STATE OF MICHIGAN

COURT OF APPEALS

DAVINA GRADY,

Plaintiff,

and

LIVONIA CARE PHARMACY, LG TRANSPORTATION & MANAGEMENT, INC., and NORTHLAND RADIOLOGY, INC.,

Intervening Plaintiffs,

and

MERCYLAND HEALTH SERVICES PLLC,

Intervening Plaintiff-Appellant,

v

STEVEN PATRICK WAMBACH and JOHN P. O'SULLIVAN DISTRIBUTING,

Defendants,

and

MEEMIC INSURANCE COMPANY,

Defendant-Appellee.

FOR PUBLICATION
November 18, 2021

No. 354091
Wayne Circuit Court
LC No. 18-014393-NI

Before: SAWYER, P.J., and CAMERON and LETICA, JJ.

SAWYER, P.J. (*dissenting*).

I respectfully dissent.

The majority erroneously views this case as simply presenting a question of standing. Rather, the essential question presented is whether the fact that Mercyland's sole member and manager, Mohammed Abraham, is not licensed to practice medicine in Michigan precludes Mercyland from lawfully rendering medical services, a requirement under the no-fault act.

I find the case relied upon by the majority and Mercyland, *Miller v Allstate Ins Co*,[1] not controlling.[2] In *Miller*, the insurer, Allstate, argued that it was not obligated to pay no-fault benefits because the services were not legally rendered because the provider, PT Works, had incorrectly incorporated under the Business Corporations Act (BCA) rather than under the Professional Services Corporations Act (PSCA), which Allstate argued that PT Works was required to use rather than the BCA.

The Supreme Court in *Miller*[3] determined that Allstate lacked standing to challenge the corporate status of PT Works:

> Here, the initial question is whether defendant Allstate may challenge the incorporation of PT Works under the BCA. Because the relevant question is whether the BCA authorizes defendant to make such a challenge, the issue presented is properly characterized as one of statutory standing.
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> MCL 450.1221 of the BCA states:
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> > The corporate existence shall begin on the effective date of the articles of incorporation as provided in [MCL 450.1131]. Filing is conclusive evidence that all conditions precedent required to be performed under this act have been fulfilled and that the corporation has been formed under this act, except in an action or special proceeding by the attorney general.
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> This statute indicates that once articles of incorporation under the BCA have been filed, such filing constitutes "conclusive evidence" that: (1) all the requirements for complying with the BCA have been fulfilled and (2) the corporation has actually been formed in compliance with the BCA. Thus, the statute generally creates an irrebuttable presumption of proper incorporation once the articles of incorporation have been filed. The statute then creates a single exception to this general rule by granting the Attorney General the sole authority to challenge whether a corporation has been properly incorporated under the BCA. That is, only the Attorney General is not affected by the irrebuttable presumption in favor of legality. By naming only the Attorney General in this respect, the Legislature has indicated that the Attorney

[1] 481 Mich 601; 751 NW2d 463 (2008).

[2] Mercyland also relies on a number of unpublished decisions of this Court. Not only do those decisions lack precedential value, MCR 7.215(C)(1), but they also rely on this Court's decision in *Miller*, which the Supreme Court's decision vacated. Moreover, I find those cases distinguishable from the case before us for the same reason that I find the decision in *Miller* itself distinguishable.

[3] *Id.* at 610-611.

> General alone has the authority to challenge corporate status, under the principle *expressio unius est exclusio alterius*, that is, "the expression of one thing is the exclusion of another." *Miller v Chapman Contracting*, 477 Mich 102, 108 n 1; 730 NW2d 462 (2007). Thus, the filing of the articles of incorporation serves as "conclusive evidence" that PT Works has been properly formed, and this Court cannot, under the terms of MCL 450.1221, conclude otherwise, except as a consequence of a suit brought by the Attorney General. [Footnotes omitted.]

Mercyland points to a provision in the Michigan Limited Liability Company Act, MCL 450.4202(2), that similarly vests in the Attorney General the authority to challenge whether an LLC has been properly formed. This Court extended the *Miller* analysis to PLLCs in *Sterling Hts Pain Mgt, PLC v Farm Bureau Gen Ins Co of Mich*.[4]

Nonetheless, there is an important additional factor present in the case before us, namely the requirement of MCL 450.4904(2) that all members and managers of the PLLC must be licensed in the state of Michigan. This creates an additional licensing requirement that was not at issue in *Miller* nor addressed in *Sterling Hts*. That is, ultimately MEEMIC's argument does not attack Mercyland's status as a PLLC in the same way that in *Miller* the insurer attacked the corporate status of the provider. Rather, MEEMIC's argument more directly focuses on a requirement that members and managers of PLLCs that provide services under the public health code must themselves be licensed to provide those services.

