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STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF FRANCES THOMAS, by its Co-Personal Representatives, LA SONYA THOMAS and LA TONYA JACKSON, Plaintiffs-Appellees, v HEARTLAND OF CANTON, MI, LLC, doing business as HEARTLAND HEALTH CARE CENTER-CANTON and PROMEDICA SKILLED NURSING AND REHABILITATION (CANTON), Defendant-Appellant.	UNPUBLISHED August 24, 2026 12:42 PM No. 371166 Wayne Circuit Court LC No. 22-009276-NI
ESTATE OF FRANCES THOMAS, by its Co-Personal Representatives, LA SONYA THOMAS and LA TONYA JACKSON, Plaintiffs-Appellants, v HEARTLAND OF CANTON, MI, LLC, doing business as HEARTLAND HEALTH CARE CENTER-CANTON and PROMEDICA SKILLED NURSING AND REHABILITATION (CANTON), Defendant-Appellee.	No. 374483 Wayne Circuit Court LC No. 22-009276-NI

Before: MARIANI, P.J., and MURRAY and PATEL, JJ.

PER CURIAM.

In Docket No. 371166 of these consolidated appeals, defendant appeals by leave granted two discovery orders compelling production of certain documents.[1] We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

In Docket No. 374483, plaintiff appeals by leave granted the trial court's order granting partial summary disposition to defendant under MCR 2.116(C)(7) on the basis of immunity provided under Michigan's Pandemic Health Care Immunity Act (PHCIA), MCL 691.1471 *et seq*., as to plaintiff's claims that arose between March 29, 2020, and July 14, 2020.[2] We reverse and remand for further proceedings consistent with this opinion.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

A. BACKGROUND

This medical-malpractice action arises from the alleged lack of proper treatment of plaintiff's decedent, Frances Thomas, during multiple admissions at defendant's rehabilitation facility between February 2020 and June 2020. Frances was initially admitted to defendant's facility on February 22, 2020, after a brief hospitalization for frequent falls. The medical records reflect that Frances had bowel and bladder incontinence, was non-weight-bearing, and required total assistance with transfers and activities of daily living. On February 23, 2020, defendant's nursing staff documented that Frances had an "open area on coccyx, edges intact, pink and moist." Plaintiff alleges while Frances was at the facility, she "suffered a series of medical setbacks and grotesque injuries, and absent care that resulted from the neglectful and substandard care she had been receiving at Heartland, the lack of care caused a downward spiral of deteriorating metabolic and health conditions caused by a lack of cleanliness and hygiene, dehydration, malnutrition, resulting in systemic septicemia, and death." Plaintiff contends that Frances developed a pressure ulcer within days of her admission but defendant's nursing staff failed to provide proper wound care and treatment, which caused Frances' pressure ulcer to worsen and become infected. Plaintiff maintains that the infectious process ultimately led to Frances' death. In August 2022, plaintiff commenced this action alleging defendant's nursing staff breached the applicable standard of care and defendant failed to provide competent and sufficient staff with appropriate supervision.

B. FIRST MOTION TO COMPEL

On January 15, 2024, plaintiff served defendant with plaintiff's third request for production of documents. Relevantly, plaintiff requested: (1) defendant's tax returns for years 2019 to 2022; (2) all citations issued to defendant by the state of Michigan, Center for Medicare and Medicaid Services (CMS), and any county or municipality for the prior five years; and (3) defendant's balance sheets and monthly or quarterly income statements (i.e., profit and loss statements) for the prior five years.

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[1] *Thomas v Heartland of Canton, MI, LLC*, unpublished order of the Court of Appeals, entered October 24, 2024 (Docket No. 371166).

[2] *Thomas v Heartland of Canton, MI, LLC*, unpublished order of the Court of Appeals, entered March 25, 2025 (Docket No. 374483).

Defendant objected to producing the disputed documents on the grounds that the information was not relevant, material, or admissible to the issues. Defendant also asserted that the request for citations from any county or municipality was "vague and overly broad." But, without waiving its objections, defendant stated that the requested information regarding the State and CMS citations was "readily available to plaintiff's counsel" through the relevant authorities.

Plaintiff moved to compel production of the financial documents and citations arguing that the information was essential to plaintiff's claims. Plaintiff asserted that the financial information was needed because the administrative and nursing claims were "hand-in-glove":

> Nursing care is a reflection of the need based on acuity and the money available to spend on the budget for nursing care, so the care should be based on the census of the residents and the acuity or medical needs of the patients, as well as the finances available, based on the budget—how much is needed for the spend. The extent to which the budget provides for variations based on those considerations is essential. Since the administrator has already testified that the budget was produced by the parent corporation, ProMedica, the budgeting process and the budget constraints become relevant so we can match the budget to the patients' needs.

Plaintiff further argued that defendant was obligated to produce any citations in its possession "that may pertain to the claims and issues in the case, especially if they relate to staffing, sufficiency of care issues, cleanliness, or any aspects of patient care. The fact that other sources may have them is not a proper response."

In response, defendant maintained that its private and confidential financial information was not relevant to whether the nurses acted with the degree of diligence and skill ordinarily possessed by nurses in similar localities. To the extent plaintiff believed that the information was relevant to staffing ratios, defendant asserted that plaintiff must first establish that defendant breached the standard of care by not having a sufficient number of nurses available and, as a result, Frances was not seen as frequently as the standard of care required. Defendant maintained that the relevant question was whether defendant had sufficient nursing staff on the days of the alleged malpractice, not whether Heartland had sufficient funds to hire more staff. As to the citations, defendant argued that any citations regarding nonparty patients were not relevant to whether defendant breached the standard of care with respect to Frances, especially if those citations were not related to wound care. And any citations outside of the timeframe of the alleged malpractice involving Frances were not only irrelevant but were also disproportionate to the needs of the case. Defendant explained that such citations frequently involve nonparty information and, even if patient names or other identifying information were to be redacted, the information could not be disclosed absent the patient's waiver of physician-patient privilege.

