

STATE OF MAINE
SAGADAHOC, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-04-044
NM-SAG-10/11/05

BRENDA BISSON f/k/a
BRENDA KNIGHTLY-ROGERS,

Plaintiff

v.

ORDER ON MOTION TO DISMISS

HANNAFORD BROS. CO.,

Defendant

Defendant Hannaford Bros. Co. moves to dismiss the plaintiff's complaint because, pursuant to the requirements of the Maine Health Security Act, the three-year statute of limitations for this action had expired when the complaint was served on 9/21/04. See 24 M.R.S.A. § 2902 (2000). For the following reasons, the motion is granted.

In her complaint, the plaintiff alleges negligent preparing and dispensing of prescription drugs by the defendant's pharmacy. See Complaint, ¶¶ 3, 6, 7-9. In response to the motion to dismiss, the plaintiff argues that the defendant's pharmacists are not health care practitioners.¹ See Pl.'s Mem. at 1-3; 24 M.R.S.A. § 2502(1-A) (2000). Under section 2502(1-A),

'Health care practitioner' means physicians and all others certified, registered or licensed in the healing arts, including, but not limited to, nurses, podiatrists, optometrists, chiropractors, physical therapists, dentists, psychologists, and physicians' assistants.

24 M.R.S.A. § 2502(1-A). Under section 2502(6),

¹ Nothing in the plaintiff's complaint or the plaintiff's memorandum suggests that anything other than the actions of the defendant's pharmacists are at issue in this case.

'Action for Professional Negligence' means any action for damages for injury or death against any health care provider, its agents or employees, or health care practitioner, his agents or employees, whether based upon tort or breach of contract or otherwise, arising out of the provision or failure to provide health care services.

24 M.R.S.A. § 2502(6) (2000).

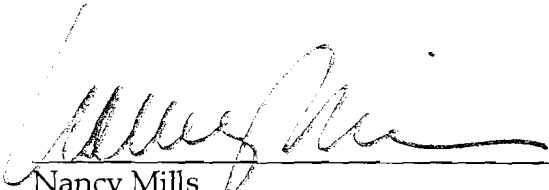
The reach of the Maine Health Security Act has been interpreted liberally. See Dutil v. Burns, 674 A.2d 910, 911 (Me. 1996) ("broad statutory definition . . . reveals the legislature's intention that the MHSA fully occupy the field of claims brought against health care providers."); see also Brand v. Seider, 1997 ME 176, ¶ 5, 697 A.2d 846, 847-48 (Maine Health Security Act applied to plaintiff's claim that defendant, plaintiff's counselor, disclosed confidential information to others); Thayer v. Jackson Brook Inst., Inc., 584 A.2d 653, 654 (Me. 1991) (Maine Health Security Act applied to claim by plaintiff who was visiting a patient at JBI).

The allegations in the complaint constitute an action for professional negligence because the alleged actions of the defendant's pharmacists arise out of the provision or failure to provide health care services. See 24 M.R.S.A. § 2502(2) & (6) (2000); see also Dupuis v. Cancer Screening Servs., 1997 U.S. Dist. LEXIS 2456 *4 (D. Me. Feb. 13, 1997); Johnson v. Transplantation Research Found., 2004 Tex.App. LEXIS 10777 *6 (not designated for publication); Delcambre v. Blood Sys., Inc., 893 So.2d 23, 28-29 (La. 2005).

The entry is

Defendant Hannaford Bros. Co.'s Motion to Dismiss is
GRANTED.

Date: October 11, 2005


Nancy Mills
Justice, Superior Court

BRENDA BISSON - PLAINTIFF
122B MEADOWS RD.
WEST BATH ME 04530
Attorney for: BRENDA BISSON
DAVID J VAN BAARS - RETAINED 10/07/2004
SHANKMAN & ASSOCIATES
101 PLEASANT STREET
BRUNSWICK ME 04011

SUPERIOR COURT
SAGADAHOC, ss.
Docket No BATSC-CV-2004-00044

DOCKET RECORD

vs
HANNAFORD BROTHERS CO INC. - DEFENDANT
C/O SEVERIN BELIVEAU, CLERK 45 MEMORIAL CIRCLE
AUGUSTA ME 04330
Attorney for: HANNAFORD BROTHERS CO INC.
WENDELL LARGE - RETAINED 10/01/2004
RICHARDSON WHITMAN LARGE & BADGER
465 CONGRESS ST, SUITE 900
PO BOX 9545
PORTLAND ME 04112-9545

Attorney for: HANNAFORD BROTHERS CO INC.
ELIZABETH STOUDEUR - RETAINED 10/01/2004
RICHARDSON WHITMAN LARGE & BADGER
465 CONGRESS ST, SUITE 900
PO BOX 9545
PORTLAND ME 04112-9545

Filing Document: COMPLAINT
Filing Date: 10/05/2004
Minor Case Type: OTHER NEGLIGENCE

Docket Events:

- 10/07/2004 FILING DOCUMENT - COMPLAINT FILED ON 10/05/2004
Plaintiff's Attorney: DAVID J VAN BAARS
- 10/07/2004 Party(s): BRENDA BISSON
ATTORNEY - RETAINED ENTERED ON 10/07/2004
Plaintiff's Attorney: DAVID J VAN BAARS
- 10/07/2004 Party(s): HANNAFORD BROTHERS CO INC.
SUMMONS/SERVICE - CIVIL SUMMONS FILED ON 09/21/2004
SERVED IN HAND TO SEVERIN BELIVEAU, ESQ.
- 10/07/2004 CERTIFY/NOTIFICATION - CASE FILE NOTICE SENT ON 10/05/2004
ISSUED TO D. VAN BAARS, ESQ.
- 10/13/2004 Party(s): HANNAFORD BROTHERS CO INC.
RESPONSIVE PLEADING - ANSWER FILED ON 10/01/2004
Defendant's Attorney: WENDELL LARGE
& E. STOUDEUR, ESQ.
- 10/13/2004 Party(s): HANNAFORD BROTHERS CO INC.
ATTORNEY - RETAINED ENTERED ON 10/01/2004
Defendant's Attorney: WENDELL LARGE