

FILED
07-24-2020
Circuit Court
St. Croix County, WI
2020CV000117

BY THE COURT:

DATE SIGNED: July 24, 2020

Electronically signed by Michael Waterman
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT

ST. CROIX COUNTY

ST. CROIX HOSPICE, LLC,

Plaintiff,

v.

MOMENTS HOSPICE OF EAU CLAIRE, LLC,
et al.,

Defendants.

DECISION AND ORDER
(Motion to Dismiss Count 5)
Case No. 2020 CV 117

In Count 5 of the complaint, St. Croix Hospice, LLC (SCH) alleges that it has suffered damages from the disclosure of its patients' health records, contrary to section 146.82. The Defendants moved to dismiss Count 5 for failure to state a claim. The Defendants argue that such a claim belongs to the patient, not a healthcare provider charged with the responsibility for maintaining confidentiality. The Defendants further argue that, even if the statute permits SCH to bring a claim, it has failed to plead sufficient facts to survive a motion to dismiss.

A motion to dismiss tests the legal sufficiency of the complaint. *John Doe 1 v. Archdiocese of Milwaukee*, 2007 WI 95, ¶ 12, 303 Wis. 2d 34, 734 N.W.2d 827. To survive such a motion, a complaint must plead facts, which if true, would entitle the plaintiff to relief. Factual assertions are evidenced by statements that describe: who, what, where, when, why, and how. *Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶ 21 n.9, 356 Wis. 2d 665, 849 N.W.2d 693. The sufficiency of the facts alleged in the complaint control the determination of whether a claim for relief

is properly pled. *Id.* at ¶ 21; *Strid v. Converse*, 111 Wis. 2d 418, 422–23, 331 N.W.2d 350 (1983).

The Defendants’ motion requires the Court to ascertain the types of persons who may seek redress under section 146.84 for a breach of patient-record confidentiality. Statutory interpretation begins with the language of the statute. If the meaning of the statute is plain, courts ordinarily stop the inquiry. *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. Words are given their common, ordinary, and accepted meaning, but context is important to meaning. So too is the structure of the statute in which the operative language appears. “Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *Id.* at ¶ 46.

“All patient health care records shall remain confidential.” Wis. Stat. § 146.82(1). Any person who violates confidentiality is liable to “any person injured as a result of the violation...” Wis. Stat. § 146.84(1). Because the word “person” can include a business, see § 990.04(26), SCH believes it may seek redress for damages it suffered when a business competitor allegedly breached confidential patient records to lure patients away from SCH. The Court disagrees with SCH’s interpretation because it defies the plain meaning of the statute.

Section 146.82 is a patient’s rights statute. *See, e.g., Pollack v. Calimag*, 157 Wis. 2d 222, 235, 458 N.W.2d 591, 598 (Ct. App. 1990) (referring to section 146.83, a statute that gives patients the right to access their records). Section 146.82 gives patients the right to control the disclosure of their medical information. In the absence of a patient’s authorization to disclose, records must remain confidential, except for limited situations. Wis. Stat. § 146.82(1), (2). Any person who violates section 146.82 is liable “to any person injured as a result of the violation.” Wis. Stat. § 146.84(1) (emphasis added). Thus, prospective plaintiffs are those persons injured by a breach of confidentiality, and logic dictates that in order to be injured

by a breach of confidentiality, one must have a right to it. Section 146.84(1) vindicates the patient's right to confidentiality.

In the present case, SCH does not attempt to vindicate its patients' rights to confidentiality. Nor does SCH attempt to vindicate its own right to confidentiality. Instead, SCH attempts to use its patients' rights to confidentiality as a vehicle to assert its private business interests against a competitor. No possible reading of sections 146.82 or 146.84 could embrace an action by one hospice against another over allegedly unfair business practices. *See, e.g., Pollack*, 157 Wis. 2d at 235-36 (stating that section 146.83 does not support a claim by one physician against another).

Reinforcing the Court's interpretation is the fact that section 146.82 gives patients the near-exclusive right to control access to their medical records. Only in specific, limited situations may information be released without patient consent. See Wis. Stat. § 146.82(2). A business lawsuit between hospices is not one of them. But a lawsuit between hospices over alleged breaches of confidential information necessarily will result in the release of confidential medical information. SCH cannot avoid disseminating confidential medical information when pursuing a lawsuit that puts such information squarely at issue. Not even the strictest of protective orders can avoid it because someone, other than the medical provider, will have access to confidential information without the patients' consent. If section 146.82(1) gives patients the right to control access to their medical information, then the persons bringing a claim to enforce section 146.82(1) must also be the same persons who are protected by it. Otherwise, a third-party, like SCH in this case, could usurp the patients' right to control access to medical information and disseminate it in the court-system to advance the third-party's business interests, not the patient's interests in maintaining confidentiality. That cannot be the result the legislature intended, given the strict protections provided to patients under section 182.82.

For these reasons, the Court concludes that the phrase "to any person injured as a result of the violation" in section 146.84 is limited to patients and persons who

act on behalf of the patient. Based on the allegations of the complaint, SCH is not one of them, so the motion to dismiss is granted.

BY THE COURT:



Hon. R. Michael Waterman
Circuit Court Judge
St. Croix County, Wisconsin