At the hearing, plaintiff's counsel stated that he would be willing to "tailor" the production of the financial documents to the year 2020. The trial court took the matter under advisement and then issued an order compelling production of: (1) defendant's tax returns, balance sheets, and income statements for the year 2020 (subject to redactions of any information identifying patients or residents of the facility); and (2) citations issued by government authorities against defendant's facility from 2019 to 2023. The trial court reasoned that plaintiff had "identified a legitimate basis for believing that [the financial documents] may constitute admissible evidence or lead to the

discovery of admissible evidence regarding issues relevant to the claim, i.e., the extent to which Defendant provided adequate staffing at its facility." Regarding the citations, the trial court concluded, "[T]here is no dispute that the information is necessarily in Defendant's possession, nor is there any indication that its production would be unduly burdensome on Defendant, at least not in comparison to the substantial burden that would be imposed on Plaintiff if it were forced to make a separate inquiry to every entity that could have possibly issued a citation to Defendant during the relevant period."

Defendant moved for reconsideration arguing that the relevant issue for the direct liability claim against defendant for alleged understaffing was whether defendant deviated from the standard of care exercised by the same type of health care facility in similar localities, not *why* it allegedly deviated from that standard of care. The trial court denied the motion.

C. SECOND MOTION TO COMPEL

On March 25, 2024, plaintiff served defendant with plaintiff's fourth set of requests to produce. Relevantly, plaintiff requested: (1) the staffing budget for 2019 and 2020; (2) the case mix adjusted nurse and aid staffing minute estimates for 2018, 2019, 2020; (3) CMS form 2540 cost report for 2018, 2019, 2020; (4) the payroll based journal for 2018, 2019, 2020; (5) internal staffing tools including staffing matrices, staffing reports to ProMedica or staffing guidance from ProMedica; (6) staffing reports and resident assessment instructions for the months that Frances was a resident of the facility; and (7) citations, notices, or letters regarding deficiencies related to staffing for 2019 and 2020. Defendant objected on the basis that the requests were vague and overbroad and the information was not relevant, material, or proportional to the needs of the case. Defendant further asserted that the staffing budgets and internal staffing tools were confidential, and any citations "would likely contain protected health information, which is subject to the physician-patient privilege."

Plaintiff moved to compel production of the documents raising the same arguments from its previous motion. Plaintiff asserted that the documents would "assist in filling out the picture of whether the Defendant adhered to the administrative standard of care for the operation of a nursing home." Plaintiff maintained that any personal information could be redacted. Defendant argued that the documents were not relevant to whether defendant breached the standard of care in staffing, supervising, or training its staff, which would be the subject of expert testimony and did not depend on defendant's internal finances. Defendant further asserted that citations regarding nonparty patients were not relevant to whether it breached the standard of care in its treatment of Frances and also contained information that was protected by the physician-patient privilege.

Following a hearing, the trial court issued an order compelling production of the following:

a. Staffing budgets for 2019 and 2020; CMS From [sic] 2540 cost reports, payroll based journals;

b. Copies of the case mix adjusted nurse and aide staffing estimates for 2018, 2019, and 2020; staffing reports and resident assessment instructions for the months that [decedent] was a resident of the defendant facility; internal

staffing tools including staffing matrices, staffing reports to Promedica or staffing guidance from Promedica; citations, notices or letters regarding deficiencies related to staffing[.]

D. MOTION FOR PARTIAL SUMMARY DISPOSITION

Before the discovery cut-off, defendant moved for partial summary disposition under MCR 2.116(C)(7) arguing that plaintiff's claims were barred on the basis of immunity under MCL 691.1475 because defendant is a health care facility that provided services in support of Michigan's COVID-19 pandemic response and Frances suffered injuries as a result of the health care services rendered by defendant's nursing staff during the applicable timeframe. Alternatively, defendant argued that it was immune from liability under the federal Public Readiness and Emergency Preparedness Act (PREP Act), 42 USC 247d-6d, because defendant was a "covered person" within the meaning of the act and its nursing staff was using protective measures to prevent the spread of COVID-19 (a covered countermeasure).

Plaintiff asserted that defendant was not entitled to immunity under MCL 691.1475 because Frances' injuries, care, and treatment did not arise out of COVID-19 treatment during her residency at defendant's facility. Plaintiff likewise asserted that the PREP Act did not apply because Frances' injuries were not caused by a "covered countermeasure," i.e., COVID-19 treatments or services. Alternatively, plaintiff argued that it should be given the opportunity to amend the complaint to include allegations and facts supporting a claim for gross negligence, which is an exception to the immunity provided by MCL 691.1475. In reply, defendant argued that the court should deny plaintiff's request to amend the complaint to add a gross negligence claim because the case had been pending for over two years, the discovery deadline was approaching, plaintiff did not move to amend the complaint, and plaintiff had not clearly defined the new allegations.

At the motion hearing, the trial court directed the parties to provide supplemental briefing on the issue of when plaintiff's cause of action arose and whether Frances' injuries were sustained by reason of health care services provided in support of the state's response to the COVID-19 pandemic. After the parties filed their supplemental briefs, this Court released its decisions in *Franklin v Flint*, __ Mich App __, __; __ NW3d __ (2024) (Docket No. 366226)[3] and *Skipper-Baines v Bd of Hosp Managers for the City of Flint*, ___ Mich App ___ ; ___ NW2d ___ (2024) (Docket No. 365137). The parties filed additional supplemental briefs addressing these decisions. Plaintiff also submitted a detailed affidavit from its expert, Bryan Judge, M.D., outlining the progression of Frances' pressure ulcer and opining that the progression was unrelated to any COVID-19 diagnosis or COVID treatment.

