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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0097**

Allstate Indemnity Company, et al.,
Appellants,

vs.

Twin Cities Diagnostic Center, L.L.C., et al.,
Respondents,

Precision Toxicology, LLC, et al.,
Defendants.

**Filed July 27, 2020
Affirmed in part, reversed in part, and remanded
Frisch, Judge**

Hennepin County District Court
File No. 27-CV-18-18730

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appellants)

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(for respondents)

Considered and decided by Frisch, Presiding Judge; Bjorkman, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

FRISCH, Judge

This appeal arises from a dismissal on the pleadings. Appellants argue that they stated viable claims against an advanced diagnostic imaging center not operated by licensed healthcare professionals for violations of (1) the corporate practice of medicine doctrine and (2) statutory accreditation requirements. Accepting the allegations set forth in the pleadings as true, we affirm the dismissal of the statutory claim, reverse the dismissal of the claim for violation of the corporate practice of medicine doctrine, and remand for further proceedings.

FACTS

Respondent Twin Cities Diagnostic Center, L.L.C. (TCDC) is owned by respondents Peter DePrimo, Carlos Fleites, and Katiana Fleites, none of whom are licensed healthcare professionals. Appellants Allstate Indemnity Company and Allstate Insurance Company (collectively, Allstate) insure several claimants who received advanced diagnostic imaging services from TCDC. The parties stipulated before the district court that a TCDC technician takes magnetic resonance imaging (MRI) scans in Minnesota and then sends the scans to radiologists in Florida for review and evaluation. The record contains no other information regarding the business enterprise.

Allstate incurred over \$25,000 in charges from TCDC for MRI scans now in dispute. Allstate sought a declaratory judgment that these charges are noncompensable, primarily arguing that ownership of an MRI facility by a non-physician violates the Minnesota Corporate Practice of Medicine Doctrine (CPMD). Allstate also claims that TCDC's

ownership structure violates accreditation standards set forth in Minn. Stat. § 144.1225, subd. 2(a)(2) (2018).¹

TCDC and its individual owners moved to dismiss pursuant to Minn. R. Civ. P. 12.02(e), arguing that Allstate’s amended complaint failed to state a claim upon which relief could be granted. The district court agreed, dismissing all claims with prejudice. Allstate appeals.

DECISION

We review de novo dismissal of a complaint pursuant to Minn. R. Civ. P. 12.02(e). *Sipe v. STS Mfg., Inc.*, 834 N.W.2d 683, 686 (Minn. 2013). “We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party.” *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014). Because “Minnesota is a notice-pleading state,” a complaint “requires only information sufficient to fairly notify the opposing party of the claim against it.” *Id.* at 604-05 (quoting *Hansen v. Robert Half Int’l, Inc.*, 813 N.W.2d 906, 917-18 (Minn. 2012)). “If a pleading is ‘so vague and ambiguous that a party cannot reasonably be required to frame a responsive pleading,’ that party may move ‘for a more definite statement.’” *Id.* at 605 (quoting Minn. R. Civ. P. 12.05).

¹ Allstate also brought a claim for misrepresentation of fact that was dismissed by the district court. Allstate’s written submissions do not discuss dismissal of this claim. Accordingly, Allstate failed to preserve the dismissal of the misrepresentation claim for appeal. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (declining to reach issue not argued in briefs).

I. The amended complaint states a claim that TCDC's ownership structure violates the Minnesota Corporate Practice of Medicine Doctrine.

Allstate alleges that the CPMD bars ownership of an MRI facility by non-physicians. The CPMD is a common-law prohibition against corporations engaging in healthcare practice “through the employment of licensed professionals except pursuant to specific statutory or regulatory exceptions.” *Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 703 N.W.2d 513, 516 (Minn. 2005). This “prohibition on the corporate practice of health care arises not simply because particular health care practitioners are engaged in ‘healing,’ but also because the individual practitioners are members of a state licensed profession, must undergo significant training and education, and enjoy independent professional judgment.” *Id.* at 522. Minnesota courts have never addressed whether an MRI facility specifically is subject to the CPMD.²

Pursuant to *Isles Wellness*, we first consider whether TCDC is engaged in the practice of “healing.” The amended complaint contains an allegation that TCDC is engaged in the practice of healing, an allegation we must accept as true at this procedural posture under *Walsh*.

² The *Isles Wellness* court observed that the Minnesota Professional Firms Act, Minn. Stat. §§ 319B.01-.12 (2018), specifically “permits the formation of professional corporations to practice certain specified professions.” 703 N.W.2d at 518. TCDC argues that Minnesota statutes contemplate lay ownership of MRI facilities and cites a statute that requires MRI facilities to provide the health commissioner with the names of physicians who have “any financial or economic interest” in the facility, as well as “all other individuals with a ten percent or greater financial or economic interest in the facility.” Minn. Stat. § 144.565, subd. 1(2) (2018). This reporting requirement does not in itself authorize lay ownership or nullify the applicability of the CPMD.

