

STATE OF MICHIGAN
COURT OF APPEALS

JESSICA MORGAN DRUTCHAS,

Plaintiff-Appellant,

v

MICHELE DEGREGORIO, M.D., and CAVA
ASSOCIATES, PC, doing business as
CARDIOLOGY & VASCULAR ASSOCIATES,
PC,

Defendants-Appellees,

and

TRINITY HEALTH-MICHIGAN, doing business as
ST. JOSEPH MERCY OAKLAND,

Defendant.¹

Before: FEENEY, P.J., and REDFORD and YATES, JJ.

PER CURIAM.

In this medical malpractice action, plaintiff appeals by leave granted² the trial court’s order denying plaintiff’s motion to admit evidence. We affirm.

¹ The trial court granted summary disposition to defendant St. Joseph Mercy Oakland (SJMO) on August 27, 2021, and dismissed it from this case.

² See *Drutchas v DeGregorio*, unpublished order of the Court of Appeals, entered April 26, 2023 (Docket No. 363895).

I. FACTUAL AND PROCEDURAL BACKGROUND

This case arises from injuries plaintiff sustained because of alleged medical malpractice committed by Dr. Michele DeGregorio, a cardiologist employed through defendant CAVA Associates, PC (CAVA) which does business as Cardiology & Vascular Associates, PC. During January and February 2019, Dr. DeGregorio worked as a consulting physician with staff privileges at Saint Joseph Mercy Oakland (SJMO). However, he was not an actual employee of SJMO during the relevant period.

On January 30, 2019, plaintiff suffered from chest pain and went to SJMO for an evaluation which resulted in a diagnosis of having suffered a myocardial infarction (i.e., a heart attack). SJMO admitted her for further evaluation. The following day, plaintiff had an echocardiogram; however, the results were “within normal limits” and did not explain the cause of plaintiff’s heart attack. A nurse practitioner reviewed the results with Dr. DeGregorio who recommended that plaintiff undergo further testing to determine the cause of the heart attack. The nurse practitioner discussed Dr. DeGregorio’s recommendation with plaintiff, and plaintiff asked whether she could have the testing done at Beaumont Hospital where she felt more comfortable having this test done. Because he considered plaintiff to be “[cardiovascular] stable,” Dr. DeGregorio agreed that plaintiff would be able to have the testing done at the other hospital.

Dr. Jacky Duong also attended plaintiff during her evaluation at SJMO. Dr. Duong assessed plaintiff’s test results and determined, after consulting with Dr. DeGregorio, that plaintiff could be safely discharged from SJMO. On January 31, 2019, Dr. Duong discharged plaintiff; however, she noted that plaintiff “should wait for observation and further testing.” Dr. Duong then stated that plaintiff was “OK to discharge.” Plaintiff left SJMO on January 31, 2019, and on February 2, 2019, suffered a second heart attack which caused heart damage and resulting physical disabilities.

In February 2020, plaintiff sued alleging that Dr. DeGregorio committed medical malpractice by failing to obtain further testing to identify the cause of her heart attack and for failing to inform her of the risk of being discharged without the additional testing. Plaintiff contended that alleged medical malpractice directly and proximately caused her to suffer a second heart attack after being discharged from SJMO. Plaintiff also alleged that Dr. DeGregorio was an employee of SJMO and that both SJMO and CAVA were vicariously liable. In July 2021, SJMO moved for summary disposition, arguing that no question of fact existed regarding whether SJMO employed Dr. DeGregorio during the relevant period. In August 2021, the trial court ruled that Dr. DeGregorio was not an agent or employee of SJMO, so SJMO was not vicariously liable and dismissed plaintiff’s claims against SJMO.

In October 2022, plaintiff moved to admit at trial three documents concerning SJMO’s Against Medical Advice (AMA) form, policy, and procedures. These documents pertain to patients who wish to leave the hospital against medical advice. The AMA form is a document given directly to those patients. Plaintiff argued that “DeGregorio should have ordered that plaintiff not be discharged without either having the recommended tests or presenting to her an Against Medical Advice form and following the Against Medical Advice procedure” and had Dr. DeGregorio provided that instruction, plaintiff would not have left SJMO without first undergoing the recommended tests. Further, she claimed that the AMA documents were relevant and

admissible as evidence in determining the applicable standard of care Dr. DeGregorio owed to plaintiff.

Dr. DeGregorio and CAVA opposed plaintiff's motion. They argued that Dr. DeGregorio was not bound by SJMO's AMA documents since he was only a consulting physician, and not an employee of the hospital. They asserted that he had no duty to use SJMO's AMA form, so the AMA documents were irrelevant to show the applicable standard of care. They argued that no need to present plaintiff with the AMA form before discharge existed because she was deemed medically stable. Although SJMO was dismissed from the case, it appeared for the limited purpose of opposing plaintiff's motion to admit its AMA form, policy, or procedures at trial. SJMO argued that the AMA documents did not set the applicable standard of care, and therefore, were neither relevant nor admissible to show the standard of care. Further, it argued that the documents were neither relevant nor probative whether Dr. DeGregorio should have required that plaintiff's discharge be designated as having been "against medical advice." SJMO also maintained that Dr. DeGregorio was not an employee of the hospital, so the AMA policy and procedures lacked relevance because they only applied to SJMO's employees.

