

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

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<p>MOSES ULUDONG and TIA BELAU NEWSPAPER, <i>Appellants,</i> v. MINISTRY OF HEALTH AND HUMAN SERVICES, <i>Appellee.</i></p>

SUPREME COURT
OF THE
REPUBLIC OF PALAU

Cite as: 2025 Palau 3
Civil Appeal No. 24-009
Appeal from Civil Action No. 23-102

Decided: February 6, 2025

Counsel for Appellant	Johnson Toribiong
Counsel for Appellee	Kathleen Burch, AAG

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
FRED M. ISAACS, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Trial Division, the Honorable Honora E. Remengesau Rudimch, Associate Justice, presiding.

OPINION¹

PER CURIAM:

[¶ 1] Mr. Moses Uludong, owner and editor of the *Tia Belau* Newspaper, appeals the Trial Division’s Orders issuing an injunction prohibiting him and the *Tia Belau* from reporting on medical information contained within a complaint, and holding him in civil contempt of court for sharing that medical information during a radio talk show.

¹ Although Appellant and Appellee request oral argument, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

[¶ 2] For the reasons set forth below, we **AFFIRM**.

BACKGROUND

[¶ 3] On August 28, 2023, Dr. Lina Al Gahamdi filed a Complaint against the Ministry of Health and Human Services (“the MHHS”) in front of the Trial Division, alleging wrongful termination and breach of her contract with the MHHS as an emergency physician at the Belau National Hospital. *See* Complaint for wrongful termination of employment in violation of public policy, breach of contract, and other relief, Civ. Action No. 23-102 (Tr. Div. Aug. 28, 2023) [hereinafter “the Complaint”]. The Complaint contained several paragraphs with the names, diagnosis, treatment, and medical history of hospital patients. *Id.* at ¶ 38-49; 79. On August 29, 2023, the trial court sealed the Complaint and issued a temporary restraining order preventing Dr. Al Gahamdi from disclosing confidential patient information.

[¶ 4] On September 6, 2023, Moses Uludong, owner and editor of the *Tia Belau* Newspaper, sent a text message to the Attorney General Ms. Ernestine Rengiil. He stated that he was acting as Dr. Al Gahamdi’s agent and representative in Palau, that he had gotten a copy of the complaint, and that the case would be in the *Tia Belau* newspaper the next day. The MHHS filed an Emergency Motion for a temporary restraining order against Mr. Uludong and the *Tia Belau*, stating that Dr. Al Gahamdi’s Complaint contains confidential information and that it should be sealed. The Trial Division granted the Temporary Restraining Order the same day, ordering Mr. Uludong, and the *Tia Belau*:

(a) NOT to disclose information contained in the sealed Complaint and NOT to disclose confidential patient medical information to any person or entity; (b) NOT publish the sealed Complaint or information contained in the sealed Complaint; and (c) to destroy all copies of any edition of the *Tia Belau* Newspaper that contains information contained in the sealed Complaint or confidential patient information.

[¶ 5] On September 8, 2023, Mr. Uludong talked about the case during a live radio talk show *Uldesuall*, which is also posted on YouTube. He gave

identifiable information as to the patients mentioned in the Complaint, referring to their sex, illness/diagnosis, treatment, and cause of death. He also disclosed one patient's age and nationality.

[¶ 6] On February 27, 2024, the trial court entered a contempt order against Mr. Uludong for violating the Temporary Restraining Order and disclosing confidential medical information during the radio show. *See Contempt Order Against Mr. Moses Uludong, Gahamdi v. Ministry of Health and Human Servs.*, Civ. Action No. 23-102 (Tr. Div. Feb. 27, 2024) [hereinafter "Contempt Order"]. On the same day, the trial court also entered an Order granting a permanent injunction against Mr. Uludong and the *Tia Belau*. *See Order Grant. Def. MHHS' Rule 65 Injunction Against Mr. Moses Uludong and Tia Belau Newspaper, Gahamdi v. Ministry of Health and Human Servs.*, Civ. Action No. 23-102 (Tr. Div. Feb. 27, 2024) [hereinafter "Injunction Order"].

[¶ 7] Mr. Uludong and the *Tia Belau* appeal these two Orders. Although Dr. Al Gahamdi was initially part of the appeal, she asked to abandon the appeal and we issued an Order granting this request on September 5, 2024.

