

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, 2001

SOUTH DADE HEALTHCARE GROUP,
LTD. d/b/a DEERING HOSPITAL,

**

Petitioner,

**

vs.

CASE NO. 3D01-2582

**

**

MEHDI GHOMESHI, et al.,

LOWER

**

TRIBUNAL NO. 00-31722

Respondents.

**

Opinion filed December 19, 2001.

A Petition for Writ of Certiorari to the Circuit Court for
Dade County, Amy Dean, Judge.

Parenti, Falk, Waas, Hernandez & Cortina and Gail Leverett
Parenti, for petitioner.

Grossman and Roth and Claudia G. Greenberg; Holland & Knight
and Daniel Pearson, for respondents.

Before GERSTEN, GODERICH and SORONDO, JJ.

PER CURIAM.

In the underlying medical malpractice action, the

petitioner, South Dade Healthcare Group, Ltd. d/b/a Deering Hospital, petitions this Court for a writ of certiorari quashing the trial court's discovery order dated August 20, 2001, wherein it ordered the hospital to produce the redacted emergency room records of seven or eight non-party patients. Because the petitioner has failed to demonstrate a departure from the requirements of law, material harm, and a lack of adequate remedy by appeal, Community Psychiatric Ctrs. of Fla., Inc. v. Bevelacqua, 673 So. 2d 948, 950 (Fla. 4th DCA 1996); Staman v. Lipman, 641 So. 2d 453, 454 (Fla. 1st DCA 1994), we deny the petition.

GERSTEN and GODERICH, JJ., concur.

South Dade Healthcare Group, Ltd.
d/b/a Deering Hospital v. Mehdi
Ghomeshi et. al. Case No. 3D01-2582

SORONDO, J. (dissenting)

South Dade Healthcare Group, Ltd., d/b/a Deering Hospital, seeks a writ of certiorari quashing the trial court's discovery order dated August 20, 2001, wherein it ordered Deering Hospital to produce certain medical records of non-party patients.

On December 24, 1999, at 7:45 a.m., Mehdi Ghomeshi was taken by Fire Rescue to Deering Hospital. While he was being transported, Fire Rescue paramedics performed five EKGs. The fourth and fifth EKGs showed findings consistent with an evolving myocardial infarction. Based on these last two EKGs, the Fire Rescue paramedics requested permission from Dr. Masood U. Haque, the emergency room physician at Deering Hospital, to administer a thrombolytic drug, Retavase, in the field. Dr. Haque denied these requests.

When Ghomeshi arrived at the Hospital another EKG was performed that did not show the same abnormal findings. Dr. Haque examined Ghomeshi and concluded that he was suffering from gastritis and was not having a heart attack. He was discharged at 2:30 p.m. with a diagnosis of gastritis. Three days later, he was taken to South Miami Hospital where it was determined that he had suffered a myocardial infarction.

Ghomeshi and his wife, Navideh, brought suit against Deering Hospital, Dr. Haque, and Dr. Haque's employer alleging that they negligently failed to diagnose a myocardial infarction and that this failure resulted in a delay in instituting the necessary treatment and caused damage to his heart. Deering Hospital denied all allegations of negligence.

Plaintiffs served Deering Hospital with a Request for Production, seeking:

Medical records of emergency room records for patients who have been treated for Retavase or TPA for cardiac problems in the three (3) years prior to the incident, December 24, 1999, with the names of the patients and other identifying information redacted. See Gerber v. Iyengar, 725 So. 2d 1181 (Fla. 3d DCA 1998).

Deering Hospital objected to this request on the grounds that the plaintiffs had not demonstrated the requisite relevance to justify producing the 400-500 medical records of other patients as this case involved an alleged failure to diagnose. The trial court conducted a hearing and sustained Deering Hospital's objection without prejudice.

At a later hearing, the issue was revisited. Plaintiffs indicated that they only wanted the emergency room records of

the six or seven patients who had received Retavase in the field, pursuant to authorizations by emergency room physicians at Deering Hospital, as well as, the records of another patient for whom Dr. Haque was believed to have previously denied a request for the pre-hospital administration of Retavase. Plaintiffs argued that this discovery was relevant to the issues of standard of care and proximate causation. Deering Hospital objected again on the grounds that these records had no relevance in an alleged failure to diagnose case.

