

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ALLSTATE INSURANCE COMPANY,

Plaintiff/Counterdefendant-  
Appellant,

v

A&A MEDICAL TRANSPORTATION  
SERVICES, INC., RENAISSANCE PHYSICAL  
THERAPY, LLC, RAHAT MALIK,  
PHYSICIANS REHABILITATION, LLC,  
ZUBAIR RATHUR, IMAN FAWAZ, and FIRST  
CHOICE REHAB, INC.,

Defendants/Counterplaintiffs-  
Appellees.

UNPUBLISHED  
January 23, 2007

No. 260766  
Oakland Circuit Court  
LC No. 2002-039177-CZ

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ALLSTATE INSURANCE COMPANY,

Plaintiff/Counterdefendant-  
Appellant,

v

A&A MEDICAL TRANSPORTATION  
SERVICES, INC., RENAISSANCE PHYSICAL  
THERAPY, LLC, RAHAT MALIK,  
PHYSICIANS REHABILITATION, LLC,  
ZUBAIR RATHUR, IMAN FAWAZ, and FIRST  
CHOICE REHAB, INC.,

Defendants/Counterplaintiffs-  
Appellees.

No. 261504  
Oakland Circuit Court  
LC No. 2002-039177-CZ

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KELLY, P.J. (*concurring*).

Relying on *Miller v Allstate Ins Co*, \_\_\_ Mich App \_\_\_, \_\_\_NW2d \_\_\_ (2006), the majority concludes that even if the defendants operating as clinics are improperly incorporated, “MCL 500.3157 does not operate to prevent an insurer from being obligated to make no-fault insurance payments for services that are otherwise properly rendered.” *Ante* at \_\_\_. I concur in the result reached by the majority, but only because I am compelled to do so pursuant to MCR 7.215(J)(1). Were it not for the precedential effect of *Miller*, I would conclude that because defendants were not licensed health care providers nonetheless purporting to render health care through their employees, they could not and, under the circumstances, did not lawfully render treatment to plaintiff’s insureds. As such, defendants are not authorized by MCL 500.3157 to “charge a reasonable amount for the products, services and accommodations rendered.”

Licensed health care professionals employed by defendants provided healthcare services to plaintiff’s insureds for injuries suffered in motor vehicle accidents. Pursuant to Michigan’s no-fault act, MCL 500.3101 *et seq.*, defendants sought payment for those services. MCL 500.3157, provides:

A physician, hospital, clinic or other person or institution lawfully rendering treatment to an injured person for an accidental bodily injury covered by personal protection insurance, and a person or institution providing rehabilitative occupational training following the injury, may charge a reasonable amount for the products, services and accommodations rendered. The charge shall not exceed the amount the person or institution customarily charges for like products, services and accommodations in cases not involving insurance.

Plaintiff challenges defendants’ entitlement to payment of no-fault benefits, arguing that defendants did not lawfully render treatment because they were unlawfully organized in an improper corporate form. More specifically, plaintiff argues that to lawfully provide health care services, defendants must be organized as either a professional corporation (PC) or a professional limited liability company (PLLC.)

Resolution of the issue on appeal, requires interpretation of statutes applicable to the formation of business entities and the no-fault act. The primary goal in statutory interpretation is to determine and give effect to the Legislature’s intent. *Nastal v Henderson & Assocs Investigations, Inc*, 471 Mich 712, 720; 691 NW2d 1 (2005). The language used is given its common and ordinary meaning. *Id.* If the statutory language is clear and unambiguous, no judicial construction is necessary; the court must interpret the statute according to the meaning clearly expressed by the Legislature. *Id.* If the language is ambiguous, this Court must strive to give effect to the intent of the Legislature by applying a reasonable construction, considering the purpose of the statute and the object it seeks to accomplish. *Macomb Co Prosecutor v Murphy*, 464 Mich 149, 158; 627 NW2d 247 (2001).

