

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS.

SUPERIOR COURT DEPT.
C.A. NO. 2483CV00692

PAUL O'KEEFE, INDIVIDUALLY & AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF JOHN
JOSEPH O'KEEFE, III; MARGARET O'KEEFE,
INDIVIDUALLY AND AS GRANDPARENT / GUARDIAN
OF KAYLEY FURBUSH; and JOHN O'KEEFE, II,

Plaintiffs,

v.

C&C HOSPITALITY, LLC, d/b/a C.F MCCARTHY'S;
G&S HOSPITALITY, LLC d/b/a C.F. MCCARTHY'S;
WATERFALL BAR & GRILL, LTD d/b/a WATERFALL
BAR & GRILL; and KAREN READ,

Defendants.

**PLAINTIFF JOHN O'KEEFE II'S REPLY TO DEFENDANT KAREN READ'S
OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL FURTHER ANSWERS TO
PLAINTIFF JOHN O'KEEFE II'S FIRST SET OF INTERROGATORIES**

A. Defendant's Medical Information Is Directly Relevant To Plaintiffs' Claims

Defendant Read fundamentally mischaracterizes the nature of this litigation when she argues that her medical information is "irrelevant." This is not a case where Plaintiffs are seeking unrelated medical history as a fishing expedition. Rather, Defendant Read's level of impairment and the factors contributing to that impairment are at the center of Plaintiffs' claims. Defendant's attempt to shield this information is unfounded.

1) Medications Can Enhance Alcohol Impairment

It is well established that certain prescription medications can significantly enhance impairment when combined with alcohol. Defendant's argument that "through two lengthy criminal trials and discovery in this case, there has been no allegation that Read was impaired by

prescription medication” is irrelevant. The absence of such allegations in prior proceedings does not preclude civil discovery into these matters. Plaintiffs are entitled to conduct independent discovery to develop evidence for their civil claims.

Moreover, identifying Defendant Read’s medications is reasonably calculated to lead to the discovery of admissible evidence. Specifically, Plaintiffs must prove Defendant Read’s intoxication at relevant times on January 28-29, 2022. It is difficult to understand how Defendant Read disputes relevancy here when her own criminal defense attorney cross-examined Forensic Scientist Hannah Knowles of the MSP Crime Lab during her re-trial. During this cross-examination, Mr. Yannetti elicited the following affirmative responses:

“To calculate a precise conversion rate, you’d first need to know precisely the amount of water in somebody’s blood... There are a number of factors that influence the amount of water in somebody’s blood... Medications, potentially, affect the amount of water in somebody’s blood.”

This testimony, elicited by Defendant Read’s own counsel, confirms that medications are directly relevant to blood alcohol concentration calculations. Plaintiffs are entitled to discover what medications Defendant Read was taking to evaluate their potential impact on BAC evidence in this case.

2) Defendant Read’s Father’s Statements Create A Factual Basis For Inquiry

Beyond the general relevance of medical information, Defendant’s father’s own words provide a specific factual basis for this discovery. Defendant attempts to dismiss her father's 911 statement by arguing that "a literal reading of Mr. Read's alleged statement is that he was worried she could overdose because of the traumatic stress of learning her boyfriend was dead; not because she was taking a 'boatload of pills' that impaired her driving abilities." This argument misses the point entirely. Plaintiffs do not seek discovery based on *why* Mr. Read expressed concern about his daughter. The reason for his concern is immaterial to this inquiry. What

matters is what the statement reveals: that Defendant had immediate access to a substantial quantity of prescription medications, a "boatload of pills", on the morning of January 29, 2022.

This statement opens the door to Plaintiffs' critical questions: What medications comprised this "boatload of pills"? Did Defendant Read have access to these medications on January 28-29, 2022? Were any of these medications ingested on January 28-29, 2022? Defendant Read's attempt to reframe her father's statements as post-traumatic grief underscores the point: regardless of the context, the underlying fact remains that Defendant Read possessed enough medication to cause alarm. That fact alone justifies discovery.

B. Massachusetts Law Does Not Support Blanket Objections

Defendant's invocation of Massachusetts privacy law does not change this analysis. While Massachusetts courts recognize a policy favoring confidentiality of medical records, this policy does not create an absolute privilege. *Commonwealth v. Senior*, 433 Mass. 453, 457 n.5 (2001).

Defendant Read's medical conditions and medications are reasonably calculated to lead to the discovery of admissible evidence because various medical conditions directly impact blood alcohol concentration test results. Certain pre-existing conditions may affect a body's fluid balance, metabolism, and liver processing, thereby skewing both BAC readings and alcohol processing rates. Plaintiffs cannot evaluate what, if any, impact these medical conditions and/or medications have without access to Defendant Read's medical records.

Here, the information sought goes directly to the central issue of Defendant's level of impairment on January 28-29, 2022. The requests are narrowly tailored, as Plaintiffs are not seeking Defendant's entire medical history. Similarly, the request for Defendant's primary care physician is routine information needed to subpoena records limited to the relevant time period.

This information is uniquely within Defendant's knowledge and possession, leaving Plaintiffs with no alternative source.

Defendant's citation to M.G.L. c. 214, § 1B, protecting against "unreasonable, substantial or serious interference with privacy," undercuts her argument. Discovery of directly relevant medical information in civil litigation where the plaintiff has demonstrated a legitimate need does not constitute "unreasonable" interference with privacy under Massachusetts law. Furthermore, sufficient protections exist to safeguard Defendant Read's privacy, including protective orders and confidentiality designations. These measures can be implemented without depriving Plaintiffs of the ability to pursue discovery that is reasonably calculated to lead to the discovery of admissible evidence.

C. Defendant's OUI Conviction Supports Discovery

Finally, Defendant argues that because she was convicted of operating under the influence of alcohol, and her "toxicology results, including her blood-alcohol level during the pertinent time frame, are a matter of public record," Plaintiffs have no need for additional discovery. This argument is backwards. Defendant's conviction for OUI confirms that her impairment on January 28-29, 2022, is relevant and at issue in this case. Plaintiffs are entitled to understand the full scope of that impairment, including any medications that may have contributed to or enhanced her alcohol-induced impairment. The simple fact that her blood-alcohol level is known does not answer the question of whether prescription medications compounded that impairment or affected the accuracy of BAC calculations.

D. Defendant's Redacted Bank Statement Production Is Insufficient

Defendant claims she "has already produced documents sufficient to provide the relevant financial information" sought by Plaintiffs. This characterization is misleading. While Defendant

has produced bank statements for January 28-29, 2022, those productions contain significant redactions that obscure relevant information requested in Interrogatory No. 3.

What Defendant Read did and what she consumed on January 28-29, 2022, is reasonably calculated to lead to the discovery of admissible evidence. Any expenses, debits, or credits reflected in her financial records provide Plaintiffs with the ability to evaluate where Defendant Read was and what she did during the relevant times on those days. This information is critical to establishing the full timeline of events.

Plaintiffs are entitled to unredacted financial records in order to subpoena the relevant financial institutions. This document production does not satisfy Defendant Read's discovery obligations in relation to Interrogatory No. 3.

E. Conclusion

For the foregoing reasons, Plaintiffs respectfully request this Court to **GRANT** Plaintiffs' Motion to Compel and **ORDER** Defendant Read to provide complete answers to Interrogatory Nos. 1, 2, and 3 within fourteen (14) days.