At the hearing, the trial court denied plaintiff's motion and concluded that "[i]t is not necessary for plaintiff to introduce copies of the AMA form to make her argument to the jury when she [already has testimony from Dr. DeGregorio] and her expert regarding the AMA form in this case." The court also found the AMA documents irrelevant because "there is no agency relationship between [SJMO] and [Dr. DeGregorio]." The court entered an order denying plaintiff's motion.

II. STANDARD OF REVIEW

A trial court's "decision to grant or deny a motion in limine is reviewed for an abuse of discretion." *Brownlow v McCall Enters*, 315 Mich App 103, 118; 888 NW2d 295 (2016). Likewise, "[i]ssues relating to the admission of evidence are reviewed for an abuse of discretion." *Hecht v Nat'l Heritage Academies, Inc*, 499 Mich 586, 604; 886 NW2d 135 (2016). A trial court abuses its discretion when its "decision is outside the range of reasonable and principled outcomes." *Id.* Additionally, we "review de novo questions of law underlying evidentiary rulings." *Elher v Misra*, 499 Mich 11, 21; 878 NW2d 790 (2016). "The proponent of the evidence has the burden of establishing its relevance and admissibility." *Id.* at 22.

III. ANALYSIS

Plaintiff argues that the trial court erred by denying her motion to admit evidence of SJMO's AMA form, policy, and procedures at trial. We disagree.

Under MRE 402, "[a]ll relevant evidence is admissible." Conversely, "[e]vidence which is not relevant is not admissible." *Id.* Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. Relevant evidence where the "probative value is substantially outweighed by the danger of unfair prejudice . . . or needless presentation of cumulative evidence" may be excluded. MRE 403. Unfair prejudice "exists when marginally relevant evidence might be given undue or preemptive

weight by the jury or when it would be inequitable to allow use of such evidence.” *DOT v Frankenlust Lutheran Congregation*, 269 Mich App 570, 583; 711 NW2d 453 (2006) (quotation marks and citation omitted).

Generally, expert testimony is required to establish the standard of care in medical malpractice cases. See *Meyers v Rieck*, 509 Mich 460, 480; 983 NW2d 747 (2022). “[A] medical provider’s rules and regulations can be used as evidence to help determine the standard of care, but they cannot be used as the standard itself without additional evidence.” *Id.* at 480. However, while internal rules and regulations are “not categorically inadmissible as irrelevant,” courts must still be “cautious in admitting this evidence.” *Id.* at 481-482. “[A] medical provider’s internal rules and regulations . . . must meet general evidentiary standards, including that the evidence be relevant, MRE 402, and its probative value must not be outweighed by the concerns listed in MRE 403.” *Id.* at 481. If such “meet the rules governing the admission of evidence and if the jury is instructed as to their proper use—i.e., that they are evidence of the standard of care and do not fix the standard itself—then they might be admitted.” *Id.* at 482.

In this case, SJMO’s AMA form, policy, and procedures did not apply to Dr. DeGregorio because he was not an SJMO employee. Both the AMA policy and procedures plainly state that they apply to “SJMO associates.” Specifically, the “scope” of the documents covers only “ ‘associates,’ which are employees of [defendant SJMO].” Dr. DeGregorio served as a consulting physician but “not an employee of SJMO.” The trial court granted SJMO summary disposition, because no dispute existed “that Defendant Dr. DeGregorio was not an employee or agent of St. Joseph Mercy.” Because he was not an employee of SJMO, he fell outside the scope of applicability of the AMA policies and procedures. Plaintiff has failed to establish that the AMA documents applied to Dr. DeGregorio. The AMA documents, therefore, lack relevance to plaintiff’s claims of medical malpractice against Dr. DeGregorio.

Plaintiff also has failed to establish that the documents have any bearing on the applicable standard of care for cardiologists in the area under similar circumstances. See *id.* at 482. The documents do not apply or define the standard of care applicable to consulting cardiologists like Dr. DeGregorio. Analysis of the AMA documents indicates that they concern allowing mentally sound patients the opportunity to decline further treatment and leave SJMO against medical advice. In this case, Dr. Duong discharged plaintiff after consulting with Dr. DeGregorio and confirming that plaintiff was in a stable condition.

Ultimately, plaintiff seeks to admit the AMA documents to show that Dr. DeGregorio did not follow SJMO’s procedures and failed to comply with the applicable standard of care when treating plaintiff. Dr. DeGregorio, however, was not bound by defendant SJMO’s AMA policies and procedures, and the forms do not provide evidence of the applicable standard of care for consulting physicians. Therefore, on the record currently before the Court, the AMA documents

are not relevant, and the trial court did not err by denying plaintiff's motion to admit the AMA form, policy, and procedures.³

Affirmed.

/s/ Kathleen A. Feeney
/s/ James Robert Redford
/s/ Christopher P. Yates

³ We note, when this matter is tried, if the trial court determines that the record has changed from that which gave rise to this appeal, the court may reconsider this issue.