

WISCONSIN COURTS CANNOT COMPEL PROVIDERS TO GIVE TREATMENTS BELOW THE STANDARD OF CARE

On May 25, 2022, the [Wisconsin Court of Appeals](#) reversed the circuit court's ruling which granted an injunction compelling a Wisconsin health system to administer Ivermectin to a patient with COVID-19. The appellate court found that the circuit court erred in granting the injunction because the Petitioner could not identify any viable legal claim or show sufficient evidentiary support upon which to base his request for relief.

BACKGROUND FACTS

Petitioner, who held health care power of attorney ("HCPOA") for the patient, sought to compel the Wisconsin health system to administer Ivermectin as part of the patient's treatment for COVID-19. Ivermectin is a drug approved for treatment of parasitic infections, but it has been increasingly requested by patients suffering from COVID-19. Petitioner, who based his request on internet research, had obtained a prescription for Ivermectin from a doctor at a different facility. When the health system refused to administer the proposed treatment, noting the prescribing doctor had neither met with the patient nor had access to the patient's medical records, Petitioner filed for injunctive relief.

The circuit court's initial ruling required the health systems' physicians to administer the Ivermectin. But after they immediately objected to the order, the circuit court amended its ruling to instead compel the health system to review and credential Petitioner's prescribing doctor to perform the treatment at its facility. The health system appealed the circuit court's order arguing that the circuit court had no legal authority to force a private health care provider to administer treatment that is below the standard of care.

THE APPELLATE DECISION

The Wisconsin Court of Appeals agreed with the health system, finding the circuit court had no legal authority to force private medical facilities to administer treatment the provider determines is below the standard of care. Furthermore, it found the court also had no legal authority to compel the health system, a private health care provider, to "credential an outside provider to provide care that is below the standard of care." In support of its decision, the appellate court cited similar rulings from Texas, Delaware, Illinois, Michigan, New York, Florida, Virginia and Ohio. It noted that the Petitioner had failed to show that Ivermectin was the normal course of treatment, was the only adequate remedy available to alleviate the patient's suffering, and, most importantly, had a reasonable probability of success if administered. In other words, Petitioner could not establish the criteria necessary for a court to issue a temporary injunction.

The Petitioner argued that the circuit court did not err in granting the injunction because it still had authority to compel the course of treatment through: (1) The HCPOA statute; (2) An implied contract in the Hippocratic Oath; and (3) The court's inherent authority to grant equitable remedies.

Rejecting each of the Petitioner's arguments, the court of appeals held:

- The HCPOA does not grant "the right to demand any health care that the patient desires" because it merely provides standard language that is informative and instructive.
- The Hippocratic Oath does not create an implied contract between the doctor and patient.
- A court's inherent authority does not require it to grant relief for *all* perceived injustices, especially when no Wisconsin law would give a petitioner the right to demand a proposed treatment. Nor is there any substantive due process right to such demands of a private organization.

PRACTICAL TAKEAWAYS

- Courts in Wisconsin have no legal authority to force private health care providers to provide care that is below the standard of care.
- Courts in Wisconsin also have no legal authority to force private health care providers to credential an outside provider to provide care that is below the standard of care.

If you have questions or would like additional information about this topic, please contact:

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