committee actually investigated the complaint referenced in the email threads or that the threads were a record within the scope of that committee. *See Giusti* at ¶ 17; *Meade* at ¶ 11. Neither Nurse Connors nor any other witness provided any details about the purpose or use of the email threads, and the threads originated from the Director of Marketing & Public Relations. There was no evidence that the Director of Marketing & Public Relations or the other staffing member on the emails were involved in the peer review process. Even if the complaint referenced in the email threads resulted in a confidential investigation, ACES failed to establish that the email threads were created by or for a peer review committee such that they did not constitute an original source. *See Spurgeon* at ¶ 16; *Cousino* at ¶ 28 (hospital itself can be an original source). Accordingly, the trial court did not err by concluding that Bates Stamped Pages 223-237 were not protected by the peer-review privilege.

Bates Stamped Pages 238-243

**{¶43}** Bates Stamped Pages 238-243 consist of email threads. The threads included emails between the former Vice President of Quality and Patient Safety, Dr. Wright, Nurse Connors, and Dr. Kennedy. The threads began with an email from the former Vice President of Quality and Patient Safety, notifying Dr. Wright of a phone complaint she received. The Vice President specified that she was acting in the role of Patient Advocate while Nurse Connors was unavailable. Each of the emails in the thread were dated before May 2022, the point at which

Wooster Community began using RLDatix. None of the emails were labeled confidential or referenced quality, peer review, or the Medical Executive Committee.

**{¶44}** For reasons previously outlined, ACES did not satisfy their burden with respect to Bates Stamped Pages 238-243. They did not set forth any evidence that a peer review committee actually investigated the complaint referenced in the email threads or that the threads were a record within the scope of that committee. *See Giusti* at ¶ 17; *Meade* at ¶ 11. Neither the originator of the thread nor any other witness provided any details about the purpose or use of the email threads. There was no evidence that the thread was generated in connection with the Quality Department or Medical Executive Committee. Even if the complaint referenced in the threads resulted in a confidential investigation, ACES failed to establish that the email threads were created by or for a peer review committee such that they did not constitute an original source. *See Spurgeon* at ¶ 16; *Cousino* at ¶ 28 (hospital itself can be an original source). Accordingly, the trial court did not err by concluding that Bates Stamped Pages 238-243 were not protected by the peer-review privilege.

Bates Stamped Pages 244-253

**{¶45}** Bates Stamped Pages 244-253 consist of email threads. The threads included emails between Nurse Connors, Dr. Wright, another staff member, and Dr. Kennedy. The threads began with an email from Nurse Connors, notifying Dr. Wright of a complaint he received from a patient's family member. Nurse Connors also cc'd another staff member. Dr. Wright responded and forwarded the original email to Dr. Kennedy. The thread also contained additional responses. Each of the emails in the thread were dated before May 2022, the point at which Wooster Community began using RLDatix. None of the emails were labeled confidential or referenced quality, peer review, or the Medical Executive Committee.

**{¶46}** For reasons previously outlined, ACES did not satisfy their burden with respect to Bates Stamped Pages 244-253. They did not set forth any evidence that a peer review committee actually investigated the complaint referenced in the email threads or that the threads were a record within the scope of that committee. *See Giusti* at ¶ 17; *Meade* at ¶ 11. Neither Nurse Connors nor any other witness provided any details about the purpose or use of the email threads. There was no evidence that the thread was generated in connection with the Quality Department or Medical Executive Committee. Nor was there evidence that the other staff member included on the emails was involved with peer review. Even if the complaint referenced in the threads resulted in a confidential investigation, ACES failed to establish that the email threads were created by or for a peer review committee such that they did not constitute an original source. *See Spurgeon* at ¶ 16; *Cousino* at ¶ 28 (hospital itself can be an original source). Accordingly, the trial court did not err by concluding that Bates Stamped Pages 244-253 were not protected by the peer-review privilege.

Bates Stamped Pages 254-257

**{¶47}** Bates Stamped Pages 254-257 consist of email threads. The threads included emails between Nurse Connors, Dr. Wright, another staff member, and Dr. Kennedy. The threads began with an email from Nurse Connors, notifying Dr. Wright of complaints he received from two different patients. Nurse Connors also cc'd another staff member. Dr. Wright forwarded the email to Dr. Kennedy. The thread also contained responses. Each of the emails in the thread were dated before May 2022, the point at which Wooster Community began using RLDatix. None of the emails were labeled confidential or referenced quality, peer review, or the Medical Executive Committee.