There are two relevant statutes to the resolution of this case. The first is a provision in the no-fault act. MCL 500.3157 at the time relevant to this case[5] provided as follows:

> A physician, hospital, clinic or other person or *institution lawfully rendering* treatment to an injured person for an accidental bodily injury covered by personal protection insurance, and a person or institution providing rehabilitative occupational training following the injury, may charge a reasonable amount for the products, services and accommodations rendered. [Emphasis added.]

The second is this provision of the Michigan Limited Liability Company Act found in MCL 450.4904:

> (1) Except as provided in this section or otherwise prohibited, a professional limited liability company may render 1 or more professional services, and each

[4] ___ Mich App ___; ___ NW2d ___ (No. 350979, issued 12/22/2020). That opinion, however, also erroneously focused on the standing question rather than the true issue raised, whether failure to comply with the licensing requirement of the PLLC's members prevented the services from being lawfully rendered.

[5] The provision has been amended, but still includes the requirement of "lawfully rendering treatment."

member and manager must be a licensed person in 1 or more of the professional services rendered by the company.

(2) Except as provided in subsection (3) or (4), if a professional limited liability company renders a professional service that is included within the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, then all members and managers of the company must be licensed or legally authorized in this state to render the same professional service.

(3) One or more individuals licensed to engage in the practice of medicine under part 170, the practice of osteopathic medicine and surgery under part 175, or the practice of podiatric medicine and surgery under part 180 of article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, may organize a professional liability company under this article with 1 or more other individuals licensed to engage in the practice of medicine under part 170, the practice of osteopathic medicine and surgery under part 175, or the practice of podiatric medicine and surgery under part 180 of article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(4) Subject to section 17048 of the public health code, 1978 PA 368, MCL 333.17048, 1 or more individuals licensed to engage in the practice of medicine under part 170, the practice of osteopathic medicine and surgery under part 175, or the practice of podiatric medicine and surgery under part 180 of article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, may organize a professional limited liability company under this article with 1 or more physician's assistants licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838. Beginning on July 19, 2010, 1 or more physician's assistants may not organize a professional limited liability company under this act that will have only physician's assistants as members.

(5) A licensed person of another jurisdiction may become a member, manager, employee, or agent of a professional limited liability company, but shall not render any professional services in this state until the person is licensed or otherwise legally authorized to render the professional service in this state.

(6) A limited liability company may engage in the practice of architecture, professional engineering, or professional surveying in this state if not less than 2/3 of the members or managers of the limited liability company are licensed in this state to render 1 or more of the professional services offered. A professional limited liability company organized under this article may engage in the practice of architecture, professional engineering, or professional surveying in this state if all of the members and managers of the professional limited liability company organized under this article are licensed in this state to render 1 or more of the professional services offered.

(7) A professional limited liability company organized under this article may engage in the practice of public accounting, as defined in section 720 of the

> occupational code, 1980 PA 299, MCL 339.720, in this state if more than 50% of the equity and voting rights of the professional limited liability company are held directly or beneficially by individuals who are licensed or otherwise authorized to engage in the practice of public accounting under article 7 of the occupational code, 1980 PA 299, MCL 339.720 to 339.736.

Resolution of this case depends on how subsections (2) and (5) interact with each other. Subsection (2) clearly provides that, for a PLLC that renders services under the Public Health Code, such as Mercyland, "then all members and managers of the company must be licensed or legally authorized in this state to render the same professional service." This creates two requirements: (1) that all members must be licensed to render the same professional service[6] and (2) that all members are licensed in this state. Because Abraham is not licensed in this state, Mercyland does not fulfill this requirement.[7]

Our decision in *The Healing Place at North Oakland Medical Center v Allstate Ins Co*,[8] supports MEEMIC's position in that it holds that services are not compensable if not legally rendered.[9] In that case, the services were not legally rendered because the facility was required to be licensed and was not.[10] In this case, it is not a question of Mercyland's licensure, but the licensure status of its sole member and manager.

While the issue in *The Healing Place* was that the facility had to also be licensed, this Court noted that when both the individual rendering the service and the institution itself must be licensed, then both must be licensed in order for the service to be lawfully rendered.[11] And, as noted above, the PLLC act requires that the members and managers of a PLLC that renders services under the public health code must be licensed. Moreover, MCL 450.4201 requires compliance with MCL 450.4904: "A limited liability company formed to provide services in a learned profession, or more than 1 learned profession, shall comply with article 9."

The same principle that this Court applied in *The Healing Place* also applies here, albeit in a slightly different context: where licensure is required, a lack of such licensure renders the service

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[6] Subsections (3) and (4) do allow certain health professions in different disciplines to join together.