The trial court issued an opinion and order granting partial summary disposition to defendant under MCR 2.116(C)(7) on the basis of immunity provided under MCL 691.1475 as to

[3] This Court's slip opinion erroneously captioned the case by listing the plaintiff's name as "Franklin Warren." The plaintiff's name is "Warren Franklin" and the error has been corrected. Before the error was corrected, the case was cited as *Warren v Flint* and referred to as the *Warren* case.

plaintiff's claims that arose between March 29, 2020, and July 14, 2020. Relying on *Franklin*, the trial court concluded, "Statutory immunity applies to defendant during this time period, even absent any specific COVID component of such treatment during that period" because defendant "provided services in support of the state's response to [the] COVID-19 pandemic and in particular to plaintiff at one time during her many admissions."[4] This appeal followed.

II. DOCKET NO. 371166

Defendant argues that the trial court abused its discretion by ordering defendant to produce documents that are not relevant or proportional to the needs of this case.[5] We agree, in part.

A. STANDARD OF REVIEW AND LEGAL PRINCIPLES

"Generally, we review the grant or denial of a discovery motion for an abuse of discretion. An abuse of discretion is not simply a matter of a difference in judicial opinion, rather it occurs only when the trial court's decision is outside the range of reasonable and principled outcomes." *Augustine v Allstate Ins Co*, 292 Mich App 408, 419; 807 NW2d 77 (2011) (cleaned up).

The purpose of discovery is to simplify and clarify issues. *Domako v Rowe*, 438 Mich 347, 360; 475 NW2d 30 (1991). "Michigan follows an open, broad discovery policy that permits liberal discovery of any matter, not privileged, that is relevant to the subject matter involved in the pending case." *Id*. (cleaned up). But this does not encompass fishing expeditions—discovery requests based on conjecture. *Augustine*, 292 Mich App at 419-420. While Michigan has a broad discovery policy, "a trial court should protect parties from excessive, abusive, or irrelevant discovery requests." *Thomas M Cooley Law Sch v Doe 1*, 300 Mich App 245, 260-261; 833 NW2d 331 (2013).

MCR 2.302(B)(1) provides:

> Parties may obtain discovery regarding any *non-privileged* matter that *is relevant* to any party's claims or defenses *and proportional to the needs of the case*, taking into account all pertinent factors, including whether the burden or expense of the proposed discovery outweighs its likely benefit, the complexity of the case, the importance of the issues at stake in the action, the amount in controversy, and the parties' resources and access to relevant information. Information within the scope of discovery need not be admissible in evidence to be discoverable. [Emphasis added.]

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[4] The trial court did not address defendant's claim for immunity under the PREP Act and defendant does not raise the PREP Act on appeal as an alternative ground to affirm the trial court's grant of partial summary disposition.

[5] Defendant only challenges the first paragraph of the second order and the part of the second paragraph compelling discovery of "citations, notices or letters regarding deficiencies related to staffing."

A matter is "relevant" when it has a "practical . . . bearing" on a party's claim or defense or is "pertinent" to it. *McClellan v Collar (On Remand)*, 240 Mich App 403, 410; 613 NW2d 729 (2000) (cleaned up). MRE 401 provides that evidence is relevant if it "has any tendency" to make a fact of consequence more or less probable than without the evidence. MRE 401(a) and (b).[6] "Generally, any document that is relevant and not privileged is freely discoverable upon request." *Hartmann v Shearson Lehman Hutton, Inc*, 194 Mich App 25, 28; 486 NW2d 53 (1992).

B. FINANCIAL DOCUMENTS

Defendant argues that the trial court abused its discretion by ordering defendant to produce private and confidential corporate financial documents because such documents are not relevant or proportional to the needs of this case. We agree.

The threshold question is whether the disputed financial documents are relevant to plaintiff's claims. Plaintiff's complaint advances two theories of liability against defendant: (1) vicarious liability for the negligence of its nursing staff, and (2) direct liability for its negligent staffing, training, and supervision. "In general, a medical malpractice claim is one brought against someone who, or an entity that, is capable of malpractice, involving actions that occurred within the course of a professional relationship, and which raises questions involving medical judgment rather than issues that are within the common knowledge and experience of the fact-finder." *Meyers v Rieck*, 509 Mich 460, 469; 983 NW2d 747 (2022) (cleaned up). A licensed healthcare facility such as defendant may be (1) directly liable through claims of negligent supervision, selection, and retention of staff, or (2) vicariously liable for the alleged negligence of its agents and employees. *Cox v Flint Bd of Hosp Managers*, 467 Mich 1, 11; 651 NW2d 356 (2002). A direct liability claim against a licensed healthcare facility regarding staffing decisions and patient monitoring is a medical-malpractice claim. See *Dorris v Detroit Osteopathic Hosp Corp*, 460 Mich 26, 47; 594 NW2d 455 (1999) (holding that the plaintiff's allegations regarding the hospital's staffing decisions and patient monitoring involved questions of "professional medical management and not issues of ordinary negligence" because "[t]he ordinary layman does not know the type of supervision or monitoring that is required for psychiatric patients in a psychiatric ward"); *Bronson v Sisters of Mercy Health Corp*, 175 Mich App 647, 652-653; 438 NW2d 276 (1989) (concluding that a claim brought against a hospital for negligent selection, retention, and supervision of medical doctor who allegedly engaged in malpractice was a medical-malpractice claim because "[t]he providing of professional medical care and treatment by a hospital includes supervision of staff physicians and decisions regarding selection and retention of medical staff").