**{¶48}** For reasons previously outlined, ACES did not satisfy their burden with respect to Bates Stamped Pages 254-257. They did not set forth any evidence that a peer review committee

actually investigated the complaints referenced in the email threads or that the threads were a record within the scope of that committee. *See Giusti* at ¶ 17; *Meade* at ¶ 11. Neither Nurse Connors nor any other witness provided any details about the purpose or use of the email threads. There was no evidence that the thread was generated in connection with the Quality Department or Medical Executive Committee. Nor was there evidence that the other staff member included on the emails was involved with peer review. Even if the complaints referenced in the threads resulted in confidential investigations, ACES failed to establish that the email threads were created by or for a peer review committee such that they did not constitute an original source. *See Spurgeon* at ¶ 16; *Cousino* at ¶ 28 (hospital itself can be an original source). Accordingly, the trial court did not err by concluding that Bates Stamped Pages 254-257 were not protected by the peer-review privilege.

Bates Stamped Page 258

**{¶49}** Bates Stamped Page 258 consists of an email from a staff member to Dr. Wright. The email notified him of a second-hand patient complaint the staff member received from another staff member. The email was dated before May 2022, the point at which Wooster Community began using RLDatix. The email was not labeled confidential and did not reference quality, peer review, or the Medical Executive Committee.

**{¶50}** For reasons previously outlined, ACES did not satisfy their burden with respect to Bates Stamped Page 258. They did not set forth any evidence that a peer review committee actually investigated the complaint referenced in the email or that the email was a record within the scope of that committee. *See Giusti* at ¶ 17; *Meade* at ¶ 11. Neither the staff member who sent the email nor any other witness provided any details about the purpose or use of the email. There was no evidence that the email was generated in connection with the Quality Department or

Medical Executive Committee. Nor was there evidence that the staff member who sent it was involved with peer review. Even if the complaint referenced in the email resulted in a confidential investigation, ACES failed to establish that the email was created by or for a peer review committee such that it did not constitute an original source. *See Spurgeon* at ¶ 16; *Cousino* at ¶ 28 (hospital itself can be an original source). Accordingly, the trial court did not err by concluding that Bates Stamped Page 258 was not protected by the peer-review privilege.

Bates Stamped Pages 259

**{¶51}** Bates Stamped Page 259 consists of an email from Nurse Connors to Dr. Wright. The email notified him of a complaint Nurse Connors received from a patient's family member. The email was dated before May 2022, the point at which Wooster Community began using RLDatix. The email was not labeled confidential and did not reference quality, peer review, or the Medical Executive Committee.

**{¶52}** For reasons previously outlined, ACES did not satisfy their burden with respect to Bates Stamped Page 259. They did not set forth any evidence that a peer review committee actually investigated the complaint referenced in the email or that the email was a record within the scope of that committee. *See Giusti* at ¶ 17; *Meade* at ¶ 11. Neither Nurse Connors nor any other witness provided any details about the purpose or use of the email. There was no evidence that the email was generated in connection with the Quality Department or Medical Executive Committee. Even if the complaint referenced in the email resulted in a confidential investigation, ACES failed to establish that the email was created by or for a peer review committee such that it did not constitute an original source. *See Spurgeon* at ¶ 16; *Cousino* at ¶ 28 (hospital itself can be an original source). Accordingly, the trial court did not err by concluding that Bates Stamped Page 259 was not protected by the peer-review privilege.

Bates Stamped Pages 260-263 and 265-269

**{¶53}** Initially, we note that the trial court addressed Bates Stamped Pages 260-275 together and wrote that the pages "comingle[d] two different patients' complaints . . . ." It is apparent from our review, however, that an error occurred in the submission of the Bates Stamped Pages to the trial court for in camera review. Bates Stamped Page 264 is a duplicate of Bates Stamped Page 275. It belongs with the email thread comprising Bates Stamped Pages 270-275. *See* Discussion of Bates Stamped Pages 270-275, *infra*. Accordingly, in conducting our de novo review, we separate the two email threads and set aside the mistakenly duplicated Bates Stamped Page 264.