[7] Mercyland maintains that, because Abraham is licensed in another jurisdiction and does not provide services to patients in Michigan, subsection (5) allows him to be a member and manager of Mercyland. Subsection (5) does allow a "licensed person of another jurisdiction" to become a member or manager of a PLLC provided that they do not render professional services in Michigan until they become licensed in Michigan. But, as explained below, I do not find Mercyland's argument compelling.

[8] 277 Mich App 51, 55; 277 NW2d 51 (2007).

[9] *Id.* at 58.

[10] *Id.*

[11] 277 Mich App at 60.

not legally rendered. In *The Healing Place*, it was a lack of a facility license that was required by law. Here, it is a lack of a Michigan license by the member and manager of the PLLC. Moreover, in *The Healing Place*, this Court specifically considered and rejected the applicability of *Miller*, concluding that it was a different issue than merely considering whether there were defects in the formation of the corporation.[12] The same is true here; we are not merely dealing with a potential defect in the formation of the PLLC. Simply put, this case does not present an issue of standing to challenge the formation of the PLLC because that is not the issue presented. The issue that must be addressed is the licensing requirement of member and manager of the PLLC.

So, it must be determined whether it is required that Abraham, the sole member and manager, be licensed in Michigan or whether being licensed in a foreign jurisdiction is sufficient. I conclude that MCL 450.4904 requires that all members and managers of a PLLC that renders services under the public health code be licensed in the state of Michigan. Moreover, any such PLLC that includes a member or manager not licensed in Michigan is not lawfully rendering services.

This issue involves how subsection (2) and subsection (5) of the statute interact. I begin by looking to the relevant principles of statutory construction. First, where a specific provision in a statute is inconsistent with a more general provision, the specific provision controls.[13] Second, we do not give an interpretation that would render any language in the statute to be mere surplusage.[14]

With respect to the first rule, if the PLLC renders services under the public health code, MCL 450.4904(2) specifically requires that "all members and managers of the company must be licensed or legally authorized in this state to render the same professional service." This is a very specific provision. On the other hand, MCL 450.4904(5) generally provides that a professional licensed in another jurisdiction may become a member or manager of a PLLC. Because the specific provision of subsection (2) is in conflict with the general provision of subsection (5), the requirement of subsection (2) must control.

The second rule of statutory construction further supports this interpretation. If we were to interpret subsection (5) as holding that all professionals licensed in another jurisdiction may become a member or manager of a Michigan PLLC without also being licensed in Michigan, it would render the requirement of subsection (2) meaningless. That is, if subsection (5) grants the right of all foreign-licensed professionals to be members and managers of any Michigan PLLC, then the requirement of subsection (2) that "all members and managers of the company must be licensed or legally authorized in this state to render the same professional service" would have no meaning.

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[12] *The Healing Place*, 277 Mich App at 61.

[13] *Miller*, 481 Mich at 613.

[14] *The Healing Place*, 277 Mich App at 59.

The only logical construction of the statute that is consistent with these principles of statutory interpretation is that the Legislature, while generally intending to allow professionals licensed in other jurisdictions to become members and managers of a Michigan PLLC, specifically decided that it did not want this to be the case where the profession involved fell under the public health code. Indeed, this conclusion is further supported by a third principle of statutory construction, *expressio unius est exclusio alterius*, the express mention of one thing excludes another thing.[15] MCL 450.4904(3) and (4) expressly set forth which health professionals from different health-care disciplines may jointly form a PLLC,[16] with specific reference to the provisions of Michigan law under which they must be licensed. The Legislature clearly focused on which health professionals, and in what combinations, could form PLLCs, and further emphasized the need for Michigan licensure. It is clear to me that if the Legislature wanted to allow health professionals from foreign jurisdictions to become members and managers of a Michigan PLLC, it would have specifically included that. I can only conclude that the Legislature intentionally decided to exclude such foreign-licensed health professionals.

In conclusion, this case does not present a question of standing to challenge the formation of the PLLC. Rather, it presents an issue of the licensing requirements imposed upon members and managers of health care PLLCs in order for the PLLC to lawfully render services. I interpret MCL 450.4904 as requiring the members and managers of PLLCs that provide services under the public health code must be licensed in the state of Michigan. The failure to have such licensure results in the services provided by the PLLC not being lawfully rendered. And that means that services provided by such PLLCs are not subject to reimbursement under the no-fault act because of the limitation contained in MCL 500.3157. Accordingly, the trial court properly granted summary disposition in favor of MEEMIC.

I would affirm.

/s/ David H. Sawyer

[15] *Miller*, 481 Mich at 611.

[16] Specifically, doctors of medicine, osteopathy, and podiatry, along with physician's assistants.