To establish a claim of medical malpractice, a plaintiff must demonstrate (1) the applicable standard of care, (2) that the defendant breached that standard, (3) that the plaintiff was injured, and (4) that the plaintiff's injuries were proximately caused by the defendant's breach of the applicable standard of care. *Rock v Crocker*, 499 Mich 247, 255; 884 NW2d 227 (2016). When a medical-malpractice case is based on the actions of someone other than a medical practitioner,

[6] The Michigan Rules of Evidence were amended, effective January 1, 2024.

such as a nurse, then the common law standard of care applies. *Cox*, 467 Mich at 20.[7] Similarly, when a licensed healthcare facility makes staffing decisions, it is not engaged in the practice of medicine and thus the common law standard of care applies. See *id*. When the common law standard of care applies in medical-malpractice cases, "the applicable standard of care is the skill and care ordinarily possessed and exercised by practitioners of the profession in the same or similar localities." *Id*. at 21-22. Generally, to establish the standard of care and that the standard of care was breached requires the testimony of an expert witness, *Danhoff v Fahim*, 513 Mich 427, 432; 15 NW3d 262 (2024), unless the breach was so obvious that it is within the common knowledge and experience of an ordinary layperson, *Elher v Misra*, 499 Mich 11, 21-22; 878 NW2d 790 (2016). Similarly, expert testimony is required to establish causation. *Pennington v Longabaugh*, 271 Mich App 101, 104; 719 NW2d 616 (2006).

Plaintiff claims that the financial information is relevant to its direct liability claim that Frances was injured as the result of negligent staffing ratios. Plaintiff explains that the documents are needed to establish that defendant "breached the standard of care for a nursing home in creating its budget to provide adequate staff, training, and supervision and make staffing considerations based on the census and acuity of the patients."[8] But tax returns, balance sheets, income statements, staffing budgets, and payroll journals do not demonstrate staffing ratios, patient needs, or the number of staff available at any particular time. Plaintiff also has not shown that any of the financial information in CMS form 2540 would reflect staffing ratios, patient needs, or the number of staff available at any particular time. The financial information sought is not relevant to establishing the standard of care with respect to staffing ratios, training, or supervision. Rather, the standard of care is the degree of skill and care ordinarily possessed and exercised by a nursing home in similar localities. See *Cox*, 467 Mich at 21-22. Whether defendant allocated sufficient funds for staffing its facility is not relevant to the standard of care, breach, or if Frances' injuries were caused by the breach. We agree with defendant: the relevant issue is not *why* it (allegedly) failed to provide adequate staff, but simply *whether* it did.

Plaintiff maintains that compliance with two federal regulations, 42 CFR § 483.35 and 42 CFR § 483.70(e), "constitutes the standard of care for all nursing residential facilities operating in

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[7] As explained in *Cox*, the practice of nursing is different from the practice of medicine because the practice of nursing consists of

> the systematic application of substantial specialized knowledge and skill, derived from the biological, physical, and behavioral sciences, to the care, treatment, counsel, and health teaching of individuals who are experiencing changes in the normal health processes or who require assistance in the maintenance of health and the prevention or management of illness, injury, or disability. [*Cox*, 467 Mich at 19, quoting MCL 333.17201(1)(a).]

[8] On appeal, plaintiff relies on the testimony of defendant's administrative director, Renee Hamilton, regarding the budgeting process. Because this testimony was not presented to the trial court in support of either one of plaintiff's motions, we cannot consider it on appeal. See *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002) ("This Court's review is limited to the record established by the trial court, and a party may not expand the record on appeal.").

the United States." 42 CFR § 483.35 generally requires facilities to have sufficient nursing staff, "as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment required at § 483.70(e)." 42 CFR § 483.70(e) provides:

> [A]n assessment of the resident population is the foundation of the facility assessment and determination of the level of sufficient staff needed. It must include an evaluation of diseases, conditions, physical, functional or cognitive limitations of the resident's populations, acuity (the level of severity of the resident's illnesses), physical, mental and cognitive limitations and conditions (and any other pertinent information about the residents that may [a]ffect the services the facility must provide). The assessment of the resident population should drive staffing decisions and inform the facility about what skills and competency staff must possess in order to deliver the necessary care required by the residents being served . . . .

Neither of these regulations state that staffing ratios are determined by financial documents. Rather, both regulations make it clear that decisions regarding staffing ratios are determined by the number, acuity, and diagnoses of the facility's resident population. While budgetary constraints may play a part in staffing, whether adequate staffing was provided is a matter of census and acuity, which involves medical judgment and will require expert testimony. See *Danhoff*, 513 Mich at 432. The trial court was obligated to protect defendant from irrelevant discovery requests. *Cooley Law Sch*, 300 Mich App at 260-261. Because the disputed financial documents are not relevant to the claims or proportional to the needs of the case, we conclude that the trial court abused its discretion by ordering defendant to produce them.

C. GOVERNMENT CITATIONS

Defendant further asserts that the trial court abused its discretion by ordering defendant to produce all government citations issued to defendant's facility from 2019 to 2023, regardless of the subject matter, because such documents are not relevant or proportional to the needs of this case and contain privileged information. We agree, in part.

Plaintiff requested defendant to produce all citations issued to defendant by the state of Michigan, Center for Medicare and Medicaid Services (CMS), and any county or municipality for 2019 to 2023 with no limitation on the reason for the citations or the involved patient. The five-year period included the time before and after the alleged malpractice in this case, which involved a period of months in 2020. This request is certainly overbroad. But the trial court ordered defendant to produce all government citations for all five requested years and all "citations, notices or letters regarding deficiencies related to staffing" for the years 2018, 2019, 2020.

Plaintiff speculates that defendant may have been issued citations and acknowledges that the citations may not be relevant to the federal and state law requirements at issue in this case or admissible. But plaintiff maintains that this information may reveal a pattern of defendant receiving citations and failing to correct the deficiencies. Plaintiff contends, "If relevant to the factual issue, one or more [citations] may be admissible under MRE 406" as evidence of routine practice, to prove that on a particular occasion, defendant acted in accordance with that practice. While Michigan has an open, broad discovery policy, it does not encompass fishing expeditions—

discovery requests based on conjecture. *Augustine*, 292 Mich App at 419-420. However, to the extent that any citations exist that pertain to the care and treatment of Frances, we conclude that they are discoverable.