At least one the defendants in this case is organized as a corporation. A corporation may be formed under the Business Corporation Act, MCL 450.1101, *et seq.* MCL 450.1251(1) provides:

A corporation may be formed under this act for any lawful purpose, *except to engage in a business for which a corporation may be formed under any other*

*statute of this state unless that statute permits formation under this act.*  
[Emphasis added].

Under the clear and express terms of § 251(1), defendants could validly incorporate under the BCA if it was not engaged in a business for which a corporation may be formed under another statute, unless that statute permitted formation under the BCA. Accordingly, it must be determined whether defendants were engaging in a business for which a corporation may be formed under another statute, and, if so, whether that other statute permitted formation under the BCA.

The Professional Service Corporation Act (PSCA), MCL 450.221 *et seq.*, permits the formation of a corporation to render “professional services.” Specifically, MCL 450.224 provides, in relevant part:

(1) One or more licensed persons may organize under this act to become a shareholder or shareholders of a professional corporation for pecuniary profit.

(2) Except as otherwise provided in subsections (3) or otherwise prohibited, a professional corporation may render 1 or more professional services, except that each shareholder must be a licensed person in 1 or more of the professional services rendered by the corporation.

The PSCA defines “professional corporation” as a “corporation that is organized under this act for the sole and specific purpose of rendering 1 or more professional services and has as its shareholders only licensed persons, the personal representatives or estates of individuals, or other persons as provided in section 10.” MCL 450.222(b). Under this definition, only a corporation that renders professional services may qualify as a professional corporation. MCL 450.222(c) states:

“Professional service” means *a type of personal service to the public that requires as a condition precedent to the rendering of the service the obtaining of a license or other legal authorization.* Professional service includes, but is not limited to, services rendered by certified or other public accountants, chiropractors, dentists, optometrists, veterinarians, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropodists, architects, professional engineers, land surveyors, and attorneys at law.  
[Emphasis added.]

The medical and rehabilitation services that were rendered by defendants’ employees are personal services to the public that require a license from the State of Michigan. Therefore, the PSCA would permit defendants to form a professional corporation, but only if each shareholder is an licensed person in 1 or more of the professional services rendered by the corporation. In this case, all of defendants’ shareholders were not so licensed. Nonetheless, they purported to operate a business for which a corporation may be formed under the PSCA and the PSCA does not permit formation of such a corporation under the BCA. MCL 450.1251(1) precludes this. Therefore, I would conclude that defendants could neither properly incorporate under the PSCA or the BCA.

Other defendants in this case are organized as LLCs. They are governed by the Michigan Limited Liability Company Act (MLLCA), MCL 450.4101 *et seq.* MCL 450.4201 provides:

A limited liability company may be formed under this act for any lawful purpose for which a domestic corporation or a domestic partnership could be formed, except as otherwise provided by law. A limited liability company formed to provide services in a learned profession, or more than 1 learned profession, shall comply with article 9.

Article 9 of the MLLCA pertains to LLCs rendering professional services. MCL 450.4901(1) states: "A limited liability company formed to render 1 or more professional services, as defined in section 902 may be organized under this article as a professional liability company." The statute further provides: "One or more licensed persons may organize and become members of a professional limited liability company." MCL 450.4903(1).

MCL 450.4902 defines certain terms used in the MLLCA:

(a) "Licensed person" means an individual who is licensed or otherwise legally authorized to practice a professional service by a court, department, board, commission, or an agency of this state or another jurisdiction, any corporation or professional services corporation all of whose shareholders are licensed persons, any partnership all of whose partners are licensed persons, or any limited liability company all of whose members and managers are licensed persons.

(b) "Professional service" means a type of personal service to the public that requires as a condition precedent to the rendering of the service the obtaining of a license or other legal authorization. Professional service includes, but is not limited to, services rendered by a certified or other public accountant, chiropractor, dentist, optometrist, veterinarian, osteopathic physician, physician, surgeon, podiatrist, chiropodist, architect, professional engineer, land surveyor, and attorney-at-law.

(c) "Professional services corporation" means a corporation formed under the professional service corporation act . . . .