**{¶54}** Bates Stamped Pages 260-263 and 265-269 consist of email threads. The threads included emails between Nurse Connors, Dr. Wright, another staff member, a third individual, and Dr. Kennedy. The threads began with an email from Nurse Connors, notifying Dr. Wright of a complaint he received from a patient's friend. Nurse Connors also cc'd another staff member. Dr. Wright forwarded the email to Dr. Kennedy as well as a third individual. The thread also contained responses. Each of the emails in the thread were dated before May 2022, the point at which Wooster Community began using RLDatix. None of the emails were labeled confidential or referenced quality, peer review, or the Medical Executive Committee.

**{¶55}** For reasons previously outlined, ACES did not satisfy their burden with respect to Bates Stamped Pages 260-263 and 265-269. They did not set forth any evidence that a peer review committee actually investigated the complaint referenced in the email threads or that the threads were a record within the scope of that committee. *See Giusti* at ¶ 17; *Meade* at ¶ 11. Neither Nurse Connors nor any other witness provided any details about the purpose or use of the email threads. There was no evidence that the thread was generated in connection with the Quality Department

or Medical Executive Committee. Nor was there evidence that the other staff member and third individual included on emails in the thread were involved with peer review. Even if the complaint referenced in the threads resulted in confidential investigations, ACES failed to establish that the email threads were created by or for a peer review committee such that they did not constitute an original source. *See Spurgeon* at ¶ 16; *Cousino* at ¶ 28 (hospital itself can be an original source). Accordingly, the trial court did not err by concluding that Bates Stamped Pages 260-263 and 265-269 were not protected by the peer-review privilege.

Bates Stamped Pages 270-275

**{¶56}** Bates Stamped Pages 270-275 consist of email threads. The threads included emails between Nurse Connors, Dr. Wright, another staff member, and Dr. Kennedy. The threads began with an email from Nurse Connors, notifying Dr. Wright of a complaint he received from a patient's family member. Nurse Connors cc'd another staff member, and Dr. Wright forwarded the email to Dr. Kennedy. The thread also contained responses. Each of the emails in the thread were dated before May 2022, the point at which Wooster Community began using RLDatix. None of the emails were labeled confidential or referenced quality, peer review, or the Medical Executive Committee.

**{¶57}** For reasons previously outlined, ACES did not satisfy their burden with respect to Bates Stamped Pages 270-275. They did not set forth any evidence that a peer review committee actually investigated the complaint referenced in the email threads or that the threads were a record within the scope of that committee. *See Giusti* at ¶ 17; *Meade* at ¶ 11. Neither Nurse Connors nor any other witness provided any details about the purpose or use of the email threads. There was no evidence that the thread was generated in connection with the Quality Department or Medical Executive Committee. Nor was there evidence that the other staff member included on Nurse

Connors' email was involved with peer review. Even if the complaint referenced in the threads resulted in confidential investigations, ACES failed to establish that the email threads were created by or for a peer review committee such that they did not constitute an original source. *See Spurgeon* at ¶ 16; *Cousino* at ¶ 28 (hospital itself can be an original source). Accordingly, the trial court did not err by concluding that Bates Stamped Pages 270-275 were not protected by the peer-review privilege.

**Physician-Patient Privilege and HIPAA**

**{¶58}** "The General Assembly established the physician-patient privilege in R.C. 2317.02." *Ward*, 2010-Ohio-6275, at ¶ 16. The privilege "generally protects medical records from disclosure, subject to certain limited exceptions." *Med. Mut. of Ohio v. Schlotterer*, 2009-Ohio-2496, ¶ 1. It provides, in relevant part, that a physician shall not testify "concerning a communication made to the physician, . . . by a patient in that relation or the advice of a physician . . . given to a patient, except as otherwise provided in [R.C. 2317.02(B)(1)-(3)] . . . ." R.C. 2317.02(B)(1). If the privilege applies, a physician can be compelled to testify only if a patient expressly consents, a deceased patient's guardian or legal representative expressly consents, or the patient files a civil action and certain other conditions apply. R.C. 2317.02(B)(1)(a)(i)-(iii) and (B)(3)(a). The term

> "communication" means acquiring, recording, or transmitting any information, in any manner, concerning any facts, opinions, or statements necessary to enable a physician . . . to diagnose, treat, prescribe, or act for a patient. A "communication" may include, but is not limited to, any medical or dental, office, or hospital communication such as a record, chart, letter, memorandum, laboratory test and results, x-ray, photograph, financial statement, diagnosis, or prognosis.