Defendant further asserts that the disclosure of citations regarding nonparty patients would violate the physician-patient privilege of those patients. We agree. The physician-patient privilege is codified in MCL 600.2157.[9] The privilege belongs only to the patient and thus can only be waived by the patient. *Meier v Awaad*, 299 Mich App 655, 666; 832 NW2d 251 (2013). "As reflected in the express language of MCR 2.302(B)(1), . . . the protection of privileged information supersedes even the liberal discovery principles that exist in Michigan." *Id*. The scope of the privilege is extensive and "precludes the disclosure of treatment histories and even the names of patients." *Id*. "Indeed, the physician-patient privilege prohibits disclosure even when the patient's identity is redacted." *Id*. at 667.

Plaintiff does not dispute that the personal information of nonparty patients should be redacted from the citations. However, plaintiff has failed to address the physician-patient privilege. If the citations exist and if they include protected "medical information" about nonparty patients, redacting the patients' names is not sufficient. *Id*. The physician-patient privilege is held by the nonparty patients and may only be waived by those nonparty patients. See *id*. at 668. Because no such waivers exist in this case, defendant is prohibited from disclosing nonparty patients' protected information.[10] "If a violation of the privilege would arise upon disclosure of information, discovery of the information is not permissible under the court rules, nor could the information be admitted into evidence." *Id*. at 669. "There are no exceptions under Michigan law for providing random patient information related to any lawsuit." *Isidore Steiner v Bonanni*, 292 Mich App 265, 272; 807 NW2d 902 (2011). Accordingly, the trial court abused its discretion by ordering defendant to produce any citations regarding the care and treatment of nonparty patients.

We affirm the trial court's orders to the extent that they compel defendant to produce any citations regarding the care and treatment of Frances. We reverse all other aspects of the trial court's discovery orders challenged by defendant on appeal and remand for further proceedings.

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[9] MCL 600.2157 states, in relevant part:

> Except as otherwise provided by law, a person duly authorized to practice medicine or surgery shall not disclose any information that the person has acquired in attending a patient in a professional character, if the information was necessary to enable the person to prescribe for the patient as a physician, or to do any act for the patient as a surgeon. . . .

[10] "[T]he statutory physician-patient privilege operates to bar disclosure even when the disclosure is not sought directly from a physician or surgeon but rather from a third party who obtained protected information from a doctor." *Meier*, 299 Mich App at 672. See also *Dorris*, 460 Mich at 38 n 6; *Mass Mut Life Ins Co v Bd of Trustees of Mich Asylum for the Insane*, 178 Mich 193, 204; 144 NW 538 (1913).

III. DOCKET NO. 374483

Plaintiff argues that the trial court erred by granting partial summary disposition to defendant and concluding that defendant was immune for negligence under MCL 691.1475 for plaintiff's claims that arose between March 29, 2020 and July 14, 2020. We agree.

A. STANDARDS OF REVIEW

"We review de novo a trial court's decision on a motion for summary disposition." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). Summary disposition under MCR 2.116(C)(7) is proper when a claim is barred because of immunity granted under the law. *Moraccini v City of Sterling Heights*, 296 Mich App 387, 391; 822 NW2d 799 (2012). We consider all documentary evidence in a light most favorable to the nonmoving party under MCR 2.116(C)(7). *Id*. "If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide." *Id*. (cleaned up). "But when a relevant factual dispute does exist, summary disposition is not appropriate." *Id*.

We also review de novo issues of statutory interpretation. *Drob v SEK 15, Inc*, 334 Mich App 607, 617; 965 NW2d 683 (2020).

B. IMMUNITY GRANTED UNDER THE PHCIA

The PHCIA became effective on October 22, 2020. 2020 PA 240. Relevantly, MCL 691.1475 provides:

> A health care provider or health care facility that provides health care services in support of this state's response to the COVID-19 pandemic is not liable for an injury, including death, sustained by an individual by reason of those services, regardless of how, under what circumstances, or by what cause those injuries are sustained, unless it is established that the provision of the services constituted willful misconduct, gross negligence, intentional and willful criminal misconduct, or intentional infliction of harm by the health care provider or health care facility.

The immunity from liability provided by MCL 691.1475 "applies retroactively, and applies on or after March 29, 2020 and before July 14, 2020." MCL 691.1477.

This Court has addressed and clarified the limitations and scope of the PHCIA in three published decisions. First, in *Franklin*, __ Mich App at __; slip op at 8, a panel of this Court construed the phrase "health care services in support of this state's response to the COVID-19 pandemic" to encompass "healthcare services that assisted, helped, or promoted the state's reactions and actions taken as a result of the COVID-19 pandemic[,]" including services given "to those infected with COVID-19 and *regular healthcare services provided during the statutory period*." *Id*. at __; slip op at 8 (emphasis added). In other words, "the immunity provision in MCL 691.1475 . . . cover[s] both regular medical care and medical treatment specific to COVID-19." *Id*. at __; slip op at 8.

The plaintiff in *Franklin* sought treatment from the defendant hospital for shortness of breath. *Id*. at ___; slip op at 1. He was admitted to the COVID-19 floor, was intubated, and later tested positive for COVID-19. *Id*. at ___; slip op at 1-2. During his stay, the plaintiff developed pressure ulcers allegedly resulting from the defendant's failure to assess his risk of such sores, reposition him to prevent their development, and provide appropriate treatment. *Id*. at ___; slip op at 2. Although the cause of plaintiff's injury was allegedly the failure to guard against pressure ulcers, not the treatment for COVID-19 per se, this Court concluded that the defendant was entitled to the immunity afforded under MCL 691.1475, explaining:

> Plaintiff alleged that he developed multiple pressure ulcers in defendant's care. Those injuries were a consequence of the care defendant provided in response to COVID-19. Stated otherwise, those injuries were sustained by reason of the healthcare services provided by defendant in support of the state's response to the COVID-19 pandemic. Plaintiff presented at the hospital with signs of COVID-19, was admitted to the COVID-19 floor for COVID-19 treatment, and allegedly developed pressure ulcers as a result of that care. Such a sequence of events is covered by the plain language of the statute. [*Id*. at ___; slip op at 9-10.]

