

STATE OF MICHIGAN
COURT OF APPEALS

JENNIFER PAUL,

Plaintiff-Appellant,

v

GLENDAL NEUROLOGICAL ASSOCIATES,
P.C.,

Defendant-Appellee.

FOR PUBLICATION
February 20, 2014

No. 309927
Oakland Circuit Court
LC No. 2011-118814-CP

Before: SERVITTO, P.J., and MURRAY and BOONSTRA, JJ.

SERVITTO, J. (*concurring in part/dissenting in part*).

While I agree that the trial court properly granted summary disposition in favor of defendant with respect to plaintiff's claims under the MCPA, I believe that the records plaintiff sought were within the scope of the MRAA. I, therefore, respectfully dissent from that part of the majority's opinion affirming the trial court's grant of summary disposition in favor of defendant on plaintiff's claim of violation of the MRAA.

As indicated by the majority, MCL 333.26265(1) provides a patient with the right to examine or obtain his or her medical record except as otherwise provided by law or regulation. The MRAA defines "[m]edical record" as "information oral or recorded in any form or medium that pertains to a patient's health care, medical history, diagnosis, prognosis, or medical condition and that is maintained by a health care provider or health facility in the process of caring for the patient's health." MCL 333.26263(i). "Health care" means "any care, service, or procedure provided by a health care provider or health facility to diagnose, treat, or maintain a patient's physical condition, or that affects the structure or a function of the human body." MCL 333.26263(d). A "patient" means "an individual who receives or has received health care from a health care provider or health facility." MCL 333.26263(n).

In granting summary disposition in defendant's favor, the trial court held that the records sought were not "medical records within the meaning of the MRAA." The trial court specifically focused its attention on the words "in the process of caring for the patient's health," taken from the MRAA's definition of "medical record," MCL 333.26263(i), and determined that, since the arthrogram and MRI performed on plaintiff were not undertaken for the sake of her health, the records were not covered by the MRAA. The majority likewise concludes that because the records of defendant's examination of plaintiff were for the benefit of a third party and the physician's duty when performing an independent medical examination is of a limited nature,

such records produced during the same do not qualify as being produced in “the process of caring for a patient’s health.” However, the MRAA contains a specific definition of medical records that the trial court and the majority unnecessarily limited.

To qualify as a medical record within the scope of the MRAA, a record must have only two qualities: (1) it must be “information oral or recorded in any form or medium that pertains to a patient’s health care, medical history, diagnosis, prognosis, or medical condition,” and (2) it must be “maintained by a health care provider or health facility in the process of caring for the patient’s health.” MCL 333.26263(i). That the requested records meet with the first criteria is not seriously disputed. The doctor conducting the MRI and arthrogram, Dr. Seidman, testified at his deposition that plaintiff’s medical procedures were performed to diagnose whether or not plaintiff had a problem with her shoulder and that his role in the context of his examination of plaintiff was the same as an independent medical examiner as it would have been outside of that context in that he was using the procedures to “[d]iagnose something wrong” with plaintiff.

I would further find that the requested records met the second criteria. Again, there is no dispute that the records were maintained by a health care provider. Where the majority and I part ways is our interpretation of the phrase “in the process of caring for the patient’s health.” “[C]aring for the patient’s health” is the verb form of “health care,” which the MRAA defines as “any care, service, or procedure provided by a health care provider or health facility to *diagnose*, treat, or maintain a patient’s physical condition, *or* that affects the structure or a function of the human body.” MCL 333.26263(d) (emphasis added). As Dr. Seidman indicated, he was performing the tests in order to diagnose plaintiff; he was performing tests in the process of caring for her health. I would thus find that the second criteria has been met.

Further, all health facilities and agencies that provide services to patients and are licensed under the Michigan Public Health Code are required to adopt and treat all patients in accordance with a policy that includes the following: “[A]n individual who is or has been a patient or resident is entitled to inspect, or receive for a reasonable fee, a copy of his or her medical record upon request in accordance with the medical records access act” MCL 333.20201(2)(b). Dr. Seidman testified that he is a licensed radiologist and a partner at defendant, who he is “pretty sure”, is licensed by the state as a health care facility. He testified that the defendant’s business is to provide healthcare to people and to, additionally, help physicians diagnose and treat their patients. As a “patient” is defined under the MRAA as an “an individual who receives or has received health care from a health care provider or health facility,” MCL 333.26263(n), and “health care” is broadly defined under the MRAA as “*any* care, service, or procedure provided by a health care provider or health facility to *diagnose*, treat, or maintain a patient’s physical condition, *or* that affects the structure or a function of the human body,” MCL 333.26263(d)(emphasis added), I would find that the records sought by plaintiff were, indeed, medical records within the meaning of the MRAA and that plaintiff was entitled to access said records consistent with both the MRAA and the Public Health Code. I would therefore reverse the trial court’s grant of summary disposition in defendant’s favor and instead enter summary disposition in favor of plaintiff on this issue.

/s/ Deborah A. Servitto