



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

	§	No. 08-22-00149-CV
THE STATE OF TEXAS	§	Appeal from the
FOR THE BEST INTEREST AND	§	Probate Court No. 2
PROTECTION OF A.R.C.	§	of El Paso County, Texas
	§	(TC# 2022-CMH00771)

DISSENTING OPINION

Section 574.009 of the Texas Health and Safety Code (the Code) sets out the requirements for medical examination in an action for court-ordered mental health services. Relevant to this appeal,

[a] hearing on an application for court-ordered mental health services may not be held unless there are on file with the court at least two certificates of medical examination for mental illness completed by different physicians[,] each of whom has examined the proposed patient during the preceding 30 days. At least one of the *physicians* must be a *psychiatrist* if a *psychiatrist* is available in the county.

TEX. HEALTH & SAFETY CODE ANN. § 574.009(a) (emphasis added). The parties dispute the meaning of the term “psychiatrist,” as included in this provision. The majority ultimately decides the legislature intended “psychiatrist” to be a “more qualified physician,” than a physician who is a postgraduate resident who is licensed by the state to provide mental health treatment under the

direction of and enrolled in an approved psychiatry training program. Because I disagree with this conclusion, I respectfully dissent.

Section 574.009 appears within Title 7, subtitle C, of the Texas Health and Safety Code, entailing provisions for Mental Health and Intellectual Disability. *See generally id.* §§ 571.001–578.008. Chapter 574 provides for “Court-Ordered Mental Health Services.” *See id.* §§ 574.001–.203. As the majority correctly observes, definitions are provided for this subtitle. *See id.* § 571.003. “Physician” is defined as “a person licensed to practice medicine in this state” or “a person authorized to perform medical acts under a physician-in-training permit at a Texas postgraduate training program approved by the Accreditation Council for Graduate Medical Education [(ACGME)] . . . or the Texas Medical Board.” *Id.* § 571.003(18)(A), (C). No definition is included for the term “psychiatrist.” *See id.* § 571.003. Here, that absence leads to the controversy over the meaning of the undefined term.

When construing a statute, our primary objective is to ascertain and give effect to the legislature’s intent. *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011). To do so, we begin with the statute’s words. *Id.*; *see also Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865–66 (Tex. 1999) (noting that the legislature’s words are the best guide to its intent). We presume the legislature chooses a statute’s language with care, including each word chosen for a purpose, while purposefully omitting words not chosen. *TGS-NOPEC*, 340 S.W.3d at 439. Ordinarily, words and phrases “shall be read in context and construed according to the rules of grammar and common usage.” *Crosstex Energy Servs., L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 389–90 (Tex. 2014) (quoting TEX. GOV’T CODE ANN. § 311.011). However, if a statute defines a term, or it has acquired a technical or particular meaning, a court is bound to construe the term accordingly. TEX. GOV’T CODE ANN. § 311.011(b); *Texas Dep’t of Transp. v.*

Needham, 82 S.W.3d 314, 318 (Tex. 2002). Ultimately, we consider statutes as a whole, and not by their isolated provisions. *Cadena Comercial USA Corp. v. Texas Alcoholic Beverage Comm’n*, 518 S.W.3d 318, 326 (Tex. 2017) (“[O]ur objective is not to take definitions and mechanically tack them together . . . rather, we consider the context and framework of the entire statute and meld its words into a cohesive reflection of legislative intent.”).

Within its opinion, the majority says it will not decide the “technical meaning, if any, of psychiatrist.” Instead, it looks at the meaning of “postgraduate resident,” a relevant term but one not in dispute. Relying on rules promulgated under the authority of the Medical Practice Act, the majority notes a “postgraduate resident” is defined as “[a] physician who is in postgraduate training as an intern, resident, or fellow in an approved postgraduate training program or a board-approved fellowship.” *See* 22 TEX. ADMIN. CODE ANN. § 171.3(a)(5). And the rule further provides that “[a] physician-in-training permit is a permit issued by the board in its discretion to a physician who does not hold a license to practice medicine in Texas and is enrolled in a training program as defined in paragraphs (1), (2), and (4) of this subsection in Texas, regardless of his/her postgraduate year (PGY) status within the program.” *Id.* § 171.3(6). The majority otherwise notes that the TAC rule and the Mental Health Code both broadly define the term “physician” such that it includes persons who are “postgraduate residents.”

But the primary dispute of this case still hinges on the meaning of “psychiatrist.” Comparing “physician” with “psychiatrist,” the majority determines the legislature chose to include postgraduate residents within the meaning of physicians who are authorized to complete at least one CME. But it further notes the legislature wholly forewent the opportunity to similarly define the term “psychiatrist.” Based on this apparent distinction between the terms—one defined to include residents while the other left undefined—the majority concludes the legislature acted

deliberately such that it, “intentionally car[ried] out a less-restrictive requirement as to one of the minimum two required CMEs, but ensur[ed] that a more qualified physician, a ‘psychiatrist,’ complete[d] at least one of the CMEs when such a more specialized physician was available.” In other words, without defining the meaning of “psychiatrist,” the majority ultimately decides, at minimum, that inclusion of that term entailed a requirement that at least one CME be performed by “a more qualified physician,” when available. That is, the majority concludes that a postgraduate resident qualifies to perform as “a physician” but does not otherwise qualify as “a psychiatrist,” regardless of expertise or enrollment in a psychiatry training program. Because I would define the term “psychiatrist” by its technical meaning, I disagree.