Subsequently, in *Skipper-Baines*, ___ Mich App at ___ ; slip op at 4, another panel of this Court clarified that immunity under the PHCIA is not limited to "when a patient is being treated for COVID-19, but it is clear that there must be *some connection*." (Emphasis added). The decedent in *Skipper-Baines* underwent a minor surgical procedure to treat gallbladder disease and once returned to his room, he was attacked by his mentally unstable roommate. *Id*. at ___; slip op at 1-2. The decedent's condition declined over the next several days, and he ultimately passed away. *Id*. at ___; slip op at 2. At some point during his hospitalization, the decedent contracted COVID-19. *Id*. at ___; slip op at 2. The forensic autopsy report stated that COVID-19 associated pneumonia was a contributing cause of death. *Id*. at ___; slip op at 2. The plaintiff sued the defendant for medical malpractice and ordinary negligence, asserting that the defendant made it possible for the decedent to be assaulted by his roommate. *Id*. at ___; slip op at 2. The trial court granted summary disposition to the defendant under MCR 2.116(C)(7) concluding that the defendant was immune from liability under MCL 691.1475. *Id*. at ___; slip op at 2.

This Court reversed, explaining:

> The services that allegedly caused the injury in this case were not given "in support of this state's response to the" pandemic. This lawsuit stems entirely from the beating inflicted upon the decedent by his roommate. The record suggests that the decedent did not contract COVID-19 until after he was hospitalized due to an unrelated illness, and at the time of the attack, he was recovering from a gallbladder procedure. The roommate was likewise not being treated for COVID-19, and there is no suggestion that COVID-19 in some way spurred the attack. The alleged negligent act was placing him in a room with an unsafe roommate, and the alleged omission was failing to deploy adequate safeguards to protect the decedent from the roommate whom [sic] was known to be unsafe. It is clear to us that neither of those were done in support of the pandemic response . . . . The fact that the decedent apparently contracted COVID-19 at some point following his admission does not change the fact that he was not being treated at the hospital for COVID-

19 or that the incident giving rise to this litigation was completely separate. [*Id.* at ___; slip op at 3.]

Because the claims of negligence and malpractice in *Skipper-Baines* arose "from the acts and omissions leading to the attack, not from the alleged shortcomings in treatment[,]" the panel determined that there was "absolutely no connection between the alleged malpractice and the pandemic" and thus defendant was not entitled to immunity under the PHCIA. *Id*. at ___; slip op at 4. In reaching its holding, the *Skipper-Baines* panel distinguished *Franklin* on the basis that, in *Franklin*, "there was a clear connection between the pandemic and the services giving rise to the cause of action," whereas in *Skipper-Baines* "there is simply no connection between the pandemic and the alleged negligence/malpractice." *Id*. at ___; slip op at 5.

In *Jokinen v Beaumont Hosp Troy*, __ Mich App __, __; __ NW3d __ (2025) (Docket No. 370983); slip op at 7, this Court concluded that the defendants were not entitled to immunity under the PHCIA because the decedent "was not admitted to the hospital with symptoms of COVID-19, she was never treated for COVID-19, and there is no indication that she ever tested positive for COVID-19." The decedent suffered a fall at a senior living facility and was transferred to the defendant's hospital due to an "altered mental status." *Id*. at __; slip op at 1. Over the next ten days, the decedent received treatment and was assessed for a risk of pressure injuries. *Id*. at __; slip op at 1-2. The decedent was later discharged from the hospital and moved to a facility where her pressure injuries were first observed. *Id*. at __; slip op at 2. Her condition worsened and she was readmitted to the hospital for a pressure ulcer. *Id*. at __; slip op at 2. The death certificate listed the cause of death as sepsis due to a pressure ulcer, cardio myopathy, and coronary artery disease. *Id*. at __; slip op at 2. The plaintiff asserted medical-malpractice claims against the defendants for negligently treating the decedent's pressure wounds. *Id*. at __; slip op at 2. The trial court awarded summary disposition to the defendant based on the plaintiff's allegations, but this Court reversed because, "at the pleading stage, it appear[ed] that the decedent did not sustain injury by reason of healthcare services provided in support of the State of Michigan's response to the COVID-19 pandemic." *Id*. at ___; slip op at 1. This Court explained that the defendant's request for immunity was "even weaker than the immunity claim that this Court rejected in *Skipper-Baines*," given that "the decedent in this case was not admitted to the hospital with symptoms of COVID-19, she was never treated for COVID-19, and there [was] no indication that she ever tested positive for COVID-19." *Id*. at ___; slip op at 7.[11]

[11] We note also that this panel recently applied this line of precedent in a fourth published decision, *Bowen v Beaumont Hosp Farmington Hills*, ___ Mich App ___, ___; ___ NW3d __ (2026) (Docket No. 374271); slip op at 8-12 (summarizing this caselaw and concluding the defendants were not entitled to summary disposition under the PHCIA given the lack of requisite connection between the defendants' pandemic-related services and the allegedly negligent treatment of the plaintiff's pressure injuries). In addition, our Court has addressed the questions raised in this matter in several unpublished decisions after *Franklin* and *Skipper-Baines* were decided and arrived at essentially the same conclusions as in the published decisions. See *Anderson v Ascension Providence Hosp*, unpublished per curiam opinion of the Court of Appeals, issued

C. DISCUSSION

This case involves a complicated history of six separate admissions at defendant's facility from February 22, 2020 through June 21, 2020. There is no dispute that some of the acts or omissions that form the basis of plaintiff's medical-malpractice claim occurred during the statutory timeframe. There is also no dispute that defendant is a health care facility that provided health care services in support of Michigan's response to the COVID-19 pandemic. Instead, the controversy centers on whether Frances' injuries were "by reason of" health care services in support of the state's response to the COVID-19 pandemic, regardless of how or by what cause the injuries were sustained.

