

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Board of Registration in Medicine v. Doe

457 Mass. 738 (2010) · No. SJC-10556 · Decided September 2, 2010

SUMMARY

The Massachusetts Supreme Judicial Court held that a board-certified psychiatrist who practiced pain management qualified as a "psychotherapist" under the statutory psychotherapist-patient privilege. The court further held that the privilege statute did not permit balancing the Board of Registration in Medicine's public-safety interest against the confidentiality interests protected by the privilege. The court vacated the order enforcing the subpoena for patient records and remanded for entry of an order quashing it.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Cowin, J.; Marshall, C.J.; Ireland, J.; Spina, J.; Cordy, J.; Botsford, J.; Gants, J.
JURISDICTION	Massachusetts
DECIDED	September 2, 2010
DOCKET	SJC-10556
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Board of Registration in Medicine brought an action in the Superior Court under G. L. c. 233, § 10, to enforce a subpoena for the treatment records of twenty-four patients. The Superior Court held that the records were not protected by the psychotherapist-patient privilege and ordered Doe to produce them. Doe appealed, and the Supreme Judicial Court transferred the case on its own motion.
STANDARD OF REVIEW	Interpretation of a privilege statute is reviewed de novo. Factual findings are generally reviewed for clear error, but findings based solely on documentary evidence receive no special deference.
PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court opinion; precedential.
PARTIES	John Doe v. Board of Registration in Medicine

TOPICS

privilege

health law

administrative law

statutory interpretation

appellate procedure

PRACTICE AREAS

health law

administrative law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether Doe qualified as a psychotherapist under G. L. c. 233, § 20B, because he was licensed to practice medicine and devoted a substantial portion of his time to the practice of psychiatry.
2. Whether the psychotherapist-patient privilege could be overridden by a public-interest balancing test allowing the Board to obtain patient records during an investigation of physician misconduct.
3. Whether Doe was entitled to an evidentiary hearing to challenge the evidence concerning the nature and extent of his psychiatric practice.

HOLDINGS

1. A licensed physician whose pain-management practice is a subspecialty of psychiatry devotes a substantial portion of his time to the practice of psychiatry and qualifies as a psychotherapist under G. L. c. 233, § 20B.
2. The psychotherapist-patient privilege statute does not permit a court to balance the Board's public-safety interest against the confidentiality interests protected by the privilege, and the privilege applies to the Board's administrative investigation.
3. Doe was entitled to an opportunity to present evidence and cross-examine the Board's witnesses concerning whether he qualified as a psychotherapist, although the existing record made a further hearing unnecessary to resolve this case.

KEY QUOTATIONS

“The record establishes that pain management is a subspecialty of psychiatry; consequently, Doe devotes a substantial amount of time to the practice of psychiatry.” (457 Mass. at 739-740)

“Creation of an exception to a statutory privilege is for the Legislature.” (457 Mass. at 745-746)

“The Legislature has resolved that conflict in favor of confidentiality by declining to enact a statutory exception to the privilege for board investigations into physician misconduct.” (457 Mass. at 746)

FACTUAL BACKGROUND

Doe was a physician licensed in Massachusetts, board certified in psychiatry, and practicing both pain management and psychiatry. He reported spending most of his practice time in pain management and refused to produce treatment records for twenty-four patients after the Board began investigating his prescribing practices. The Board sought the records in connection with concerns about controlled-substance prescribing and possible physician impairment.

PROCEDURAL HISTORY

The Board investigated Doe's prescribing and treatment practices and subpoenaed records from twenty-four patients. After Doe refused to produce the records, the Board sought enforcement in the Superior Court. The Superior Court ruled that Doe was not a statutory psychotherapist, ordered production of the records, and quashed Doe's subpoenas seeking investigative materials. The Supreme Judicial Court vacated the judgment requiring production and remanded for an order quashing the Board's subpoena; it took no action on the order quashing Doe's subpoenas.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the Superior Court judgment stating that Doe is not a psychotherapist and ordering production of the records. Remand for entry of an order quashing the Board's subpoena. The court took no action on the Superior Court's order quashing Doe's subpoenas for the Board's and investigator's records.

CASES CITED

- Matter of a Grand Jury Subpoena, 447 Mass. 88, 90 (2006)
- Commissioner of Revenue v. Comcast Corp., 453 Mass. 293, 302 (2009)
- Alberts v. Devine, 395 Mass. 59, 67-68 (1985)
- Petition of Catholic Charitable Bur. of the Archdiocese of Boston, Inc., to Dispense with Consent to Adoption, 392 Mass. 738, 742 (1984)
- Commonwealth v. Dwyer, 448 Mass. 122, 143 (2006)
- Commonwealth v. Kobrin, 395 Mass. 284, 287 n.8, 288-290, 292-295 (1985)
- Gonzalez v. Spates, 54 Mass. App. Ct. 438, 443 (2002)

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