STATE OF MICHIGAN

COURT OF APPEALS

GERMAINE J. MAVIGLIA,

Plaintiff-Appellee,

v

WEST BLOOMFIELD NURSING & CONVALESCENT CENTER, INC., BEAUMONT NURSING HOME SERVICES, INC., and WEST BLOOMFIELD NURSING & CONVALESCENT CENTER JOINT VENTURE,

Defendants-Appellants.

UNPUBLISHED
November 9, 2004

No. 248796
Oakland Circuit Court
LC No. 2002-041739-NH

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Defendants appeal by leave granted the order granting plaintiff's motion to compel discovery of incident reports at defendants' nursing home. In the course of this negligence action, the trial court granted plaintiff's request for discovery of incident reports related to her residency at the nursing home. We hold that because the incident reports are data collected for the purposes of professional review, they should not be subject to discovery in a negligence/malpractice case. Accordingly, we reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The primary purpose of statutory interpretation is to ascertain and give effect to the intent of the Legislature as expressed in the language of the statute. *In re Lieberman*, 250 Mich App 381, 386; 646 NW2d 149 (2002). MCL 333.20175(8) provides:

> The records, data, and knowledge collected for or by individuals or committees assigned a professional review function in a health facility or agency, or an institution of higher education in this state that has colleges of osteopathic and human medicine, are confidential, shall be used only for the purposes provided in this article, are not public records, and are not subject to court subpoena.

And MCL 333.21515, which is applicable to hospitals, similarly provides:

> The records, data, and knowledge collected for or by individuals or committees assigned a review function described in this article are confidential and shall be used only for the purposes provided in this article, shall not be public records, and shall not be available for court subpoena.

In *Lieberman, supra* at 387, this Court explained the purpose and intent of §21515 as follows:

> The clear language of § 21515 provides: (1) peer review information is confidential, (2) peer review information is to be used "only for the purposes provided in this article," (3) peer review information is not to be a public record, and (4) peer review information is not subject to subpoena. Section 21515 demonstrates that the Legislature has imposed a comprehensive ban on the disclosure of any information collected by, or records of the proceedings of, committees assigned a professional review function in hospitals and health facilities. If the specific mention of a court subpoena meant that the privilege existed only as a defense against a subpoena, the statute's general language stating that peer review materials are confidential would become nearly meaningless. Although the statute does not refer to search warrants, it would be inconsistent with the stated purposes of the privilege to find that peer review information could be obtained pursuant to an investigatory search warrant. The protection against discovery through subpoena would effectively evaporate if an investigator needed only to obtain a search warrant instead.
>
> Underscoring the high level of confidentiality attendant to peer review documents is the statutory admonishment that such information is to be *used only for the reasons set forth in the legislative article including that privilege.* [Emphasis in original.]

Plaintiff's reliance on *Centennial Healthcare Mgt Corp v Dep't of Consumer & Industry Services*, 254 Mich App 275, 290; 657 NW2d 746 (2002), is misplaced. In that case, this Court found that the incident reports, accident reports, and other records prepared in compliance with the administrative rules, which contained only factual information rather than the assessments of the peer review committee, were not within the scope of the privilege. The *Centennial* Court explained:

> Certainly, in the abstract, a peer review committee cannot properly review performance in a facility without hard facts at its disposal. However, it is not the facts themselves that are at the heart of the peer review process. Rather, it is what is done with those facts that is essential to the internal review process, i.e., a candid assessment of what those facts indicate, and the best way to improve the situation represented by those facts. Simply put, the logic of the principle of confidentiality in the peer review context does not require construing the limits of the privilege to cover any and all factual material that is assembled at the direction of a peer review committee. [*Id.* at 290.]

We agree with defendants that this reasoning should be limited to the context of where the state agency responsible for regulating nursing homes requires the collection of incident and accident information:

> In the context of the circumstances in the case at bar, it is true that Westgate's peer review committee could not effectively do its work without collecting basic information about the various incidents and accidents that occur at a nursing home. However, it is not the existence of the facts of an incident or accident that must be kept confidential in order for the committee to effectuate its purpose; it is how the committee discusses, deliberates, evaluates, and judges those facts that the privilege is designed to protect. We conclude that in order to effectuate other purposes outlined in the Public Health Code--especially those involving licensing--the statutory peer review privilege outlined in subsection 21075(8) is not undermined by administrative rules requiring a nursing home to keep and make available for review and copying incident reports and accident records that contain basic factual material but do not require the reporting of the internal deliberative process of a peer review committee. [*Id.* at 291].

The *Centennial* Court's decision and reasoning is not applicable where, as here, the party seeking disclosure of the information is a private litigant. MCL 333.20175(8) clearly bars release of the "records, data, and knowledge collected for or by individuals or committees assigned a professional review function in a health facility." The accompanying regulation, 1979 AACS, R 325.21101, also relied on by plaintiff, provides that accident records and incident reports shall be kept in the home and shall be available to the director or his or her authorized representative for review and copying if necessary. But the rule only authorizes copying of the reports by the director or an authorized representative. It does not indicate that the reports should be available for copying by anyone else.

Reversed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Michael R. Smolenski