

STATE OF MISSOURI)
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CITY OF ST. LOUIS)

FILED

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22ND JUDICIAL CIRCUIT
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**MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)**

PLANNED PARENTHOOD OF THE)
ST. LOUIS REGION AND)
SOUTHWEST MISSOURI,)

Plaintiff,)

vs.)

ANDREW BAILEY, ATTORNEY)
GENERAL STATE OF MISSOURI,)

Defendant.)

No. 2322-CC00637

Division No. 6

JUDGMENT

The Court has before it Plaintiff, Planned Parenthood of the St. Louis Region and Southwest Missouri ("Plaintiff")'s, Motion for Judgment on the Pleadings and Defendant, Attorney General Andrew Bailey ("Defendant")'s Motion for Judgment on the Pleadings. All parties were given the opportunity to present their arguments to the Court. The Court took the matter under submission and now rules as follows.

The facts in this matter are not in controversy and are recounted herein. On or about March 14, 2023, Plaintiff received a Civil Investigation Demand ("CID") request from Defendant. This request arose out of Defendant's investigation of certain transgender care services provided through Washington University

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Pediatric Transgender Center. Defendant's CID request contained fifty-four (54) separate requests with an additional fifteen (15) subparts. Plaintiff argues that said CID request should be set aside because the CID is unauthorized and vague. Plaintiff further argues that Defendant has failed to show how Plaintiff is directly involved in his investigation and therefore should not be allowed to request said documents via a CID. Defendant argues that said CID request should stand because he has an affidavit that alleges intentional dishonesty in Plaintiff's medical and billing practices.

A motion for judgment on the pleadings is properly granted if, from the face of the pleadings, the moving party is entitled to a judgment as a matter of law. *Lanham v. Missouri Dept. of Corrections*, 232 S.W.3d 630, 633 (Mo. App. S.D. 2007). A party moving for judgment on the pleadings admits the truth of all well-pleaded facts and contends that, assuming the facts are true, the facts are insufficient as a matter of law. *Stephens v. Brekke*, 977 S.W.2d 87, 92 (Mo. App. S.D. 1998). A motion for judgment on the pleadings raises only issues of law and will lie only when the moving party, on the face of all of the pleadings, is entitled to judgment as a matter of law. *Madison Block Pharmacy, Inc. v. U.S.*

Fidelity and Guarantee Company, 620 S.W.2d 343, 345 (Mo. banc 1981).

With the Parties agreeing to the underlying facts of this matter, the issue in dispute is the power of a CID request under the MMPA. "The MMPA is paternalistic legislation designed to protect those that could not otherwise protect themselves." *Acol v. Travers Autoplex & RV, Inc.*, 637 S.W.3d 415, 423 (Mo. App. E.D. 2021). The Defendant is asserting that the Plaintiff is subject to the broad investigative powers granted to his office when looking into the violation of the MMPA under the Missouri Revised Statute 407.040. Missouri Revised statute 407.040 states in relevant part, "When it appears to the attorney general that a person has engaged in or is engaging in any method, act, use, practice or solicitation declared to be unlawful by this chapter or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in or is engaging in any such method, act, use, practice or solicitation, he may execute in writing and cause to be served upon any person who is believed to have information, documentary material, or physical evidence relevant to the alleged or suspected violation, a civil investigative demand requiring such person to appear and testify, or to produce relevant documentary material or physical evidence

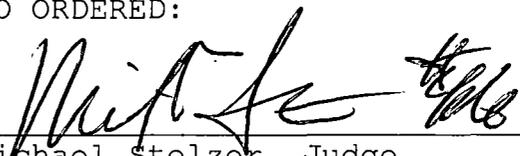
or examination, at such reasonable time and place as may be stated in the civil investigative demand, concerning the advertisement, sale or offering for sale of any goods or services or the conduct of any trade or commerce or the conduct of any solicitation that is the subject matter of the investigation." In this case, the Defendant is investigating possible dishonesty by Plaintiff in their medical and billing practices. It is clear from the statute that the Defendant has the broad investigative powers when the consumer is in possible need of protection and there is no dispute in this matter that the MMPA applies. Therefore, the Defendant is entitled to some of the requested documents within his CID.

While the Court agrees that the CID and MMPA grants Defendant broad investigative powers, it does not grant Defendant the authority to access federally protected documents. Additionally, this Court does not have the authority to override any federal law. "Authorized by the Missouri constitution and statutes, Missouri Supreme Court Rules are to be given the same effect as statutes so long as they are not in conflict with other law." *Gillespie v. Rice*, 224 S.W.3d 608, 612 (Mo. App. W.D. 2006). Medical records are federally protected documents under the Health Insurance Portability Accountability Act ("HIPAA"). The only way for Defendant to gain access to such documents is for each

individual patient to directly waive their HIPAA rights. "Waiver is the voluntary relinquishment of a known right." *Ziervogel v. Royal Packing Co.*, 225 S.W.2d 798, 803 (Mo. App. E.D. 1949). In this case, the right to privacy as it relates to medical records belongs to the patient and therefore cannot be waived by Plaintiff on each patient's behalf.

THEREFORE, it is Ordered, Adjudged and Decreed that Plaintiff's Motion for Judgment on the Pleadings is hereby GRANTED in part and DENIED in part. Plaintiff shall produce any and all documents not protected by HIPAA. It is further ordered that Defendant's Motion for Judgment on the Pleadings is hereby GRANTED in part and DENIED in part. Defendant shall be entitled to receive any and all requested documents not protected by HIPAA.

SO ORDERED:



Michael Stelzer, Judge

Dated: 4/11 / _____, 2024