Notwithstanding the notice-pleading standard and without analyzing how the practice of healing is defined under Minnesota law, TCDC argues that the mere *taking* of an MRI scan is not the practice of healing. Because the parties stipulated that TCDC sends its MRI scans to independent radiologists for evaluation, TCDC contends that, as a matter of law, its practices do not implicate concerns regarding the corporate practice of medicine.³ But the stipulated facts do not reveal anything about the relationship between the MRI technicians and the radiologists or the nature of any professional judgment required in taking an MRI scan to obtain an accurate diagnosis. Although we must, at this procedural posture, accept the allegation set forth in the pleading that TCDC is engaged in the practice of healing, whether the actual work conducted at TCDC involves the practice of healing, thereby implicating the CPMD, requires discovery to develop a factual record.

Assuming that TCDC is engaged in the practice of healing, the application of the CPMD also requires consideration of whether individual practitioners “are members of a state licensed profession, must undergo significant training and education, and enjoy independent professional judgment.” *Isles Wellness*, 703 N.W.2d at 522. Here also, the record contains no information regarding the profession of MRI technicians. Minnesota

³ TCDC relies on federal cases applying Minnesota law to support its argument. *See Ill. Farmers Ins. Co. v. Mobile Diagnostic Imaging, Inc.*, No. 13-CV-2820 PJS/TNL, 2014 WL 4104789, at *7 (D. Minn. Aug. 19, 2014) (citing cases). We are not bound by federal interpretations of Minnesota common law. Further, the cases cited by TCDC either involved a heightened plausibility pleading standard not accepted in Minnesota or were decisions on summary judgment, with the benefit of discovery to shed light on the activities actually taking place at the MRI facilities at issue. Here, we have no discovery and can only speculate as to the activities of TCDC employees and the radiologists who interpret the scans.

statutes suggest, however, that advanced diagnostic imaging centers must have “standards for quality control,” “routine performance monitoring by a medical physicist,” and proper qualification for technologists, “including minimum standards of supervised clinical experience.” Minn. Stat. § 144.1225, subd. 2(a)(2)(ii)-(iii). And the amended complaint contains an allegation that TCDC “find[s] more [material] than anyone,” which implies an exercise of professional judgment. Again, discovery should reveal whether the CPMD applies to the services rendered by practitioners at TCDC.

The district court reasoned that Allstate failed to state a claim because the amended complaint did not specifically allege that TCDC technicians “enjoy independent professional judgment.” But such an allegation is not necessary for notice pleading, which “requires only information sufficient to fairly notify the opposing party of the claim against it.” *Walsh*, 851 N.W.2d at 605 (quotation omitted). Because the amended complaint contains allegations that ownership of TCDC by non-physicians violated the CPMD, and that the actual work performed at TCDC implicated the exercise of professional judgment, the pleading sufficiently notified TCDC that one of the factual issues to be litigated was the exercise of independent professional judgment at TCDC.

Accordingly, the district court erred by failing to properly apply the *Walsh* standard to Allstate’s CPMD claim. Because the amended complaint contained sufficient allegations to state a claim for violation of the CPMD under the notice-pleading standard, we reverse the dismissal of the CPMD claim and remand to the district court for further proceedings.

II. Allstate failed to state a statutory claim that the services of TCDC are noncompensable.

Allstate also claims that TCDC's services are noncompensable because TCDC fails to meet independent accreditation standards. MRI services "shall be reimbursed only if the facility" is accredited by one of certain, listed entities. Minn. Stat. § 144.1225, subd. 2(a)(1) (2018). One such entity is the Intersocietal Accreditation Commission (IAC). *Id.*, subd. 2(a)(1)(ii). It is undisputed that TCDC held IAC accreditation at the time of the district court proceedings. Allstate contends, however, that the IAC mistakenly accredited TCDC because the facility is not supervised by a licensed physician and therefore does not comply with accreditation requirements specified in the statute. *Cf. id.*, subd. 2(a)(2)(i) (requiring accreditation standards to include "provisions establishing qualifications of the physician").

Allstate has not set forth any legal basis to challenge the allegedly erroneous accreditation by an independent agency. The statute requires that TCDC obtain accreditation. *Id.*, subd. 2 (2018). Although the statute sets forth specifications for agency accreditation standards, Allstate did not identify any recognized legal remedy for the circumstance where the accrediting agency deviates from its own requirements and erroneously accredits an imaging center. The statute does not appear to authorize a legal action to challenge accreditation and no caselaw recognizes a cause of action to do so. Allstate appears to assert a novel claim that has not been recognized and without supporting legal authority. Because Allstate did not set forth a legal basis to challenge the actions of the IAC, we affirm dismissal of Allstate's statutory claim. *See Stephens v. Bd. of Regents*

of Univ. of Minn., 614 N.W.2d 764, 770-71 (Minn. App. 2000) (declining to reach claim where briefs failed to set forth supporting citation or authority), *review denied* (Minn. Sept. 26, 2000).

Affirmed in part, reversed in part, and remanded.