IN THE

Indiana Supreme Court

Supreme Court Case No. 21S-CQ-48

Jeffrey B. Cutchin,
Appellant/Plaintiff,

–v–

Amy L. Beard,
Appellee/Defendant.

Argued: May 20, 2021 | Decided: June 30, 2021

Certified Questions from the
United States Court of Appeals for the Seventh Circuit
Case No. 20-1437

Opinion by Justice Slaughter

Chief Justice Rush and Justices Massa and Goff concur.
Justice David concurs in result with separate opinion.

Slaughter, Justice.

Before us are two certified questions from the United States Court of Appeals for the Seventh Circuit. We answer question two in the affirmative, holding that the Indiana Medical Malpractice Act applies when a plaintiff alleges that a qualified health-care provider treated someone else negligently and that the negligent treatment injured the plaintiff. Because our answer resolves this case, we decline to answer question one.

I

In 2017, Sylvia Watson, age 72, and her adult granddaughter picked up Watson's car from a repair shop. *Cutchin v. Robertson*, 986 F.3d 1012, 1014 (7th Cir. 2021). Before they left the shop, the granddaughter saw Watson swallow two pills from a prescription bottle. *Id.* Later, Watson approached an intersection with a red light but could not lift her foot from the accelerator, saying "I can't stop." *Id.* Watson ran the light and crashed into another vehicle. Watson died from injuries sustained in the crash; so, too, did the other driver, Claudine Cutchin, and her daughter, Adelaide. Watson's granddaughter avoided serious injury. *Id.* A blood test showed Watson's system contained opiates, which had been prescribed by "Physician". *Id.* "Physician" had treated Watson at "Clinic" for many years and had prescribed her at least eight different medications. *Id.*

In 2018, Jeffrey Cutchin, the husband and father of decedents Claudine and Adelaide, respectively, filed a proposed complaint with the Indiana Department of Insurance against Physician and Clinic under our Medical Malpractice Act. *Id.* At the same time, Cutchin filed a civil action in the Southern District of Indiana under its diversity jurisdiction alleging medical malpractice. *Id.* He claimed that Physician breached the standard of care to Watson by failing to:

- warn her of the danger of operating a motor vehicle while under the influence of Physician's prescribed medications;
- screen her for cognitive impairment caused by these medications;
- adjust her medications to address problems with muscle control; and

- ask the Indiana Bureau of Motor Vehicles to assess Watson's driving ability.

Id. Cutchin alleged that Physician's negligence caused the wrongful deaths of his wife and daughter. *Id.* He later amended the complaint to seek a declaratory judgment that the Act applies. *Id.*

The Act is a comprehensive statute covering tort and breach-of-contract claims that are "based on health care or professional services that were provided, or that should have been provided, by a health care provider, to a patient." Ind. Code § 34-18-2-18. The Act governs claims for medical malpractice in Indiana and provides a damages cap for recovery against qualified health-care providers, *id.* § 34-18-14-3(a)(3), including physicians, *id.* § 34-18-2-14. To qualify for the Act's protection at that time, a physician needed to secure malpractice insurance up to $250,000, *id*. §§ 34-18-14-3(b)(1)–(d)(1), 34-18-15-3, which was the maximum amount of a physician's personal liability, *id.* § 34-18-14-3(b)(1)–(d)(1). A physician also had to pay a surcharge to the Patient's Compensation Fund. *Id.* § 34-18-3-2. The Fund acts as an excess insurer and paid, at the time, up to $1 million above the physician's liability. *Id.* § 34-18-14-3(c).

After Cutchin filed the federal suit, the state insurance commissioner, who administers the Fund, sought and received permission to intervene. *Cutchin*, 986 F.3d at 1014. The district court held a settlement conference among the parties, including the Fund. *Id.* at 1015. Physician, Clinic, and Cutchin all agreed to settle the case, with Physician agreeing to pay the $250,000 statutory cap. *Id.* Under the settlement, Cutchin agreed to end proceedings before the medical-review board, *id.*, but he reserved his rights vis-à-vis the Fund. *Id.* The court dismissed Physician and Clinic from the litigation, and Cutchin sought excess damages from the Fund. *Id.* The Fund responded that it had no liability because the underlying claim was not covered by the Act. *Id.* Cutchin and the Fund filed cross-motions for summary judgment on Cutchin's request for declaratory relief. *Id.* The district court entered judgment for the Fund. *Id.*

Cutchin appealed to the Seventh Circuit, which certified two questions to us:

1. Whether Indiana's Medical Malpractice Act prohibits the Patient's Compensation Fund from contesting the Act's applicability to a claim after the claimant concludes a court-approved settlement with a covered health care provider.