R.C. 2317.02(B)(5)(a).

**{¶59}** The physician-patient privilege "is designed to 'promote health by encouraging a patient to fully and freely disclose all relevant information which may assist the physician in

treating the patient.'" (Cleaned up.) *Schlotterer* at ¶ 15, quoting *State Med. Bd. of Ohio v. Miller*, 44 Ohio St.3d 136, 140 (1989). Because it did not exist at common law, it "must be strictly construed against the party seeking to assert it and may be applied only to those circumstances specifically named in the statute." *Ward* at ¶ 15. "'A trial court does not err in granting a motion to compel discovery when a party claiming privilege fails to demonstrate that the requested health information is a communication between a provider and patient for diagnosis or treatment or otherwise protected from disclosure.'" *Renne v. Summa Health Sys.*, 2024-Ohio-5590, ¶ 11 (9th Dist.), quoting *Loparo v. Univ. Hosps. Health Sys., Inc.*, 2024-Ohio-663, ¶ 22 (8th Dist.).

**{¶60}** Initially, we note that, apart from arguing in favor of the physician-patient privilege, Appellants have broadly asserted that Bates Stamped Pages 210-275 are protected by the Health Insurance Portability and Accountability Act ("HIPAA"). While HIPAA guards against the unauthorized disclosure of protected health information, it stems from a distinct statutory and regulatory scheme. *See Menorah Park Ctr. for Senior Living v. Rolston*, 2020-Ohio-6658, ¶ 19-28. This Court has held that "the regulations protecting the physician-patient privilege in Ohio are more stringent than those put forward in HIPAA." *Grove v. Northeast Ohio Nephrology Assoc., Inc.*, 2005-Ohio-6914, ¶ 23 (9th Dist.). Appellants have not cited to or argued for the application of any individual HIPAA statute(s). Nor have they explained why, under these circumstances, any HIPAA regulations would be more stringent than the regulations protecting the physician-patient privilege. This Court will not create an argument on their behalf. *See* App.R. 16(A)(7); *Cardone v. Cardone*, 1998 WL 224934, *8 (9th Dist. May 6, 1998). Because Appellants' analysis is limited to the application of the physician-patient privilege, we likewise confine our review to that issue.

Bates Stamped Pages 210-213

**{¶61}** As noted, Bates Stamped Pages 210-213 consist of an email from Nurse Connors and several attachments. The attachments were copies of a negative review that a patient left on the hospital's public website and on a survey that same patient completed regarding the patient's hospital experience. The email did not contain any patient details beyond the patient's identity, which the patient included in the negative review and survey.

**{¶62}** Upon review, ACES failed to show that any page within Bates Stamped Pages 210-213 was "a communication between a provider and patient for diagnosis or treatment or otherwise protected from disclosure.'" *Renne*, 2024-Ohio-5590, at ¶ 11 (9th Dist.), quoting *Loparo*, 2024-Ohio-663, at ¶ 22 (8th Dist.). The patient who shared the experience described therein was not seeking the advice of a physician. *See* R.C. 2317.02(B)(1). The facts, opinions, and statements the patient shared on the website and survey were offered as commentary on the quality of care the patient received. They were not offered to enable a physician to diagnose, treat, prescribe, or act for the patient. *See* R.C. 2317.02(B)(5)(a). Thus, none of the Bates Stamped Pages 210-213 were a "communication" protected by the physician-patient privilege. The trial court did not err by ordering ACES to produce those pages.

Bates Stamped Page 214

**{¶63}** As noted, Bates Stamped Page 214 consists of an email sent by Nurse Connors to Dr. Wright. It described a phone complaint Nurse Connors received from a patient. The email did not identify the patient by name. It included medical details the patient shared with Nurse Connors while describing the nature of the patient's complaint.

**{¶64}** Upon review, ACES failed to show that Bates Stamped Page 214 was "a communication between a provider and patient for diagnosis or treatment or otherwise protected

from disclosure.'" *Renne* at ¶ 11, quoting *Loparo* at ¶ 22. The patient who shared the experience described therein was not seeking the advice of a physician. *See* R.C. 2317.02(B)(1). The patient shared facts, opinions, and statements with Nurse Connors in his role as Patient Advocate for the purpose of making a complaint based on the quality of care the patient received. Those facts, opinions, and statements, were not offered to enable a physician to diagnose, treat, prescribe, or act for the patient. *See* R.C. 2317.02(B)(5)(a). Thus, Bates Stamped Page 214 was not a "communication" protected by the physician-patient privilege. The trial court did not err by ordering ACES to produce that page.