STANDARD OF REVIEW

[¶ 8] The decision to grant or deny injunctive relief is reviewed on appeal for an abuse of discretion. *Whipps v. Idesmang*, 2017 Palau 24 ¶ 8. We review a court's imposition of sanctions pursuant to its inherent powers, such as holding a litigant in contempt of court, under an abuse of discretion standard. *Cushnie v. Oiterong*, 4 ROP Intrm. 216, 218 (1994). Similarly, the decision to seal or not seal a proceeding is reviewed under the abuse of discretion standard. *Ellender Ngirameketii v. Republic of Palau*, 2022 Palau 9 ¶ 16.

[¶ 9] Under the abuse of discretion standard, a trial court's decision will not be overturned on appeal unless the decision was arbitrary, capricious, or manifestly unreasonable or because it stemmed from an improper motive. *Ngoriakl v. Gulibert*, 16 ROP 105, 107 (2008).

DISCUSSION

[¶ 10] Mr. Uludong maintains that the Complaint filed by Dr. Al Gahamdi does not contain confidential medical information and that the injunctions against Mr. Uludong and the *Tia Belau* violate the constitutional right to

freedom of expression and the press. We find that the Complaint does contain confidential medical information, and that the injunctions issued by the trial court adequately balanced the competing interests of confidentiality and freedom of the press.

[¶ 11] As a preliminary matter, we note that the MHHS argues that Mr. Uludong cannot appeal the Injunction Order because Mr. Uludong agreed to it during a hearing. This Court has recognized that “[a]s a general matter, a party may not appeal a judgment to which he consented.” *Mesubed v. Urebau Clan*, 20 ROP 166, 167 (2013) (citing 5 Am. Jur. 2d *Appellate Review* § 579). However, the MHHS fails to mention that *Mesubed* goes on to state a list of express exceptions to this rule, including where “the party appealing has unequivocally reserved the right to appeal the judgment.” *Id.* at 168. The Injunction Order states that “[a]t the hearing, Mr. Uludong, through counsel, informed the Court that he will stipulate to a permanent injunction being entered and will comply with it, *pending an appellate opinion, if he decides to file an appeal.*” (emphasis added). The wording of the stipulation clearly indicates that Mr. Uludong did not waive his right to appeal. The MHHS’ partial statement of the law veers dangerously close to a violation of an attorney’s duty of candor to the Court. *See* ABA Model R. of Prof. Responsibility 3.3(a).

I. Freedom of Press

[¶ 12] Our Constitution protects the fundamental guarantee that “[t]he government shall take no action to deny or impair the freedom of expression or press.” Palau Const., Art IV, Sec. 2. As we have yet to interpret this constitutional provision in the context of sealed court records, we look to the law and reasoning of the United States on the First Amendment to guide our decision making. *See* 1 PNC § 303; *Yano v. Kadoi*, 3 ROP Intrm. 174, 181 n.1 (Palau courts may look to U.S. case law for guidance, especially those cases interpreting identical or similar constitutional provisions).

[¶ 13] The common law recognizes “a general right to inspect and copy public records and documents, including judicial records and documents.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978). Such right is not absolute: “[e]very court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle

for improper purposes.” *Id.* at 598. Indeed, the right to freedom of expression “does not guarantee access to property simply because it is owned or controlled by the government.” *Wong v. Nakamura*, 4 ROP Intrm. 364, 372 (Tr. Div. 1994) (quoting *U.S. Postal Service v. Council of Greenburgh Civic Ass’ns.*, 458 U.S. 114, 129 (1981)). “Although many governmental processes operate best under public scrutiny, it takes little imagination to recognize that there are some kinds of government operations that would be totally frustrated if conducted openly.” *Press-Enterprise v. Superior Ct. (Press-Enterprise II)*, 478 U.S. 1, 8–9 (1986).

[¶ 14] The Third, Fourth, Sixth, Seventh and Ninth Circuits of the United States have agreed that a constitutional public right of access may exist. Some courts have even derived a presumption of a right of access. *Oregonian Publ’g Co. v. U.S. Dist. Ct.*, 920 F.2d 1462, 1465 (9th Cir. 1990) (“[T]he press and the public have a presumed right of access to court proceedings and documents.”). This presumption of “[o]penness in judicial proceedings enhances both the basic fairness of the [proceeding] and the appearance of fairness so essential to public confidence in the system, and forms an indispensable predicate to free expression about the workings of government.” *Courthouse News Serv. v. Planet (Planet II)*, 947 F.3d 581, 589 (9th Cir. 2020) (internal citations and quotations omitted). Therefore, “[a]bsent a showing that there is a substantial interest in retaining the private nature of a judicial record, once documents have been filed in judicial proceedings, a presumption arises that the public has the right to know the information they contain.” *Id.* at 592.

