

[J-21-2020] [MO: Todd, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

KATHRYN F. LEIGHT AND JOHN L.
 LEIGHT, HER HUSBAND,

Appellants

v.

UNIVERSITY OF PITTSBURGH
 PHYSICIANS, UPMC, UNIVERSITY OF
 PITTSBURGH OF THE COMMONWEALTH
 SYSTEM OF HIGHER EDUCATION,
 SUSAN SHICK, AND PHILLIP L. CLARK,
 ADMINISTRATOR OF THE ESTATE OF
 JOHN F. SHICK, DECEASED,

Appellees

: No. 35 WAP 2019
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 : Appeal from the Order of the
 : Superior Court entered December
 : 31, 2018 at No. 1912 WDA 2017,
 : affirming the Order of the Court of
 : Common Pleas of Allegheny County
 : entered December 15, 2017 at No.
 : GD12-9942.
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 : ARGUED: May 19, 2020
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CONCURRING OPINION

JUSTICE DOUGHERTY

DECIDED: DECEMBER 22, 2020

I join the majority opinion. I write separately to add that, as a general proposition, I agree with the broad strokes developed by Justice Wecht in his concurring opinion, *i.e.*, the MHPA does not preclude common law claims against mental health treatment providers and, had we been faced with such a claim on this record, the result might arguably be different. *See generally* Concurring Opinion at 4, 11-12; *see also Maas v. UPMC Presbyterian Shadyside*, 234 A.3d 427, 439 (Pa. 2020) (treatment providers had duty to warn “readily identifiable” victims). However, the statute we are charged with interpreting does not authorize recovery under the present circumstances. As the majority explains, the relevant provision grants immunity in some cases, and by

implication, allows civil liability in others. See Majority Opinion at 20-21. A situation where the defendant-physician “participates in a decision that a person be examined or treated” under the MHPA, and where that decision to examine or treat is made with “willful misconduct or gross negligence,” may be actionable under the statute. 50 P.S. §7114(a) (“In the absence of willful misconduct or gross negligence ... a physician ... who participates in a decision that a person be examined or treated under this act ... shall not be civilly or criminally liable for such decision or for any of its consequences.”). But the statute as written is simply not susceptible to an interpretation that a provider’s failure to treat is actionable, and we may not supply these missing words.