

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

WALTER M. LUCAS, III, DDS,

Defendant-Appellee.

UNPUBLISHED

August 22, 2006

No. 260798

Ingham Circuit Court

LC No. 02-001259-FH

Before: Cavanagh, P.J., and Smolenski and Talbot, JJ.

TALBOT, J. (*concurring*).

Although the trial court did not address defendant's alternative argument that he is not a "health care provider" and that his patient files are not "medical records or charts" within the meaning of MCL 750.492a, and resolution of this issue is, therefore, not required to dispose of this case, I nonetheless address this issue for the sake of judicial economy because it will likely arise again on remand.

MCL 750.492a provides, in pertinent part, as follows:

(1) Except as otherwise provided in subsection (3), a health care provider or other person, knowing that the information is misleading or inaccurate, shall not intentionally, willfully, or recklessly place or direct another to place in a patient's medical record or chart misleading or inaccurate information regarding the diagnosis, treatment, or cause of a patient's condition.

I would hold that defendant is a "health care provider" under MCL 750.492a. Although MCL 750.492a does not define the term "health care provider[.]" the definition of "health care provider" in MCL 333.26263(e) includes dentists,¹ and I find the definition persuasive. Further, common sense dictates that a practicing dentist provides health care to his patients in the form of

¹ MCL 333.26263(e) provides in pertinent part: "'Health care provider' means a person who is licensed or registered or otherwise authorized under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, to provide health care in the ordinary course of business or practice of a health profession." MCL 333.16601(c) provides, "'Dentist' means an individual licensed under this article to engage in the practice of dentistry."

dental care. See *Frierson v West American Ins Co*, 261 Mich App 732, 734; 683 NW2d 695 (2004) (holding that “courts should not abandon common sense when construing a statute”).

Similarly, defendant argues that the charts at issue are not “medical records or charts” under MCL 750.492a, but are “dental treatment charts” under 1999 AC, R 338.11120. Although MCL 750.492a does not define “medical record,” that term is defined elsewhere by the Legislature. MCL 333.26263(i) states, “‘Medical record’ means 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 the patient’s health.” I find the definition in MCL 333.26263(i) persuasive and applicable here. Because defendant is a health care provider, and information regarding dental treatment clearly concerns the health of his patients, dental treatment charts constitute medical records under MCL 750.492a.

Moreover, even though these records may be more specifically termed dental treatment records by administrative rule, this alone would not preclude these same records from also being medical records. An object can be defined both generally and specifically, and the use of a specific definition and a general definition is not mutually exclusive or inherently contradictory. In other words, the records at issue can consistently be defined broadly as medical records and also be defined more narrowly as dental treatment charts.²

For the foregoing reasons, I would hold that the allegations against defendant fall within the scope of MCL 750.492a. I join in the majority’s opinion in all other respects.

/s/ Michael J. Talbot

² Defendant also argues that, because MCL 600.2169(1) distinguishes between physicians and dentists, the records at issue are not medical records. However, the language cited by defendant as current has been omitted since 1993, and the earliest instance of alleged fraud occurred in 1997. Thus, defendant’s argument lacks merit.