

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 0195

DENISE M. HORTON

VERSUS

**BECK PARTNERS, L.L.C. DBA CYPRESS PSYCHIATRIC
HOSPITAL & JERRY SANDERS, M.D.**

Judgment Rendered: September 10, 2010

**Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number 576,071**

Honorable Doug Moreau, Judge Presiding Ad Hoc

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BEFORE: WHIPPLE, McDONALD AND McCLENDON, JJ.

WHIPPLE, J.

Plaintiff's claims against a doctor who examined her in the hospital were dismissed without prejudice on the basis that plaintiff was required to first present her claim to a medical review panel and, thus, that the suit she filed in district court was premature. Plaintiff appeals the judgment of dismissal, and for the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

On March 4, 2009, Denise Horton filed suit for damages in district court against Beck Partners, L.L.C., d/b/a Cypress Psychiatric Hospital ("Cypress Psychiatric Hospital") and Dr. Jerry Sanders. In her petition, Horton averred that upon her discharge from Cypress Psychiatric Hospital, Dr. Sanders negligently issued a discharge summary which contained numerous errors and which thereafter caused certain events that harmed her. Specifically, Horton averred that on March 5, 2008, she suffered a "mental breakdown" during a pastoral counseling session and was taken by ambulance from the counseling session to North Oaks Medical Center ("North Oaks") in Hammond, Louisiana. Horton further averred that she was then transported from North Oaks to Cypress Psychiatric Hospital on March 5, 2008, but that after being examined the following morning, she was discharged at mid-day on March 6, 2008, and returned home.

However, according to the petition, shortly after Horton returned home, officers of the Livingston Parish Sheriff's Office arrived to check on Horton, and, at the request of the officers, Horton reluctantly agreed to leave her home by ambulance. Horton averred that she was then taken back to North Oaks by ambulance and from there, was transported to the Adult Psychiatry Ward of East Jefferson General Hospital ("East Jefferson"), where she was held for twenty-nine days against her will. According to the

allegations of the petition, East Jefferson instituted judicial commitment proceedings against Horton, but after being advised at an April 4, 2008 hearing that a consent decree had been reached under which Horton would seek psychological counseling and after hearing Horton's psychiatrist's testimony, the court ordered Horton's immediate release from East Jefferson.

With regard to her claim against Cypress Psychiatric Hospital and Dr. Sanders, Horton averred that upon her discharge from Cypress Psychiatric Hospital on March 6, 2008, Dr. Sanders prepared a discharge summary which contained numerous errors about Horton and her condition. According to Horton, the numerous errors in the discharge summary, which was provided to East Jefferson, compromised her treatment at East Jefferson and led East Jefferson to wrongly attempt to have Horton judicially committed. The alleged errors in the discharge summary included: a description of Horton as "a 26-year-old White female," when in fact Horton is forty-six years old; a statement that Horton smoked cigarettes and drank alcohol, when Horton does not smoke and has been a recovered alcoholic for over twenty-two years; a statement that Horton suffered from "Chronic Mental Illness" and had a GAF score of just 30; and statements that Horton was "started back on her medication, Geodon" and that "[s]he was told to continue with Geodon 20 mg three times a day," when Horton has never taken Geodon.¹

Horton averred that had the discharge summary not been negligently prepared and had it not contained so many errors about her, East Jefferson

¹According to the petition, Geodon is a medication used for the treatment of schizophrenia, acute mania, and mixed episodes associated with bipolar disorder. Horton alleged in her petition that she has never been prescribed Geodon and has never been diagnosed with schizophrenia or bipolar disorder.

would not have confined Horton and would not have attempted to have her judicially committed, nor would she have incurred the expense of her hospitalization at East Jefferson and other medical and non-medical expenses. Horton also contended that but for the negligently prepared discharge summary, she would not have experienced the emotional pain and suffering, public shame and humiliation, and loss of enjoyment of life that she has endured. Thus, Horton sought damages against Cypress Psychiatric Hospital and Dr. Sanders for their negligence.

Dr. Sanders responded to the petition by filing an exception raising the objection of prematurity. In support of his exception, Dr. Sanders contended that he was a qualified health care provider within the intent and meaning of the Louisiana Medical Malpractice Act (“the MMA”), LSA-R.S. 40:1299.41 et seq., and, thus, that Horton’s claims against him had to first be presented to a medical review panel. In opposition to the exception, Horton contended that her claims against Dr. Sanders “d[id] not sound in medical malpractice” and, accordingly, did not have to first be presented to a medical review panel.

Following a hearing, the district court maintained the exception of prematurity and dismissed Horton’s claims against Dr. Sanders without prejudice. From this judgment, Horton appeals, contending that the district court erred in maintaining Dr. Sanders’s exception of prematurity.