[¶ 15] Therefore, while “there is no right of access which attaches to all judicial proceedings,” *Phoenix Newspapers, Inc. v. U.S. Dist. Ct.*, 156 F.3d 940, 946 (9th Cir. 1998), “[t]he public generally has presumptive access to judicial opinions, hearings, and court filings,” *Forbes Media LLC v. United States*, 61 F.4th 1072, 1077 (9th Cir. 2023). And, “[w]here . . . the State attempts to deny the right of access in order to inhibit the disclosure of sensitive information, it must be shown that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest.” *Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 606-07 (1982).

[¶ 16] To properly balance these competing interests and determine whether the right of access applies to medical records, courts should take a holistic approach and consider the following factors as relevant:

(1) the need for public access to the documents at issue; (2) the extent of previous public access to the documents; (3) the fact that someone has objected to disclosure, and the identity of that person; (4) the strength of any property and privacy interests asserted; (5) the possibility of prejudice to those opposing disclosure; and (6) the purposes for which the documents were introduced during the judicial proceedings.

United States v. Hubbard, 650 F.2d 293, 317-22 (D.C. Cir. 1980); *see also Civ. Beat L. Ctr. for Pub. Int., Inc. v. Maile*, 117 F.4th 1200, 1210 (9th Cir. 2024) (“[T]o determine whether the right attaches to medical or health records, we must evaluate whether there is a history of public access to the proceedings in which such records are filed and whether public access to such records supports the functioning of those proceedings.”).

[¶ 17] When granting the Injunction Order, the trial court grounded its reasoning upon the confidential nature of the medical information, stating that disclosing it would constitute an invasion of privacy, and held that “any right of the press alleged by Mr. Uludong has been expressly denied by the OEK through the enactment of the Open Government Act which exempts private medical information.” *See* Injunction Order at 5. Regardless of whether the trial court properly interpreted and applied the Open Government Act, we hold that it appropriately tailored the Injunction Order to satisfy a compelling governmental interest.

[¶ 18] First, complaints filed in the courts of our Republic have generally been accessible upon request, and there is a significant public interest in accessing a complaint which alleges medical malpractice within the Belau National Hospital. Second, the MHHS objected to the disclosure of the Complaint in this case, upon the basis that the Complaint contains the names, diagnoses, treatments, and medical histories of two hospital patients—personal identifiable health information, which constitutes confidential medical information under the MHHS Regulations.

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[¶ 19] There are considerable privacy interests surrounding this information.² Although we have no explicit statutory framework on the question,³ the Ministry of Health has set out regulations protecting a patient’s medical record. The Regulations Relating to Ministry of Health Operations state that “[t]he Ministry of Health (MOH) is committed to protecting the confidentiality of the personal health information in its custody and control” and the Health Professions Regulations impart that “[i]ntentionally or negligently releasing or disclosing confidential patient information” constitutes unprofessional conduct for doctors. *See* Regulations Relating to Ministry of Health Operations, §101; Health Professions Regulations, Regulation 9.1(1).

[¶ 20] Furthermore, the common law generally recognizes that a fiduciary duty of confidentiality emanates from the physician-patient relationship.⁴ *See e.g.*, 116 Am. Jur. *Proof of Facts* 3d 1 § 3; David A. Elder, *Privacy Torts* § 5:2.

² Uludong points to ROP R. Evi. P. 504, the rule on the privilege for confidential communications between physicians and their patients. He argues that because the Evidence Rule privileges confidential *communications*, and that the information contained in the Complaint did not derive from communications between Dr. Al Gahamdi and the patients, it does not constitute “confidential medical information”. Rule 504 provides that:

[a] patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient’s physical, mental or emotional condition, including alcohol or drug addiction, among the patient, the physician or psychotherapist of the person, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient’s family.

Mr. Uludong is misapprehending the issue. First, the scope of application of the Rules of Evidence is limited to “proceedings in the courts of the Republic.” ROP R. Evid. 101. Second, evidence rules are not the be-all, end-all of confidentiality. Although the information contained in the Complaint does not fit neatly within the confines of an evidentiary privilege, a privacy interest may still attach to it.