2. Whether Indiana's Medical Malpractice Act applies to claims brought against qualified providers for individuals who did not receive medical care from the provider, but who are injured as a result of the provider's negligence in providing medical treatment to someone else.

Id. at 1029. We accepted these questions under Indiana Appellate Rule 64. While the case was pending, Amy L. Beard succeeded Stephen W. Robertson as commissioner of the Indiana Department of Insurance. We substitute Ms. Beard for Mr. Robertson under Rule 17(C).

II

We begin with the second question, which asks whether the Act applies to a third party who did not receive medical care from a qualified health-care provider but who was injured by the provider's negligence in treating someone else. Based on the Act's definition of "patient", we answer this question in the affirmative.

The Act defines both what kind of claim and what kind of claimant are subject to the Act. The Act covers malpractice claims brought by a patient or a patient's representative. See I.C. §§ 34-18-1-1, 34-18-8-1. Here, it is undisputed that Cutchin is suing for malpractice because his claim is based on allegations that Physician and Clinic treated their patient, Watson, negligently. The key issue is whether Cutchin (in addition to Watson) also is a "patient", i.e., a claimant covered by the Act.

The Act says that a "patient":

> means an individual who receives or should have received health care from a health care provider, under a contract, express or implied, and includes a person having a claim of

> any kind, whether derivative or otherwise, as a result of alleged malpractice on the part of a health care provider. Derivative claims include the claim of a parent or parents, guardian, trustee, child, relative, attorney, or any other representative of the patient including claims for loss of services, loss of consortium, expenses, and other similar claims.

Id. § 34-18-2-22.

Based on this provision's text and structure, we hold that a statutory "patient"—an eligible claimant under the Act—falls into either of two categories. The first category is a traditional patient, i.e., one with a physician-patient relationship with a health-care provider: "an individual who receives or should have received health care from a health care provider, under a contract, express or implied". *Id*. The other category is a third party with a claim against a health-care provider under state law: "a person having a claim of any kind, whether derivative or otherwise, as a result of alleged malpractice on the part of a health care provider." *Id*. This latter category refers to a third party whose claim results from a provider's malpractice to someone in the first category, namely, a traditional patient. Here, Cutchin is not a traditional patient because he has no patient-provider relationship with either Physician or Clinic. But he is nevertheless a statutory "patient" because he has a wrongful-death claim resulting from Physician's and Clinic's alleged malpractice to Watson, who is their traditional patient.

Our precedent supports this interpretation. In *Cram v. Howell*, we held that a health-care provider owed a duty in a medical-malpractice case to a "third-party non-patient[]". 680 N.E.2d 1096, 1097, 1097–98 (Ind. 1997). There, Cram, a third party, was injured after a doctor administered immunizations and vaccinations that led to the patient's blacking out and causing Cram's death in an accident. *Id.* at 1097. We held that the doctor "owed a duty of care to take reasonable precautions in monitoring, releasing, and warning his patient for the protection of unknown third persons potentially jeopardized by the patient's driving upon leaving the physician's office." *Id.* at 1098. By holding that Cram stated a malpractice

claim on which relief could be granted, we relied on the implicit understanding that such third parties are "patients" under the Act.

In more recent cases, we have expressly noted the broader class of eligible claimants under the Act. In *Goleski v. Fritz*, we held that the wife of a traditional patient was herself a "patient" because she had derivative claims against her husband's provider. 768 N.E.2d 889, 891 (Ind. 2002). In coming to this conclusion, we clarified an earlier court of appeals' holding that "a derivative claimant is a subset of the patient and not a patient unto himself." *Id.* at 891 n.1 (quoting *Ind. Patient's Comp. Fund v. Wolfe*, 735 N.E.2d 1187, 1192 (Ind. Ct. App. 2000)). We observed that the court of appeals reached the right result in *Wolfe* but for the wrong reason. *Goleski*, 768 N.E.2d at 891 n.1. As we noted, section 34-18-2-22 "defines derivative claimants as 'patients.'" *Id.* Thus, "[a]lthough there may be persons who are statutorily defined to be 'patients' and therefore may assert derivative claims for their own damages under the Act", the statute also "applies the damages cap to all claims, whoever may assert them, for [the] 'injury or death of a patient.'" *Id.*