DISCUSSION

The MMA “requires that all claims against healthcare providers be reviewed or ‘filtered’ through a medical review panel before proceeding to any other court.” Perritt v. Dona, 2002-2601, 2002-2603 (La. 7/2/03), 849 So. 2d 56, 61; see also LSA-R.S. 40:1299.47(A)(1)(a) and

40:1299.47(B)(1)(a)(i).² The exception of prematurity is the proper procedural mechanism for a qualified health care provider to invoke when a medical malpractice plaintiff has failed to submit the claim for decision by a medical review panel before filing suit against the provider. Spradlin v. Acadia-St. Landry Medical Foundation, 98-1977 (La. 2/29/00), 758 So. 2d 116, 119. If an action against a health care provider covered by the MMA has been commenced in a court of law and the complaint was not first presented to a medical review panel, an exception of prematurity must be maintained, and the plaintiff's suit must be dismissed. Bennett v. Krupkin, 2000-0023R (La. App. 1st Cir. 3/28/02), 814 So. 2d 681, 685, writ denied, 2002-1208 (La. 6/21/02), 819 So. 2d 338.

Nonetheless, the supreme court has emphasized that the MMA and its limitations on tort liability for a qualified health care provider apply strictly to claims arising from medical malpractice and that all other tort liability on the part of the qualified health care provider is governed by general tort law. Blevins v. Hamilton Medical Center, Inc., 2007-127 (La. 6/29/07), 959 So. 2d 440, 444; Coleman v. Deno, 2001-1517, 2001-1519, 2001-1521 (La. 1/25/02), 813 So. 2d 303, 315. The burden of providing prematurity is on the exceptor, in this case the defendant health care provider, who must show

²Louisiana Revised Statute 40:1299.47(A)(1)(a) provides, in pertinent part, as follows:

All malpractice claims against health care providers covered by this Part, other than claims validly agreed for submission to a lawfully binding arbitration procedure, shall be reviewed by a medical review panel established as hereinafter provided for in this Section.

Louisiana Revised Statute 40:1299.47(B)(1)(a)(i) provides as follows:

No action against a health care provided covered by this Part, or his insurer, may be commenced in any court before the claimant's proposed complaint has been presented to a medical review panel established pursuant to this Section.

that he is entitled to a medical review panel because the allegations fall with the MMA. Blevins, 959 So. 2d at 444.

The MMA provides the substantive law in this matter, including definitions for several key terms at issue. At the times pertinent hereto, LSA-R.S. 40:1299.41 provided, in pertinent part:

§ 40:1299.41. Definitions and general applications

A. As used in this Part:

* * *

(8) "Malpractice" means any unintentional tort or any breach of contract based on health care or professional services rendered, or which should have been rendered, by a health care provider, to a patient, including failure to render services timely and the handling of a patient, including loading and unloading of a patient, and also includes all legal responsibility of a health care provider arising from acts or omissions during the procurement of blood or blood components, in the training or supervision of health care providers, or from defects in blood, tissue, transplants, drugs, and medicines, or from defects in or failures of prosthetic devices implanted in or used on or in the person of a patient.

(9) "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement, or during or relating to or in connection with the procurement of human blood or blood components.

Because the MMA limits the liability of health care providers in derogation of the general rights of tort victims, any ambiguities in the Act must be strictly construed against coverage. See Price v. City of Bossier City, 96-2408 (La. 5/20/97), 693 So. 2d 1169, 1172. The supreme court has set forth a six-part test to determine whether a negligent act by a health care provider is covered under the MMA. Coleman, 813 So. 2d at 315-316. The six Coleman factors are:

(1) Whether the particular wrong is "treatment related" or caused by a dereliction of professional skill;

(2) whether the wrong requires expert medical evidence to determine whether the appropriate standard of care was breached;

(3) whether the pertinent act or omission involved assessment of the patient's condition;

(4) whether an incident occurred in the context of a physician-patient relationship or was within the scope of activities which a hospital is licensed to perform;

(5) whether the injury would have occurred if the patient had not sought treatment; and

(6) whether the tort alleged was intentional.

Coleman, 813 So. 2d at 315-316.

It is undisputed herein that Dr. Sanders is a qualified health care provider pursuant to the MMA. Thus, the question presented is whether the claim asserted by Horton against Sanders falls within the ambit of the MMA. On appeal, Horton contends that an application of the Coleman factors to her claim, i.e., a claim "to recover for damages and injuries sustained after treatment due to the negligence of the provider in maintaining and transmitting information about the patient," demonstrates that her claim against Dr. Sanders sounds in general negligence and, thus, should proceed under general tort law. We disagree.