The trial court ordered Deering Hospital to produce the redacted emergency room records of the six or seven patients who had received Retavase in the field prior to treatment at Deering Hospital, as well as, the records of the other patient for whom Dr. Haque allegedly denied a prior request for the pre-hospital administration of Retavase.¹ The hospital asks this Court to quash the trial court's order.

I agree with Deering Hospital that the records at issue are irrelevant to the pending claims and defenses and unlikely to lead to the discovery of admissible evidence. Accordingly, the lower court's order constitutes a departure from the essential requirements of law. See Allstate Ins. Co. v. Langston, 655 So.

¹ At oral argument, counsel for the hospital indicated that the number of patient records is presently up to eleven.

2d 91 (Fla. 1995); Richard Mulholland & Associates v. Polverari, 698 So. 2d 1269 (Fla. 2d DCA 1997). Florida's district courts have held that certiorari is appropriate to review orders compelling discovery of medical records of non-party patients. Pusateri v. Fernandez, 707 So. 2d 892 (Fla. 2d DCA 1998); Colonial Med. Specialties of S. Florida, Inc. v. United Diagnostic Laboratories, Inc., 674 So. 2d 923 (Fla. 4th DCA 1996); Community Psychiatric Centers of Florida, Inc. v. Bevelacqua, 673 So. 2d 948 (Fla. 4th DCA 1996); Staman v. Lipman, 641 So. 2d 453 (Fla. 1st DCA 1994).

Plaintiff's claim of medical malpractice in this case is based on the attending physician's failure to properly diagnose a myocardial infarction. For two reasons, I do not believe that the requested records are relevant to the issues being litigated or are likely to lead to the discovery of relevant evidence. First, contrary to plaintiff's assertion, the records are not relevant to establish the standard of care. In 1997, Deering Hospital, along with two other hospitals in Miami-Dade County, entered into an agreement with the University of Miami to participate in a study to determine the feasibility of administering thrombolytic therapy in the pre-hospital setting. The study contemplated allowing paramedics to administer Retavase while en route to a hospital's emergency room by

applying strict inclusion/exclusion criteria. The study further contemplated that the emergency room physician in the receiving hospital would be the one who would authorize the use of Retavase.² Given the experimental nature of the procedures involved, I fail to see how the treatment of other patients involved in the experiment can possibly be relevant to the establishment of the standard of care.

Plaintiff's reliance on Gelber v. Iyengar, 725 So. 2d 1181 (Fla. 3d DCA 1999), is misplaced. In Gelber, plaintiff sought to introduce proof of Dr. Iyengar's established practice of administering a 1000 to 2000 unit bolus of heparin at the site of a cardiac catheterization. The question presented was whether proof of Dr. Iyengar's treatment of other patients during cardiac catheterizations was relevant to proving the standard of care. This Court held that "evidence of a doctor's customary practice is relevant in a medical malpractice case." Id. at 1184. The Court acknowledged that prior conduct is not conclusive on the issue of negligence, but that "what is usually done is . . . some evidence of the standard of care." Id. (emphasis added). The critical distinction between Gerber and the present case is that Dr. Iyengar's prior treatment of

² Both sides agree that thrombolytic agents such as Retavase are powerful, "clot-busting" drugs that must be administered with great care.

similarly situated non-party patients was within the normal scope of his practice. In the present case, the treatment of the non-party patients whose records are sought was part of a medical experiment and cannot possibly help establish the standard of care.

Second, perhaps more significant in the analysis of the issue presented is that plaintiff's claim of negligence is not based on the rendering of improper treatment following a correct diagnosis of myocardial infarction, but rather on a misdiagnosis of his condition. Whether Dr. Haque ordinarily authorized, or refused to authorize paramedics to administer thrombolytic therapy to patients in pre-hospital settings is irrelevant to plaintiff's claim of misdiagnosis.

I would grant certiorari and quash the trial court's discovery order. Accordingly, I respectfully dissent.