

**18-A-2093**

JUL 23, 2019 01:47 PM



Angie T. Davis, Clerk of State Court  
Cobb County, Georgia

**IN THE STATE COURT OF COBB COUNTY  
STATE OF GEORGIA**

	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>CIVIL ACTION</b>
<b>v.</b>	)	<b>FILE NO. 18-A-2093-3</b>
	)	
<b>CARLOS GAMEZ,</b>	)	
	)	
<b>Defendant.</b>	)	

**ORDER**

This case comes before the Court on Defendant's Motion for Partial Summary Judgment, Plaintiff's Response, and Defendant's Reply. No request was made for oral argument. After considering the arguments of counsel, the entire case of record, as well as relevant legal authority, the Court finds and rules as follows:

Plaintiff claims personal injuries resulting from an automobile accident occurring on February 17, 2018. She is seeking to recover medical expenses allegedly incurred as a result of this accident. Specifically, Plaintiff is claiming medical expenses for magnetic resonance imaging (MRI).

Defendant argues that Plaintiff's chiropractor, Navid Mahallati, DC, ordered the MRIs, which is a medical decision outside the scope of his practice and prohibited by O.C.G.A. § 43-9-16. Plaintiff disagrees with Defendant's argument and details how the decision in *Colvard v. Mosley*, 270 Ga. App. 106 (2004), which was cited with support by Defendant, has been superseded in the last 15 years through amendments to the Code, an unofficial Georgia Attorney General's opinion, and other rules and regulations.

Defendant phrased the issue to be decided this way:

whether Plaintiff's chiropractor, Navid Mahallati, DC **referred** Plaintiff to the appropriate health care provider for the MRIs in order to determine the need for chiropractic care or whether Plaintiff's chiropractor simply **ordered** the MRIs of the thoracic spine and cervical spine.

Def.'s Reply Br. at 2.

"Chiropractic" and the "practice of chiropractic" are defined in O.C.G.A. § 43-9-1. The Court notes that O.C.G.A. § 43-9-1 was amended after the *Colvard* decision in 2007. O.C.G.A. § 43-9-12.1 expressly permits chiropractors to refer their patients to the appropriate health care provider to determine the need for chiropractic care.<sup>1</sup>

Plaintiff contends and Dr. Mahallati's affidavit shows that Plaintiff was treated for a form of subluxation.<sup>2</sup> Dr. Mahallati's affidavit also evinces that he referred Plaintiff for an MRI to Northside Hospital because, based on his training and experience, MRI is often the best available rational and empirical evidence for the diagnosis and treatment of chiropractic patients. Mahallati Aff. ¶ 3.

The Georgia Chiropractic Board authorizes chiropractors to refer their patients to hospitals and diagnostic imaging centers for the purpose of having diagnostic procedures administered and evaluated. Ga. Comp. R. & Regs. 100-1-01

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<sup>1</sup> O.C.G.A. § 43-9-12.1 provides that "[t]he doctor of chiropractic must bring to the exercise of that person's profession a reasonable degree of care and skill, which shall include the determination of the need for chiropractic care, as defined in paragraph (2) of Code Section 43-9-1, and shall render treatment, referral to the appropriate health care provider, or both treatment and referral commensurate with that chiropractor's findings. Any failure to refer to the appropriate health care provider may subject the doctor of chiropractic to the provisions of Code Section 43-9-12. Nothing in this Code section shall be deemed to expand or limit the chiropractic scope of practice." (Emphasis added).

<sup>2</sup> Subluxation is defined in O.C.G.A. § 43-9-1(4) as "a complex of functional or pathological articular changes that compromise neural integrity and general health. A subluxation is evaluated, diagnosed, and managed through the use of chiropractic procedures based on the best available rational and empirical evidence." (Emphasis added).

*et seq.* Furthermore, the Georgia Attorney General's Unofficial Opinion 2006-1 is instructive and persuasive on issue framed by Defendant. It reads in part that "[t]o the extent that 1993 Op. Att'y Gen. 93-11<sup>3</sup> concludes that MRI referral is outside the scope of practice of chiropractic, it has been superseded by O.C.G.A. § 43-9-12.1, which makes referral necessary when appropriate in the determination of chiropractic care." The opinion goes on to recognize rules, which emphasize that a chiropractor has a responsibility to render a referral, including X-ray or MRI, in appropriate cases, promulgated by the Board of Chiropractic Examiners. Significantly, the attorney general's opinion noted that

there is a distinction between *referring* for a diagnostic procedure such as MRI and *ordering* such a procedure. The law permits a chiropractor to refer when appropriate. The referral would necessarily be to a diagnostic practice group with a health care professional such as a radiologist trained to read, evaluate, and report on the images. I am informed by the Board that this is the actual practice since enactment of the 1997 amendment. So long as the referral is made under these circumstances, the chiropractor is acting within the scope of current Georgia law.

(Emphasis in original) Att'y Gen. Unofficial Op. 2006-1.

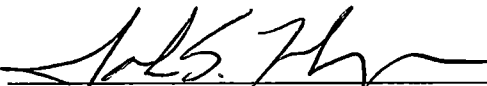
The attachments to Defendant's brief show some of Plaintiff's Northside Hospital records. These records clearly demonstrate that Dr. Mahallati referred Plaintiff to obtain an MRI, which was performed by a radiologist, Dr. Patricia C. Davis, M.D., at Northside Hospital's Department of Radiology/Johnson Ferry

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<sup>3</sup> This opinion was cited in *Colvard*, which concluded that referring patients for MRIs was not within the scope of chiropractic practice. 270 Ga. App. 106, fn. 7.

Imaging for a radiological consultation.<sup>4</sup> Dr. Davis read, evaluated, and reported on the images. Therefore, it appears that Dr. Mahallati acted within the scope of his chiropractic practice and in accordance with Georgia law. Accordingly, Defendant's Motion for Partial Summary Judgment is **DENIED**.

SO ORDERED this, the 23<sup>rd</sup> of July, 2019.

  
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JOHN S. MORGAN, JUDGE  
STATE COURT OF COBB COUNTY

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<sup>4</sup> "The referral would necessarily be to a diagnostic practice group with a health care professional such as a radiologist trained to read, evaluate, and report on the images." Georgia Attorney General's Unofficial Opinion 2006-1.

Certificate of Service

I certify that I have on this date served a true and correct copy of the foregoing Order to all parties and/or their attorney of record by electronically filing the foregoing document using the Cobb County Peach Court system. I further certify that the foregoing document was served upon the following person(s) via the Cobb County Peach Court system.

Alina A. Krivitsky, Esq. – [akrivit1@progressive.com](mailto:akrivit1@progressive.com)

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This, the 23rd day of July, 2019.



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Allison Schnatmeier, Judicial Administrative Specialist  
to Judge John S. Morgan, State Court of Cobb County