Turning to the first Coleman factor, whether the wrong is treatment related or caused by a dereliction of professional skills, we note that in her petition, Horton alleged that the negligence at issue herein was Dr. Sanders's action in issuing a discharge summary that contained numerous errors. On appeal, Horton notes that the damages she suffered occurred **after** her discharge from Cypress Psychiatric Hospital, and she contends that "[a]llowing wrong patient information to be maintained and transmitted to a

subsequent provider does not result from any dereliction of professional skill that is treatment-related for the patient.”

Clearly, the treatment of a patient by a physician includes documenting the patient’s history, condition, diagnosis, and treatment plan, including any medications prescribed. Such documentation is necessary for the proper care and treatment of the patient, whether present, ongoing, or future. Thus, contrary to Horton’s suggestion that the act of documenting her condition and treatment upon discharge can be divorced from other acts performed by Dr. Sanders in his evaluation or treatment of Horton, we conclude that the recording of a patient’s history, condition, and treatment is treatment related and constitutes a part of Horton’s medical treatment by Dr. Sanders. See Flood v. Pendleton Memorial Methodist Hospital, 2002-0440 (La. App. 4th Cir. 7/17/02), 823 So. 2d 1002, 1009, writ denied, 2002-2206 (La. 11/8/02), 828 So. 2d 1121 (Hospital employee’s alleged conduct in misfiling patient’s diagnostic test results was “treatment related” because the interpretation of the results was a necessary step in the patient’s treatment program); also see generally Coleman, 813 So. 2d at 317 (Physician’s decision to transfer patient to another hospital could not be divorced from other treatment decisions, but, rather, was a part of the patient’s medical treatment).

Application of the second Coleman factor, the necessity for expert medical evidence to determine whether the appropriate standard of care was breached, also supports the conclusion that Horton’s claim constitutes a claim for malpractice under the MMA. While expert testimony may not be necessary to establish whether Horton’s age or status as a smoker or drinker was incorrectly documented in the discharge summary, expert testimony would be required to explain Horton’s condition, diagnosis, and treatment

plan at the relevant time in order for a trier of fact to determine whether alleged errors in reporting affected the proper assessment of her mental status and her treatment regimen. Expert testimony would also be necessary in the determination of whether any such errors were substantial or material misstatements of Horton's condition or treatment such that those misstatements could have in fact caused Horton the damages alleged.

With regard to the third Coleman factor, which addresses whether the pertinent act or omission involved the assessment of the patient's condition, in our view, it cannot be disputed that the reporting by a physician of a patient's condition is integrally related to the assessment of that patient. Indeed, such a report by a health care provider is written documentation of that health care provider's individual, professional assessment of the patient's condition at the time of the treatment or assessment of the patient by that particular health care provider.

The fourth Coleman factor concerns whether the incident occurred in the context of the physician/patient relationship *or* was within the scope of activities which a hospital is licensed to perform. Given that, as stated above, documentation or reporting of the patient's condition is a necessary and integral part of the care and treatment of the patient, we must likewise conclude that such reporting obviously occurs in the context of the physician/patient relationship.

The fifth Coleman factor, which questions whether the injury would have occurred if the patient had not sought treatment, also supports a finding that Horton's claim against Dr. Sanders arises under the MMA. Obviously, if Horton had not been treated at Cypress Psychiatric Hospital for treatment following her "mental breakdown," no discharge summary would have been necessitated and no alleged negligence in the preparation of that medical

report would have occurred which could have then allegedly resulted in the alleged improper treatment and attempted judicial commitment by East Jefferson. Thus, in accordance with the allegations of the petition, if Horton had not sought treatment at Cypress Psychiatric Hospital and had not thus been evaluated by Dr. Sanders, her alleged injury would not have occurred.

Finally, with regard to the sixth Coleman factor, Horton did not allege in her petition that Dr. Sanders committed an intentional tort in his preparation of the discharge summary. Rather, the claim asserted is one of negligence.

Applying the Coleman factors to the claim asserted by Horton against Dr. Sanders, we cannot conclude that the trial court erred in finding that Horton's claim was a claim for malpractice governed by the MMA. See Flood, 823 So. 2d at 1009-1010. Accordingly, because Horton did not first present her claim against Dr. Sanders to a medical review panel, her suit against Dr. Sanders in district court was premature. The trial court properly maintained Dr. Sanders's exception of prematurity and dismissed Horton's claims against him without prejudice.

CONCLUSION

For the above and foregoing reasons, the June 9, 2009 judgment maintaining the exception of prematurity and dismissing without prejudice Horton's claims against Dr. Sanders is affirmed. Costs of this appeal are assessed against Denise Horton.

AFFIRMED.