Bates Stamped Pages 217-222

**{¶65}** As noted, Bates Stamped Pages 217-222 consist of an email thread. The thread began with an email from Nurse Connors, forwarding a written complaint he received from a patient. In the complaint, the patient identified themselves, provided a few details about the reason for their visit, and set forth the basis for the complaint. Nurse Connors also summarized the patient's provided details and complaint in his email to Dr. Wright.

**{¶66}** Dr. Wright responded to Nurse Connors email and forwarded it to Dr. Kennedy. Dr. Wright and Dr. Kennedy's responses are included in Bates Stamped Pages 217-222. Both of their responses included details about the patient's diagnosis, treatment, and exchanges with Dr. Kennedy.

**{¶67}** Upon review, ACES failed to show that Bates Stamped Pages 217, 219, and 221-222 were "a communication between a provider and patient for diagnosis or treatment or otherwise protected from disclosure.'" *Renne*, 2024-Ohio-5590, at ¶ 11 (9th Dist.), quoting *Loparo*, 2024-Ohio-663, at ¶ 22 (8th Dist.). The patient who shared the experience described therein was not seeking the advice of a physician. *See* R.C. 2317.02(B)(1). The patient shared facts, opinions,

and statements with Nurse Connors in his role as Patient Advocate for the purpose of making a complaint based on the quality of care the patient received. Those facts, opinions, and statements were not offered to enable a physician to diagnose, treat, prescribe, or act for the patient. *See* R.C. 2317.02(B)(5)(a). Thus, Bates Stamped Pages 217, 219, and 221-222 were not a "communication" protected by the physician-patient privilege. The trial court did not err by ordering ACES to produce those pages.

**{¶68}** Regarding Bates Stamped Pages 218 and 220, those pages included details about the patient's diagnosis, treatment, and exchanges with Dr. Kennedy. Those details were acquired when the patient met with Dr. Kennedy for the purpose of diagnosis and treatment. Accordingly, the pages reciting those details were a "communication" protected by the physician-patient privilege. *See* R.C. 2317.02(B)(5)(a). There is no indication that the patient therein expressly consented to the release of that medical information so as to waive the privilege. *See Schlotterer*, 2009-Ohio-2496, at ¶ 16; R.C. 2317.02(B)(1)(a)(i). Nor could Dr. Wright or Dr. Kennedy waive the privilege on behalf of the patient. *State ex rel. Wallace v. State Med. Bd. of Ohio*, 89 Ohio St.3d 431, 435 (2000) ("[I]t is a well-settled general principle that no party has the power to waive matters that affect third parties, because the holder of the privilege is the only one who has the power to relinquish it."). Because Bates Stamped Pages 218 and 220 contain privileged information, we must conclude that the trial court erred by ordering ACES to produce those pages.

Bates Stamped Pages 223-237

**{¶69}** As noted, Bates Stamped Pages 223-237 consist of email threads. The first thread began with an email from Wooster Community's Director of Marketing & Public Relations, forwarding a negative review posted by a patient's family member. The review itself identified the reviewer by name and the reviewer's relationship with the patient. It did not divulge any details

about the patient's name, medical history, or treatment. The Director of Marketing & Public Relations sent the review to Nurse Connors and another staff member. The staff member then forwarded the email to Dr. Wright who, in turn, forwarded it to Dr. Kennedy. The staff member also sent Dr. Wright another email, raising additional concerns.

**{¶70}** Dr. Kennedy sent two responses regarding the negative post. In the first response, he referenced information contained in the reviewer's post. In his second response, he included details about the patient's diagnosis, treatment, and exchanges with Dr. Kennedy. The email thread also included responses from Nurse Connors, offering the patient's name as well as contact information for the patient and the patient's family member.

