

STATE OF MICHIGAN
COURT OF APPEALS

CRYSTAL A. AVRAM,

Plaintiff-Appellant,

v

OAKWOOD HOSPITAL CORPORATION, d/b/a
OAKWOOD HOSPITAL MEDICAL CENTER,

Defendant-Appellee.

UNPUBLISHED

October 5, 2001

No. 222428

Wayne Circuit Court

LC No. 97-728412-NH

Before: K. F. Kelly, P.J., and Hood and Zahra, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the trial court's order granting defendant's motion in limine. We affirm.

Plaintiff was admitted to defendant hospital for a laminectomy. Following the surgery, plaintiff allegedly suffered an allergic reaction to the pain medication. A third year resident, Dr. Daphine Brown, treated plaintiff. Plaintiff alleged that Dr. Brown erroneously doubled the dose of benadryl and improperly administered the medication intravenously, when it should have been given intramuscularly. Dr. Brown's contract with defendant was later terminated. Plaintiff obtained a report of change in staff privileges completed by defendant from the Michigan Department of Consumer and Industry Services. In the report, Dr. John Battle, director of medical education for defendant, indicated the following reason for the termination:

On October 25, 1996, Dr. Brown was advised that her contract with Oakwood Hospital & Medical Center [defendant] was being terminated and that her residency with the Hospital was being summarily suspended, based on inappropriate interactions and communications with residents, medical students, doctors, staff, patients, and their families. The action was also based on medical treatment evidencing lack of medical judgement [sic] and knowledge such as would be expected of a third year resident. Specifically, on October 4, 1996, Dr. Brown was called to evaluate a patient experiencing a rapid heart rate and shortness of breath. The diagnosis that she made was not supported by the symptoms and findings, and the treatment that she instituted was not appropriate.

Plaintiff indicated that the last two sentences of the change in status report constituted an admission of medical malpractice that was binding on defendant. However, defendant filed a

motion in limine to have the document excluded from trial, alleging that it was privileged material. Plaintiff alleged that she was prejudiced by defendant's failure to admit medical malpractice and would be forced to present experts who would merely concur in the admission by defendant. The trial court concluded that the document was privileged and granted defendant's motion in limine. We granted plaintiff's application for leave to appeal.

Plaintiff argues that the trial court erred in concluding that defendant's report of change in staff privileges provided to the state department was inadmissible. We disagree. A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *Meyer v City of Center Line*, 242 Mich App 560, 568; 619 NW2d 182 (2000). However, whether the document at issue is barred by statute presents a question of law that we review de novo. *Dye v St John Hosp & Medical Center*, 230 Mich App 661, 665; 584 NW2d 747 (1998). The primary goal of statutory interpretation is to give effect to the intent of the Legislature. *In re Telecommunications Complaint*, 460 Mich 396, 511; 596 NW2d 164 (1999). This determination is accomplished by reviewing the plain language of the statute itself. *Id.* If the statutory language is unambiguous, it is presumed that the Legislature intended the clearly expressed meaning, and judicial construction is neither required nor permitted. *DiBenedetto v West Shore Hosp*, 461 Mich 394, 402; 605 NW2d 300 (2000). When two statutes relate to the same subject or share a common purpose, the statutes are in pari materia. *Jackson Community College v Dep't of Treasury*, 241 Mich App 673, 681; 621 NW2d 707 (2000) quoting *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998). That is, the statutes must be read together as one law, even where the statutes do not reference to one another and were enacted on different dates. *Id.*

MCL 330.20101 *et seq.* sets forth rules and regulations governing health facilities and agencies. MCL 333.20175(5) provides that any disciplinary action taken against a licensed health professional shall be reported to the department of consumer and industry services.¹ At the time of the alleged medical malpractice, MCL 333.20175(8) set forth the use of the information provided by a health agency:²

The records, data, and knowledge collected for or by individuals or committees assigned a professional review function in a health facility or agency, are confidential, shall be used only for the purposes provided in this article, are not public records, and are not subject to court subpoena.

Furthermore, MCL 331.533 reinforces the provisions of MCL 333.20175 and provides that the reports, findings, and conclusions by a review entity "are confidential, are not public records, and are not discoverable and shall not be used as evidence in a civil action or administrative proceeding." Pursuant to the plain language of MCL 333.20175(8) and reading the statute in pari materia with MCL 331.533, the document cannot be utilized as an admission in a civil trial. In *Attorney General v Bruce*, 422 Mich 157, 169-170; 369 NW2d 826 (1985), our Supreme Court stated that subjecting MCL 333.20175 to the discovery process would result in the

¹ At the time of the alleged medical malpractice, MCL 333.20175 provided that the disciplinary action shall be reported to the department of commerce.

² MCL 333.20175(8) was amended effective October 24, 2000, to reflect that this subsection also applied to institutions of higher education with colleges of osteopathic and human medicine.

termination of the discussions and deliberations designed to improve hospital care. Plaintiff's attempts to distinguish the *Bruce* decision are without merit. See also *Dye, supra*.

Plaintiff also argues that prejudice is the net result of the failure to admit the change in status report. We disagree. Generally, expert testimony is required to establish the standard of care in a medical malpractice action and to demonstrate the defendant's alleged failure to conform to that standard. *Cox v Flint Brd of Hosp Managers (On Remand)*, 243 Mich App 72, 86; 620 NW2d 859 (2000). Plaintiff merely carries the same burden as any other plaintiff alleging a claim of medical malpractice would have.

Affirmed.³

/s/ Kirsten Frank Kelly
/s/ Harold Hood
/s/ Brian K. Zahra

³ Because of our disposition, we need not address defendant's argument that the document is excludable as evidence of a subsequent remedial measure.