Frances' first admission was from February 22, 2020 to March 8, 2020, for rehabilitation following a series of falls related to increased lower extremity swelling. There is no record evidence that Frances had COVID-19 during her first admission or received any COVID-related treatment. On March 8, 2020, Frances was transferred to the hospital for treatment for sepsis secondary to a urinary tract infection and hypoxia. Because plaintiff's claims arising out of

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December 18, 2024 (Docket No. 365559) (applying PHCIA immunity when the plaintiff sought mental-health treatment for a risk of suicide for pandemic-related stress and suffered a fall when left unassisted by the defendant hospital); *Harris v Rhema-Belmont Operating, LLC*, unpublished per curiam opinion of the Court of Appeals, issued January 27, 2025 (Docket No. 367678) (applying PHCIA immunity where a decedent developed pressure wounds and died while she was being treated for COVID-19-related pneumonia); *Monroe v St Joseph Hosp*, unpublished per curiam opinion of the Court of Appeals, issued March 21 2025 (Docket No. 368667) (applying PHCIA immunity to a patient admitted with generalized weakness, low blood pressure, and a diagnosis of likely COVID-19 who suffered pressure wounds while in the defendant's care); *Pakenas v McLaren Macomb*, unpublished per curiam opinion of the Court of Appeals, issued September 11, 2025 (Docket Nos. 369752 and 372858) (concluding PHCIA immunity did not apply to the claims of a patient who slipped and fell in a pre-discharge shower when briefly left unattended and the patient had never been treated or diagnosed with COVID-19); *Johnson v Beaumont Hosp*, unpublished per curiam opinion of the Court of Appeals, issued November 12, 2025 (Docket No. 369349) (applying PHCIA immunity to the claims of a patient who developed pressure ulcers after being admitted to the defendant hospital for COVID-19 symptoms and being diagnosed and treated for COVID-19); *Winconek v Mich Healthcare Profs*, *PC*, unpublished per curiam opinion of the Court of Appeals, issued November 18, 2025 (Docket No. 372742) (concluding PHCIA immunity did not apply to a patient's claim that the defendants failed to diagnose his prostate cancer where there was no allegation or evidence that the patient tested positive for COVID-19 or was being treated for COVID-19); *Alli v William Beaumont Hosp*, unpublished per curiam opinion of the Court of Appeals, issued November 19, 2025 (Docket Nos. 368268, 368395) (applying PHCIA immunity to the claims of a patient who fell while hospitalized and being treated for COVID-19 but concluding PHCIA immunity did not apply to the claims of a non-COVID-19 patient who died from ruptured aortic dissection); *Newton v McLaren Port Huron*, unpublished per curiam opinion of the Court of Appeals, issued December 22, 2025 (Docket No. 373235) (concluding PHCIA immunity did not apply to a patient who fell when left unattended and the patient had never been treated or diagnosed with COVID-19).

Frances' first admission arose before the March 29, 2020 effective date of MCL 691.1475, they were not included in the trial court's grant of partial summary disposition and are not at issue in this appeal.

Frances' second admission was from March 12, 2020 to April 17, 2020. The only dates relevant to this appeal are March 29, 2020 to April 17, 2020. The record reflects that Frances had an elevated temperature on April 15, 2020. COVID testing was performed but the results were pending for several days. Frances was placed on oxygen and in isolation due to possible exposure to COVID-19. On April 17, 2020, while the test results were still pending, Frances was transferred to the hospital due to the worsening of her suspected COVID-19 symptoms. Frances was ultimately diagnosed with and treated for COVID-19. She remained hospitalized until April 27, 2020, at which time she was readmitted to defendant's facility "in recovering and stable condition."

There is no record evidence that Frances had COVID-19 or received any COVID-related treatment before April 15, 2020. For immunity to attach, there "must be some connection . . . between the alleged malpractice and the pandemic." *Skipper-Baines*, ___ Mich App at ___; slip op at 4. After all, "[t]he Legislature and the Governor would not have limited the immunity conferred pursuant to [MCL 691.1475] to services supporting the pandemic response if it actually intended for all medical providers to be immune from all liability short of gross negligence." *Id*. at __; slip op at 4. Because there is no record evidence that the alleged negligence from March 29, 2020 through April 14, 2020, was connected to the pandemic, the trial court erred by concluding that defendant was immune for negligence under MCL 691.1475 for plaintiff's claims that arose during those dates.

The record reflects that Frances was treated at defendant's facility for COVID-19 symptoms from April 15, 2020 through April 17, 2020. Plaintiff's expert, Dr. Judge, maintained that Frances' pressure ulcers opened and progressed to stage III during her first admission and continued to deteriorate throughout her admissions at defendant's facility because of defendant's grossly negligent care and treatment. Dr. Judge opined:

> 7. During admissions and residencies at Heartland, Francis [sic] went on to suffer from fulminating septicemia due to the open pressure ulcer that extended down to the bone and developed metabolic encephalopathy; her lab studies support this, and her demise was unrelated to a COVID diagnosis or COVID-related medical care.
>
> 8. From the time that Francis [sic] Thomas was admitted to the time she was discharged from Heartland for the last time, she had been deprived of medical care, nutrition, and hydration, so she lacked the physical capacity to ever recover from her systemic infection.
>
> 9. The death certificate . . . demonstrates that death was directly caused by fulminating septicemia from these pressure ulcers, which first appeared long before her COVID diagnosis and which continued to deteriorate after a COVID-19 diagnosis. Her death was unrelated to COVID-19 or any care in support of the COVID-19 initiative.