Again, defendants purported to provide, through their employees, professional services and, if they elected to form a LLC, were required to do so pursuant to article 9. But article 9 requires that all members and managers "shall be licensed or legally authorized in the state to render the same professional service." MCL 450.4904(2). Accordingly, the LLC defendants cannot organize under this provision because some of their members lack a professional license. Nonetheless, they sought to operate a business for which a corporation may be formed under article 9 of the MLLCA, which does not permit formation of such a corporation under the BCA. Again, MCL 450.1251(1) does not permit this. Accordingly, I would conclude that defendants could neither properly incorporate under article 9 of the MLLCA or the BCA.

Plaintiff asserts that defendants' failure to properly incorporate as a PC or a PLLC precludes them from seeking payment pursuant to MCL 500.3157, under which only treatment lawfully rendered is subject to payment as a no-fault benefit. I would conclude that MCL 500.3157 precludes defendants from seeking payment under the no-fault act because defendants,

who were not licensed health care providers that attempted to offer health care through their licensed employees, did not themselves lawfully render any treatment for which they can be paid. This conclusion is bolstered by the fact that, under the circumstances presented here, Michigan law does not provide defendants with any means by which to properly incorporate. In other words the no-fault act and Michigan laws concerning the formation of corporations reflect the same public policy underlying Michigan laws requiring health care professionals and providers to be licensed by the state.

This Court has also recognized that only properly licensed health care professionals can seek payment, pursuant to the no-fault act, for services rendered. In *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 64; 535 NW2d 529 (1995), this Court held, "To be sure, only treatment lawfully rendered, including being in compliance with licensing requirements, is subject to payment as a no-fault benefit." In *Cherry v State Farm Mut Automobile Ins Co*, 195 Mich App 316, 317; 489 NW2d 788 (1992), the plaintiff was injured in an automobile accident and was referred by her treating physicians to Deborah Lincoln, a licensed registered nurse who practiced acupuncture. The defendant insurance company refused to pay for the services rendered by Lincoln on the basis that Lincoln was not licensed to practice acupuncture in Michigan. *Id.* at 317-318. Relying on MCL 500.3157, this Court agreed that the defendant was not required to pay no-fault benefits for Lincoln's services because she was operating as an unlicensed medical care provider; it explained:

. . . reading the no-fault act as a whole and MCL 500.3157; MSA 24.13157 specifically, we believe it is clear that the Legislature intended that only treatment lawfully rendered, including being in compliance with licensing requirements, is subject to payment as a no-fault benefit. In *Attorney General v Raguckas*, 84 Mich App 618, 626; 270 NW2d 665 (1978), the Court held that acupuncture is the practice of medicine or osteopathy. The practice of medicine or the administering of medical treatment can be lawfully performed only by licensed physicians. MCL 333.16294; MSA 14.15(16294). Consequently, unless acupuncture is administered by a licensed physician, it is not lawfully rendered. If the treatment was not lawfully rendered, it is not a no-fault benefit and payment for it is not reimbursable. [*Cherry, supra* at 320.]

This case is similar to *Cherry*, but with additional facts and a twist. Defendants, who were not licensed health care providers, seek payment for medical treatment rendered not by them, but by their employees, who were licensed health care professionals. Thus, while the treatment actually rendered was not unlawful, defendants themselves did not render it. And, to the extent they purport to have rendered it, it would have been unlawful for them to do so. As plaintiff notes, MCLA 500.3157 does not provide "[f]or treatment lawfully rendered, . . . a reasonable amount may be charged." Rather, MCLA 500.3157 permits payment to the individual or entity that is "lawfully rendering treatment." Thus, the only relevant inquiry is whether defendants, the business entities seeking payment, lawfully rendered treatment. They did not; rather, as an entity unlicensed to render health care, they are seeking payment for medical treatment rendered by licensed health care professionals whom they hired. MCL 500.3157 does not permit this. I would reverse.

/s/ Kirsten Frank Kelly