And in *Spangler v. Bechtel*, we embraced a broad reading of "patient", which includes plaintiffs with claims that are not derivative. See 958 N.E.2d 458, 472 (Ind. 2011). There, the issue was whether parents could bring a claim under the Act based on the death of their *in utero* child. *Id.* at 469–70. We avoided deciding whether an unborn child is a patient under the Act. See *id.* at 471–72. But we observed that the parents' claims that their child died due to medical malpractice were not derivative of injury to another. *Id.* at 471. We explained that the Act's definition of "patient" contemplates the "expansive applicability of the [Act] . . . to a variety of actions alleging medical negligence." *Id.* at 471–72. That is because "patient" includes "a person having a **claim of any kind**, whether derivative **or otherwise**, as a result of alleged malpractice". *Id.* at 471. Based on this expansive definition, we held the parents' claims were subject to the Act: "Thus a parent who suffers emotional distress from experiencing the birth of a lifeless child resulting from medical negligence is a 'patient' subject to the [Act]". *Id*. at 472.

Despite this precedent and the Act's text, the Fund argues that a third party unconnected to the underlying provider cannot be a "patient" because case law requires a "direct connection". To support this argument, the Fund relies on two cases from our court of appeals, *Midtown Community Mental Health Center v. Estate of Gahl*, 540 N.E.2d 1259 (Ind. Ct. App. 1989), and *Preferred Professional Insurance Co. v. West*, 23 N.E.3d 716 (Ind. Ct. App. 2014). But because these cases do not adequately wrestle with the plain meaning of "patient" under section 34-18-2-22, we find their reasoning unpersuasive.

In *Gahl*, the estate of a probation officer killed by a hospital's former patient sued the hospital and its doctors. 540 N.E.2d at 1260. The estate alleged that the health-care providers were negligent in caring for their former patient. *Id.* The court concluded that the officer "was not a patient; therefore, although [the officer] may have a valid claim for negligence based upon failure to warn, that claim is not governed by the provisions of the Malpractice Act." *Id.* at 1262. We agree that the officer was not a patient in the traditional sense; he received no services from the providers. But the misstep in *Gahl* is that the court did not consider the Act's definition of "patient" to determine if the officer was otherwise a statutory patient. To the extent *Gahl*'s implicit reasoning conflicts with the legislature's broad definition of patient, we disapprove it.

And in *West*, the plaintiff was injured when a coworker under the influence of prescription narcotics crashed into the plaintiff's work vehicle. 23 N.E.3d at 719. The plaintiff alleged negligence against her coworker's health-care providers. *Id.* The court first recited the definition of patient under the Act and found that to qualify as a patient, a plaintiff must be one "who receives or should have received health care from a health care provider". *Id.* at 729 (quoting I.C. § 34-18-2-22). The panel then noted this expansive language—"a person having a claim of any kind"—but dismissed it, along with our reasoning in *Spangler*, and said this "inclusive language" did not defeat "the initial requirement that a patient be an individual who receives or should have received health care from a provider." *Id.*

Like *Gahl*, *West* ignores the natural reading of "patient". The two main clauses of the first sentence are "means an individual who receives or should have received health care from a health care provider, under a contract, express or implied" and "includes a person having a claim of any kind". I.C. § 34-18-2-22. The sentence structure does not indicate that the second clause ("includes a person") was intended to modify the first clause ("means an individual"). Rather, because the two main clauses are separated by a comma and an "and", this structure indicates that both clauses define "patient" independently. In other words, the structure of the statute's first sentence is as follows: "['Patient'] means X and includes Y"—where X is a traditional patient and Y is a third party with a claim "of any kind". Given this structure, the best interpretation is that "patient" is one who satisfies either X or Y.