> 10. [Defendant] failed to obtain a wound care consultation from a wound care specialist, as she had osteomyelitis, which is extremely painful—producing a deep, gnawing pain and a bloodstream infection that was unrelated to COVID-19 or its treatment.

Dr. Judge further opined, "These ulcers did not develop because of COVID-19 or COVID-related services or during any period that Francis [sic] presented with a COVID-19 diagnosis." Dr. Judge testified that Frances had "an open and gaping wound" before she was diagnosed with COVID-19.

Unlike the plaintiff in *Franklin* who developed pressure ulcers while he was hospitalized and being treated for COVID-19, plaintiff's expert maintains that Frances developed pressure ulcers during her first admission at defendant's facility, which was unrelated to any COVID-19 diagnosis or treatment, and her wounds continued to deteriorate during her subsequent admissions. In other words, Frances' *initial* injuries were not "a consequence of the care defendant provided in response to COVID-19" or "sustained by reason of the healthcare services provided by defendant in support of the state's response to the COVID-19 pandemic." See *Franklin*, __ Mich App at __; slip op at 9. But plaintiff alleges the nursing staff neglected to care for Frances' pressure ulcer during each admission at defendant's facility, which "caused a downward spiral of deteriorating metabolic and health conditions caused by a lack of cleanliness and hygiene, dehydration, malnutrition, resulting in systemic septicemia, and death." It is undisputed that Frances was treated at defendant's facility for COVID-19 symptoms from April 15, 2020 through April 17, 2020. The services, or lack thereof, that allegedly caused Frances' pressure ulcer to worsen during that time period were given "in support of this state's response to the" pandemic. Accordingly, the trial court did not err by concluding that defendant was immune for negligence under MCL 691.1475 for plaintiff's claims that arose on those dates.

Frances was hospitalized from April 17, 2020 to April 27, 2020, and was readmitted to defendant's facility for her third admission from April 27, 2020, to May 9, 2020.[12] Frances received COVID-related care during her third admission, including oxygen and placement in a COVID isolation unit. Because the services, or lack thereof, that allegedly caused Frances' pressure ulcer to worsen during her third admission were given "in support of this state's response to the" pandemic, the trial court did not err by concluding that defendant was immune for negligence under MCL 691.1475 for plaintiff's claims that arose from April 27, 2020 to May 9, 2020.

Frances was hospitalized from May 9, 2020 to May 19, 2020.[13] Her COVID-19 testing was negative. After Frances was discharged from the hospital, she was readmitted to defendant's

[12] On appeal, defendant references and attaches medical records related to the April 2020 hospital admission. Because these records were not presented to the trial court, we cannot consider them on appeal. See *Sherman*, 251 Mich App at 56.

[13] On appeal, plaintiff references and attaches medical records related to the May 2020 hospital admission. Because these records were not presented to the trial court, we cannot consider them on appeal. See *id*.

facility for her fourth admission from May 19, 2020 to May 25, 2020. Dr. Judge testified that all COVID-related care had ceased at that time. Dr. Judge further averred that, as of May 21, 2020, Frances' pressure wound was "classified as a stage IV pressure injury, indicating the continued deterioration of the injury and open wound exposure down to the bone." Defendant claims that Frances remained under COVID-19 precautions during her fourth admission and thus her alleged injuries were sustained "by reason of" this state's response to the pandemic. However, there is no record evidence to support this assertion. Viewing the medical records and testimony in the light most favorable to plaintiff, we conclude that there is no material factual dispute that there was no connection between the pandemic and the health care services that gave rise to plaintiff's claims during her fourth admission. Accordingly, the trial court erred by concluding that defendant was immune for negligence under MCL 691.1475 for plaintiff's claims that arose from May 9, 2020 to May 19, 2020.

Frances was hospitalized from May 25, 2020 to May 28, 2020, and was readmitted to defendant's facility for her fifth admission from May 28, 2020 to June 6, 2020. She was hospitalized once again from June 6, 2020 to June 11, 2020, and was readmitted to defendant's facility for her sixth and final admission from June 11, 2020 to June 21, 2020. Dr. Judge testified that Frances' wound, which had been present since February 2020, continued to deteriorate and increase in size during her fifth and sixth admissions. Dr. Judge opined that the continued deterioration of Frances' pressure wound was unrelated to her previous COVID-19 diagnosis or any COVID-related care. Once again, defendant claims that Frances remained under COVID-19 precautions during her fifth and sixth admissions and thus her alleged injuries were sustained "by reason of" this state's response to the pandemic. However, there is no record evidence to support this assertion. Viewing the medical records and testimony in the light most favorable to plaintiff, we conclude that there is no material factual dispute that there was no connection between the pandemic and the health care services that gave rise to plaintiff's claims during her fifth and sixth admissions. Accordingly, the trial court erred by concluding that defendant was immune for negligence under MCL 691.1475 for plaintiff's claims that arose from May 28, 2020 to June 6, 2020, and June 11, 2020 to June 21, 2020.[14]

IV. CONCLUSION

In Docket No. 371166, we affirm the trial court's orders to the extent that they compel defendant to produce any citations regarding the care and treatment of Frances. We reverse all other aspects of the trial court's discovery orders challenged by defendant on appeal and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

[14] Plaintiff also argues that the trial court erred by denying its October 30, 2024 motion to amend the complaint to include gross negligence allegations. We decline to address this issue because our order granting plaintiff's application for leave to appeal limited the issues on appeal to those raised in the application, and plaintiff failed to raise this issue in its application. *Thomas v Heartland of Canton, MI, LLC*, unpublished order of the Court of Appeals, entered March 25, 2025 (Docket No. 374483), citing MCR 7.302(E)(4).

In Docket No. 374483, we reverse the trial court's grant of partial summary disposition to defendant and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Philip P. Mariani
/s/ Christopher M. Murray
/s/ Sima G. Patel