³ In the United States, the Health Insurance Portability and Accountability Act (HIPAA) of 1996 mandates federal regulations governing protected health information in the United States.

⁴ Several U.S. courts have found that such duty may be extended to third parties such as a health care plan or employer who contracts with a physician to provide medical services to a patient and that the physician-patient relationship may exist even where the physician did not personally examine a patient. 116 Am. Jur. *Proof of Facts* 3d 1 § 3.

Accordingly, protecting an individual's constitutional and statutory right to privacy is a compelling interest that may justify sealing a particular medical or health record. *See Maile*, 117 F.4th at 1210; *In re McClatchy Newspapers, Inc.*, 288 F.3d 369, 374 (9th Cir. 2002) (“[t]he need to protect individual privacy rights may, in some circumstances, rise to the level of a substantial governmental interest and defeat First Amendment right of access claims.”); 84 A.L.R.3d 598 (1978).

[¶ 21] As a result of its policies and fiduciary duty owed to patients, the MHHS has a strong interest in opposing the disclosure of confidential medical information in its possession. As the Injunction Order noted, the MHHS would be prejudiced if its patients no longer trusted the MHHS to protect their medical information.

[¶ 22] Third, the confidential information was introduced as evidence on a claim of wrongful termination and breach of contract. The trial court's Injunction Order was narrowly tailored to protect this information without impeding the right to freedom of the press. The Injunction Order made clear that it was “not meant to prohibit Mr. Uludong from reporting any concerns about the hospital.” *See* Injunction Order at 5. The Injunction allowed Mr. Uludong and the *Tia Belau* to report on matters of legitimate concerns to the public, without disclosing medical information that constitutes “both an invasion of privacy and would allow a third party to easily identify the individual patient at issue, including a patient's treating physician, illness/diagnosis, treatment, medication information, x-rays, scans, etc. of diagnosis.” *Id.* Therefore, the trial court did not abuse its discretion in issuing the Injunction Order.

II. Contempt Order

[¶ 23] There was similarly no abuse of discretion in issuing the Contempt Order. Our Rules of Civil Procedure provide that an injunction or restraining order

binds only the following who receive actual notice of it by personal service or otherwise: (A) the parties; (B) the parties' officers, agents, servants, employees, attorneys, and trial

counselors; and (C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

ROP R. Civ. P. 65(d)(2).

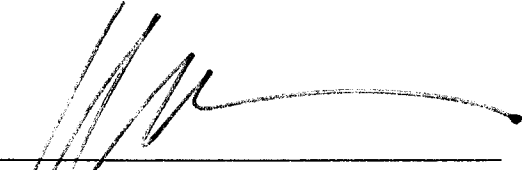
[¶ 24] Several United States courts have furthered this principle by holding that “[t]he general rule is that one who violates an injunction is guilty of contempt, although he is not a party to the injunction suit, if he has notice or knowledge of the injunction order, and is within the class of persons whose conduct is intended to be restrained, or acts in concert with such a person.” 15 A.L.R. 386 (2023) (consolidating cases).

[¶ 25] In this case, Mr. Uludong had actual notice of the Temporary Restraining Order against Dr. Al Gahamdi—the Attorney General informed him during their phone call. As Dr. Al Gahamdi’s representative, he is clearly within the class of persons whose conduct is intended to be restrained. The trial court only clarified the matter when it issued a temporary restraining order, then a permanent injunction against Mr. Uludong and the *Tia Belau* personally. Mr. Uludong violated the Injunction Order by sharing the confidential medical information during the radio talk show. Therefore, the trial court did not abuse its discretion in holding Mr. Uludong in civil contempt and requiring him to edit and remove the portion of the radio program that referenced the confidential medical information.

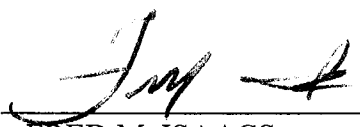
CONCLUSION

[¶ 26] We **AFFIRM** the Trial Division’s Injunction and Contempt Orders.

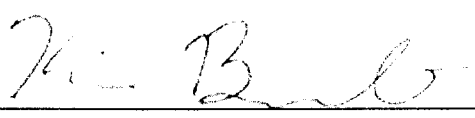
SO ORDERED, this 6th day of February 2025.



OLDJAIS NGIRAIKELAU
Chief Justice, presiding



FRED M. ISAACS
Associate Justice



KEVIN BENNARDO
Associate Justice