**{¶71}** Upon review, ACES failed to show that Bates Stamped Pages 224-226, 229, and 231-237 were "a communication between a provider and patient for diagnosis or treatment or otherwise protected from disclosure.'" *Renne*, 2024-Ohio-5590, at ¶ 11 (9th Dist.), quoting *Loparo*, 2024-Ohio-663, at ¶ 22 (8th Dist.). The reviewer who shared the negative post was not a patient seeking the advice of a physician. *See* R.C. 2317.02(B)(1). The reviewer posted a negative experience for the purpose of making a complaint based on the quality of care the reviewer's family member received. Neither the review nor the emails it generated in Bates Stamped Pages 224-226, 229, and 231-237 were offered to enable a physician to diagnose, treat, prescribe, or act for a patient. *See* R.C. 2317.02(B)(5)(a). Thus, Bates Stamped Pages 224-226, 229, and 231-237 were not a "communication" protected by the physician-patient privilege. The trial court did not err by ordering ACES to produce those pages.

**{¶72}** Regarding Bates Stamped Pages 223, 227-228, and 230, those pages included details about the patient's identity, diagnosis, treatment, and/or exchanges with Dr. Kennedy. Those details were not acquired by virtue of the reviewer's post. They were acquired from two

sources: the patient's medical record and the consultation the patient had with Dr. Kennedy for the purpose of diagnosis and treatment. Accordingly, the pages reciting those details were a "communication" protected by the physician-patient privilege. *See* R.C. 2317.02(B)(5)(a). There is no indication that the patient therein expressly consented to the release of that medical information so as to waive the privilege. *See Schlotterer*, 2009-Ohio-2496, at ¶ 16; R.C. 2317.02(B)(1)(a)(i). Nor could Dr. Wright, Dr. Kennedy, or the hospital staff waive the privilege on the patient's behalf. *State ex rel. Wallace*, 89 Ohio St.3d at 435. Because Bates Stamped Pages 223, 227-228, and 230 contain privileged information, we must conclude that the trial court erred by ordering ACES to produce those pages.

Bates Stamped Pages 238-243

**{¶73}** As noted, Bates Stamped Pages 238-243 consist of email threads. The threads began with an email from the former Vice President of Quality and Patient Safety, who indicated that she was filling in for Nurse Connors. Her email notified Dr. Wright of a phone complaint she received from a patient's family member. Dr. Wright responded without revealing any patient details and forwarded the email to Dr. Kennedy. Dr. Kennedy then responded without revealing any patient details.

**{¶74}** Upon review, ACES failed to show that Bates Stamped Pages 238-243 were "a communication between a provider and patient for diagnosis or treatment or otherwise protected from disclosure.'" *Renne*, 2024-Ohio-5590, at ¶ 11 (9th Dist.), quoting *Loparo*, 2024-Ohio-663, at ¶ 22 (8th Dist.). The family member who shared the experience described therein was not a patient seeking the advice of a physician. *See* R.C. 2317.02(B)(1). The family member shared facts, opinions, and statements with the office of Patient Advocate for the purpose of making a complaint based on the quality of care the patient received. Those facts, opinions, and statements

were not offered to enable a physician to diagnose, treat, prescribe, or act for the patient. *See* R.C. 2317.02(B)(5)(a). Thus, Bates Stamped Pages 238-243 were not a "communication" protected by the physician-patient privilege. The trial court did not err by ordering ACES to produce those pages.

Bates Stamped Pages 244-253

**{¶75}** As noted, Bates Stamped Pages 244-253 consist of email threads. The first thread began with an email from Nurse Connors, notifying Dr. Wright and another staff member of a complaint he received from a patient's family member. The complainant identified the patient by name and shared medical details with Nurse Connors while describing the nature of the complaint. Nurse Connors summarized those details in his email. Dr. Wright responded to the email and forwarded it to Dr. Kennedy. In his reply, Dr. Kennedy included details about the patient's diagnosis, treatment, and exchanges with Dr. Kennedy.

**{¶76}** Upon review, ACES failed to show that Bates Stamped Pages 248-253 were "a communication between a provider and patient for diagnosis or treatment or otherwise protected from disclosure.'" *Renne*, 2024-Ohio-5590, at ¶ 11 (9th Dist.), quoting *Loparo*, 2024-Ohio-663, at ¶ 22 (8th Dist.). The family member who shared the complaint with Nurse Connors was not a patient seeking the advice of a physician. *See* R.C. 2317.02(B)(1). The family member shared the patient's negative experience for the purpose of making a complaint about the quality of care the patient received. Neither the complaint nor the emails that it generated in Bates Stamped Pages 248-253 were offered to enable a physician to diagnose, treat, prescribe, or act for a patient. *See* R.C. 2317.02(B)(5)(a). Thus, Bates Stamped Pages 248-253 were not a "communication" protected by the physician-patient privilege. The trial court did not err by ordering ACES to produce those pages.