When a word or phrase has acquired a technical or particular meaning; it must be construed accordingly. *In re Texas Educ. Agency*, 619 S.W.3d 679, 687 (Tex. 2021); *In re NCS Multistage, LLC*, No. 08-21-00020-CV, 2021 WL 4785743, at *9 (Tex. App.—El Paso Oct. 14, 2021, orig. proceeding); *EP Hotel Partners, LP v. City of El Paso*, 527 S.W.3d 646, 655 (Tex. App.—El Paso 2017, no pet.); *see also* TEX. GOV’T CODE ANN. § 311.011(b). When doing so, we may consult appropriate trade sources, to include reference materials or expert testimony. *State v. Kaiser*, 822 S.W.2d 697, 700 (Tex. App.—Fort Worth 1991, pet. ref’d); *Lloyd A. Fry Roofing Co. v. State*, 541 S.W.2d 639, 642–43 (Tex. App.—Dallas 1976, writ ref’d n.r.e.) (“If such a technical term is not defined in the statute, courts have interpreted the statutes in the light of the testimony of expert witnesses familiar with the particular art, science, or trade.”); *see also Reliant Energy, Inc. v. Pub. Util. Comm’n of Texas*, 62 S.W.3d 833, 836 n.2 (Tex. App.—Austin 2001, no pet.) (consulting administrative rules to determine a technical meaning). When the art, science, or trade involves the practice of medicine, courts may consider how medical dictionaries define a particular term of art. *See, e.g., Texas State Bd. of Exam’rs of Marriage & Family Therapists v. Texas Med. Ass’n*,

511 S.W.3d 28, 35 (Tex. 2017) (consulting medical dictionary for the definition of terms such as “remedy,” “evaluate,” and “diagnose”); *Texas Orthopaedic Ass’n v. Texas State Bd. of Podiatric Med. Exam’rs*, 254 S.W.3d 714, 721 (Tex. App.—Austin 2008, pet. denied) (consulting anatomy atlas to determine the meaning of “foot” in medical licensing context); *State v. Bingham*, 921 S.W.2d 494, 496 (Tex. App.—Waco 1996, pet. ref’d) (looking to medical dictionary and testimony of phlebotomist to define phrase “qualified technician”).

Trade sources that include reference materials and expert testimony indicate the term “psychiatrist” has acquired a technical meaning. First, medical dictionaries provide that “psychiatrist” is defined as “a physician who specializes in psychiatry.” *Dorland’s Illustrated Medical Dictionary* 1383 (27th ed. 1988). In turn, “psychiatry” is defined as “that branch of medicine which deals with the study, treatment, and prevention of mental disorders.” *Id.* Thus, a psychiatrist is simply a type of physician, one who specializes in psychiatry. Other specialists within the medical profession follow a similar pattern. For example, a “cardiologist” is “a physician skilled in the diagnosis and treatment of heart disease,” while a “pediatrician” is defined as “a physician who specializes in pediatrics.” *Id.* at 274, 1246. These definitions all show that a medical specialist is simply a physician specializing in the treatment of diseases or disorders in a particular area or branch of medicine.

Second, as the State points out in its briefing, administrative rules promulgated by authoritative bodies have also defined the undefined term. “Psychiatrist” is defined by the administrative rules of both the Department of State Health Services (DSHS), serving as the state’s mental health authority, and the Department of Aging and Disability Services (DADS), serving as the state’s intellectual disability authority. *See* 25 TEX. ADMIN. CODE ANN. § 415.3; *see also* 40 TEX. ADMIN. CODE ANN. § 5.3. Both of these authorities define “psychiatrist” broadly to include a

physician who is currently in training in an approved psychiatry training program and is supervised by a board eligible or board-certified psychiatrist. *See* 25 TEX. ADMIN. CODE ANN. § 415.3(13); *see also* 40 TEX. ADMIN. CODE ANN. § 5.3(13).

Lastly, the State presented expert testimony to the trial court addressing the meaning of the term “psychiatrist.” Before testimony was received from Dr. Kutcher-Diaz, Appellant stipulated that he qualified as an expert in clinical psychiatry. When asked whether he considered himself to be a psychiatrist, Dr. Kutcher-Diaz answered, “Yes.” Asked to explain, he responded, “Well, because I treat patients with mental illness, and I use medications. And . . . that’s part of my . . . job process[.]” Dr. Kutcher-Diaz also confirmed that he held an active medical license to practice medicine in the state, that is, a physician-in-training permit. He further testified that he practiced medicine under the supervision of other physicians as part of his psychiatry residency with the Paul L. Foster School of Medicine, Texas Tech Health Sciences Center, El Paso.

Because “psychiatrist” has acquired a technical meaning, I would construe the term accordingly. *See In re Texas Educ. Agency*, 619 S.W.3d at 687; TEX. GOV’T CODE ANN. § 311.011(b). Based on reference materials and expert testimony that is part of this record, I would construe “psychiatrist” as a physician who specializes in that branch of medicine that deals with the study, treatment, and prevention of mental disorders. In turn, the term “physician,” which is included in the meaning of psychiatrist, is defined by section 571.003(18)(C) of the Mental Health Code to include a person authorized to perform medical acts under a physician-in-training permit at a Texas postgraduate training program. *See* TEX. HEALTH & SAFETY CODE ANN. § 571.003(18)(C). Here, Dr. Kutcher-Diaz provided uncontested testimony that he met such requirements including having the required training, supervision, and permit. Accordingly, I would conclude the requirements of section 574.009(a) were met as the required number of certified

medical examinations were on file with the court prior to the hearing. *See id.* § 574.009(a). Lastly, although the majority does not address Appellant’s second issue, I would also conclude the evidence was legally and factually sufficient to establish that Appellant was suffering from a mental illness and, as a result, he was both at risk of harm to self and unable to function independently. Thus, I would affirm the trial court’s ruling.

GINA M. PALAFOX, Justice

September 21, 2022

Before Rodriguez, C.J., Palafox, and Alley, JJ.