

CIRCUIT COURT FOR THE STATE OF MICHIGAN
INGHAM COUNTY CIRCUIT COURT
THIRTIETH JUDICIAL DISTRICT

BEN HANSEN,

Plaintiff

Case No. 06-1033 CZ

v.

Hon. Beverley Nettles-Nickerson

STATE OF MICHIGAN, DEPARTMENT OF
COMMUNITY HEALTH

Defendant.

SUPPLEMENTAL BRIEF REGARDING DYE CASE

The Department's reliance on the Dye case (a split decision) is very much misplaced. Dye v St. John Hospital and Medical Center, et al., 230 Mich. App. 661, 584 N.W. 2d 749 (1998). To begin, as Mr. Quasarano noted, Dye is a medical malpractice negligence case. Id., 230 Mich. App. at 664. The document being sought were Dr. Paz's personnel/privileges file ... "Id. The issue was whether or not Dr. Paz's file was discoverable. Id. at p. 665. n 2. Our issue concerns raw data and the names of drug manufacturers - no personal information is being sought.

Neither Dye nor the authority cited therein provide that the data sought pursuant to § 2 of Act 270; M.C.L. 333.532; M.S.A. 14.57 as a matter of law, can only be released to a "review entity." This is in effect what the Department is asking this Court to rule and the case simply does not so hold.

The Dye Court noted that Michigan Supreme Court reasoned that Act 270 protects persons, organizations and entities that choose to disclose information ..." Id., 233 Mich. App. at 671; citing Bruce v Attorney General, 407 Mich. 157, 171-172; 369 N.W. 2d 826 (1985). This may lead to the question of whether or not disclosure is mandatory. However, this is not the issue or argument

before the Court at this time and such has not been argued by the Department. Indeed, had this been argued, questions of fact would arise (such as, is the decision to withhold arbitrary) which would require an evidentiary hearing or trial. Plaintiff does recognize that the Court of Appeals notes that nothing in Sections 2 and 3 mandates disclosure. Id., 230 Mich. App. at 672, n 10. While Plaintiff does not read the statute this way, in any event, this case does not support the Department's argument that Mr. Hansen is not entitled to the data because he is not a "review entity." For that matter, footnote 10 clearly supports Plaintiff's position:

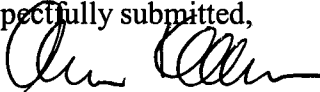
"Thus, a disclosure fully within one of the specified purposes of § 2 does not run foul of the confidentially provision of § 3." Id.

Dye does not support stifling education and research. The exceptions to confidential set forth in the statute are meant to promote education, research and discussion. If the Department actually disputes the purpose, then, as noted, questions of fact exist which must be determined. The Department has done nothing to question or put the affidavit and statement of two professionals regarding the purpose and use of the requested data at issue. Summary disposition is not warranted.

CONCLUSION

In closing, Plaintiff would simply like to preserve its right to be heard on the question of fees and costs. This is only mentioned as the Department has argued this issue. Plaintiff contends, based on what has transpired to date, regardless of those in dispute, that he has prevailed and is entitled fees and costs, not the Department.

Respectfully submitted,



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