**{¶77}** Regarding Bates Stamped Pages 244-247, those pages included details about the patient's diagnosis, treatment, and/or exchanges with Dr. Kennedy. Those details were not acquired by virtue of the family member's complaint. They were acquired as a result of the patient meeting with Dr. Kennedy for the purpose of diagnosis and treatment. Accordingly, the pages reciting those details were a "communication" protected by the physician-patient privilege. *See* R.C. 2317.02(B)(5)(a). There is no indication that the patient therein expressly consented to the release of that medical information so as to waive the privilege. *See Schlotterer*, 2009-Ohio-2496, at ¶ 16; R.C. 2317.02(B)(1)(a)(i). Nor could Dr. Wright, Dr. Kennedy, or the hospital staff waive the privilege on the patient's behalf. *State ex rel. Wallace*, 89 Ohio St.3d at 435. Because Bates Stamped Pages 244-247 contain privileged information, we must conclude that the trial court erred by ordering ACES to produce those pages.

Bates Stamped Pages 254-257

**{¶78}** As noted, Bates Stamped Pages 254-257 consist of email threads. The first email in the thread was from Nurse Connors. The email notified Dr. Wright and another staff member of two patient complaints. Nurse Connors summarized the information he received from his conversation with the two patients. He also included information he gleaned from their patient charts. Other responses in the email thread included information related to the patients' diagnoses and treatments.

**{¶79}** Upon review, we must conclude the trial court erred when it ordered ACES to produce Bates Stamped Pages 254-257. Each of those documents included details about the patients' diagnoses, treatments, and exchanges with Dr. Kennedy. Those details were acquired directly from their medical charts as well as their consultation with Dr. Kennedy, both of which served the purpose of medical diagnosis and treatment. Thus, the documents were a

"communication" protected by the physician-patient privilege. *See* R.C. 2317.02(B)(5)(a). There is no indication that the patients expressly consented to the release of that medical information so as to waive the privilege. *See Schlotterer* at ¶ 16; R.C. 2317.02(B)(1)(a)(i). Nor could Dr. Wright, Dr. Kennedy, or the hospital staff waive the privilege on behalf of the patients. *State ex rel. Wallace* at 435. Because Bates Stamped Pages 254-257 contain privileged information, we must conclude that the trial court erred by ordering ACES to produce those pages.

Bates Stamped Page 258

**{¶80}** As noted, Bates Stamped Page 258 consists of an email from a staff member to Dr. Wright. The email notified him of a second-hand complaint the staff member received from another staff member. The original complaint stemmed from a patient who described a negative experience and wanted her complaint shared. The email did not include any information related to diagnosis or treatment.

**{¶81}** Upon review, ACES failed to show that Bates Stamped Page 258 was "a communication between a provider and patient for diagnosis or treatment or otherwise protected from disclosure.'" *Renne*, 2024-Ohio-5590, at ¶ 11 (9th Dist.), quoting *Loparo*, 2024-Ohio-663, at ¶ 22 (8th Dist.). The patient who shared the experience described therein was not seeking the advice of a physician. *See* R.C. 2317.02(B)(1). The patient shared facts, opinions, and statements with a hospital staff member for the purpose of making a complaint based on the quality of care the patient received. Those facts, opinions, and statements were not offered to enable a physician to diagnose, treat, prescribe, or act for the patient. *See* R.C. 2317.02(B)(5)(a). Thus, Bates Stamped Page 258 was not a "communication" protected by the physician-patient privilege. The trial court did not err by ordering ACES to produce that page.

Bates Stamped Page 259

**{¶82}** As noted, Bates Stamped Page 259 consists of an email from Nurse Connors to Dr. Wright, notifying him of a complaint from a patient's family member. Nurse Connors summarized the information he received from his conversation with the complainant. He also included medical information he gleaned from the patient's chart.

**{¶83}** Upon review, we must conclude the trial court erred when it ordered ACES to produce Bates Stamped Page 259. That document included details about the patient's medical history. Although some of that information came from the patient's family member, other details were gleaned strictly from the patient's medical chart. Thus, the document was a "communication" protected by the physician-patient privilege. *See* R.C. 2317.02(B)(5)(a). There is no indication that the patient expressly consented to the release of the charted medical information so as to waive the privilege. *See Schlotterer* at ¶ 16; R.C. 2317.02(B)(1)(a)(i). Nor could Dr. Wright, Dr. Kennedy, or the hospital staff waive the privilege on behalf of the patient. *State ex rel. Wallace* at 435. Because Bates Stamped Page 259 contains privileged information, we must conclude that the trial court erred by ordering ACES to produce that page.