In contrast, the Fund (relying on *West*) interprets the definition of "patient" thus: "['Patient'] means only an individual who receives X, including Y." That is, a "patient" is the one who received X, which can include Y. Under this interpretation, X is an essential attribute of "patient", but Y is not. In the Fund's view, Y illustrates a particular subset of X. This proposed interpretation both ignores the structure of the sentence and reads out the definition's second sentence, which says that "[d]erivative claims include the claim of a parent or parents, guardian, trustee, child, relative, attorney, or any other representative of the patient". *Ibid.* "Patient" cannot be limited to "an individual who receives or should have received health care from a health care provider" and still include people related to or representing a person who receives or should have received health care. Under our surplusage canon, courts should give effect to every word and "eschew those [interpretations] that treat some words as duplicative or meaningless." *Estabrook v. Mazak Corp.*, 140 N.E.3d 830, 836 (Ind. 2020). Because *West* is at odds with the Act's plain meaning, as well as our own precedent and interpretive canon, we likewise disapprove it.

Section 34-18-2-22 says that a third party who did not receive medical care from a provider but who has a claim due to the provider's medical malpractice to a traditional patient also is a "patient" under the Act. We thus answer the second certified question in the affirmative. In doing so,

we reject the Fund's argument that the legislature intended that a third party injured by a provider's malpractice to a traditional patient has only a generic negligence claim not subject to the Act. Such a claim would not be subject to any cap on damages recoverable from the provider and would afford no relief from the Fund. But the Fund's view ignores the structure and text of the statute. We will not ignore the statute's language in favor of what the Fund perceives to be the legislature's intent.

* * *

For these reasons, we hold that the Act applies where a plaintiff alleges that a qualified health-care provider's negligent treatment of someone else caused the plaintiff to suffer an injury. Having answered the second certified question in the affirmative, we leave the first question for another day.

Rush, C.J., and Massa and Goff, JJ., concur.
David, J., concurs in result with separate opinion.

ATTORNEYS FOR APPELLANT
Patrick A. Shoulders
Jean M. Blanton
L. Katherine Boren
Ziemer, Stayman, Weitzel & Shoulders, LLP
Evansville, Indiana

ATTORNEY FOR AMICI CURIAE
Libby Yin Goodknight
Krieg DeVault LLP
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE
A. Richard M. Blaiklock
Wade D. Fulford
Matthew W. Conner
Taylor L. Fontan
Lewis Wagner, LLP
Indianapolis, Indiana

David, J., concurring in result.

I concur in the result of the majority opinion given the unique factual background and procedural posture of the case, but I write separately to express my concerns about the expansion of the Medical Malpractice Act.

I think it's important to note that the Act is to be construed narrowly. The Act is not all-inclusive for claims against healthcare providers, nor is it intended to be extended to cases of ordinary negligence. *Peters v. Cummins Mental Health, Inc*., 790 N.E.2d 572, 576 (Ind. Ct. App. 2003). Instead, the Act was designed to curtail, not expand, liability for medical malpractice. *See generally Atterholt v. Herbst*, 902 N.E.2d 220, 223 (Ind. 2009).

I believe the statutory definition of "patient" is ambiguous and I do not interpret it the way the majority here does. While the majority makes much of the language "claim of any kind," and "and," I believe the opinion's broad definition of "patient" renders the whole opening clause of its definition meaningless. Indiana Code section 34-18-2-22. Additionally, I interpret the "and" differently as I do not think it is separating two kinds of patients, but rather setting guardrails for who may bring a claim under the Act. A patient must be someone who received or should have received healthcare. If they are, then they can bring a claim of any kind; the statute allows family to bring derivative claims as well. I don't think the statute is nearly as broad as the majority has interpreted it. Because the statute is open to more than one reasonable interpretation, it is ambiguous. Therefore, I believe it must be construed narrowly. While I sympathize with the Plaintiff here, I am hesitant to grant relief until the Legislature resolves this ambiguity.

While I understand that many Court of Appeals opinions over the years have expanded the Act, I cannot condone continuing to do so. I previously expressed concerns about expansion of the Act in my dissent to the denial of transfer in *Martinez v. Oaklawn Psychiatric Ctr., Inc*., 128 N.E.3d 549 (Ind. Ct. App.), *clarified on reh'g*, 131 N.E.3d 777 (Ind. Ct. App. 2019), *trans. denied*, 140 N.E.3d 286 (Ind. 2020).

I remain concerned with continued expansion of the Act and believe that this expansion may have unintended consequences. While it may help this particular plaintiff, it may hurt future litigants who would be better served filing their claims not through the Medical Review Panel, but directly and initially through the court.

For the above reasons, I concur in the result.