Bates Stamped Pages 260-263 and 265-269

**{¶84}** As noted, Bates Stamped Pages 260-263 and 265-269 consist of email threads. The first email in the thread was from Nurse Connors. The email notified Dr. Wright and another staff member of a complaint made by a friend of a patient. Nurse Connors summarized the information he received from his conversation with the friend. He also included information he gleaned from the patient's chart. Other responses in the email thread included information related to the patient's diagnosis and treatment.

**{¶85}** Upon review, we must conclude the trial court erred when it ordered ACES to produce Bates Stamped Pages 260-263 and 265-269. Each of those pages included details about

the patient's diagnosis, treatment, and/or exchanges with Dr. Kennedy. Those details were acquired directly from the patient's medical chart as well as the patient's consultation with Dr. Kennedy, both of which served the purpose of medical diagnosis and treatment. Thus, the pages were a "communication" protected by the physician-patient privilege. *See* R.C. 2317.02(B)(5)(a). There is no indication that the patient expressly consented to the release of that medical information so as to waive the privilege. *See Schlotterer* at ¶ 16; R.C. 2317.02(B)(1)(a)(i). Nor could Dr. Wright, Dr. Kennedy, or the hospital staff waive the privilege on behalf of the patient. *State ex rel. Wallace* at 435. Because Bates Stamped Pages 260-263 and 265-269 contain privileged information, we must conclude that the trial court erred by ordering ACES to produce those pages.

Bates Stamped Pages 270-275

**{¶86}** As noted, Bates Stamped Pages 270-275 consist of email threads. The first email in the thread was from Nurse Connors. The email notified Dr. Wright and another staff member of a complaint made by a patient's family member. Nurse Connors summarized the information he received from his conversation with the family member. He also included information he gleaned from the patient's chart. Other responses in the email thread included information related to the patient's diagnosis and treatment.

**{¶87}** Upon review, we must conclude the trial court erred when it ordered ACES to produce Bates Stamped Pages 270-275. Each of those documents included details about the patient's diagnosis, treatment, and/or exchanges with Dr. Kennedy. Many of those details were acquired directly from the patient's medical chart as well as the patient's consultation with Dr. Kennedy, both of which served the purpose of medical diagnosis and treatment. Thus, the documents were a "communication" protected by the physician-patient privilege. *See* R.C.

2317.02(B)(5)(a). There is no indication that the patient expressly consented to the release of that medical information so as to waive the privilege. *See Schlotterer* at ¶ 16; R.C. 2317.02(B)(1)(a)(i). Nor could Dr. Wright, Dr. Kennedy, or the hospital staff waive the privilege on behalf of the patient. *State ex rel. Wallace* at 435. Because Bates Stamped Pages 270-275 contain privileged information, we must conclude that the trial court erred by ordering ACES to produce those pages.

**Conclusion**

**{¶88}** Regarding the peer-review privilege, Appellants failed to show that the trial court erred in its discovery order. ACES failed to carry its burden by establishing that Bates Stamped Pages 210-275 were protected by that privilege. As such, we reject Appellants' argument that the trial court erred in its application of the peer-review privilege.

**{¶89}** Regarding the physician-patient privilege, we must conclude that the trial court erred by ordering ACES to produce certain Bates Stamped pages. Those pages were Bates Stamped Pages 218, 220, 223, 227-228, 230, 244-247, 254-257, 259, 260-263, 265-275. To the extent Appellants argue that the trial court erred in ordering the production of those pages, their assignment of error is sustained. The remainder of their assignment of error is overruled.

III.

**{¶90}** Appellants' assignment of error is sustained in part and overruled in part for the reasons outlined above. The judgment of the Summit County Court of Common Pleas is affirmed in part, reversed in part, and remanded for further proceedings consistent with the foregoing opinion.

Judgment affirmed in part,
reversed in part,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed equally to both parties.

NATHAN MANNING
FOR THE COURT

FLAGG LANZINGER, P. J.
STEVENSON, J.
CONCUR.

APPEARANCES:

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