

MISSOURI COURT OF APPEALS WESTERN DISTRICT

STATE OF MISSOURI ex rel.:
JOHN L. PUTNAM, M.D.,

Appellant,

v.

STATE BOARD OF REGISTRATION FOR THE HEALING ARTS AND THE
ADMINISTRATIVE HEARING COMMISSION,

Respondents.

DOCKET NUMBER WD84394

Date: December 7, 2021

Appeal from:
Cole County Circuit Court
The Honorable Jon E. Beetem, Judge

Appellate Judges:
Before Special Division: Mark D. Pfeiffer, P.J., and Alok Ahuja, and Thomas N.
Chapman, JJ.

Attorneys:
David F. Barnett, Terry M. Jarrett, Douglas L. Healy, Jefferson City, Penny
Speake, Springfield, for appellant
Adam G. Grayson, Jefferson City, for respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

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**STATE OF MISSOURI ex rel.: JOHN L. PUTNAM, M.D., Appellant,
v.
STATE BOARD OF REGISTRATION FOR THE HEALING ARTS AND THE
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Before Special Division Judges: Mark D. Pfeiffer, P.J., and Alok Ahuja, and
Thomas N. Chapman, JJ.

The State Board of Registration for the Healing Arts has filed a complaint with the Administrative Hearing Commission (the “Commission” or “AHC”), seeking to discipline the medical license of Dr. John L. Putnam. The Board alleges that Dr. Putnam engaged in misconduct in connection with his treatment of five patients.

In discovery before the Commission, the Board asked Dr. Putnam to produce the patients’ medical records. It also asked him to disclose “the substance” of any oral statements he had obtained from the patients, and the “substance” of the knowledge of any person having knowledge of relevant facts.

Dr. Putnam objected to the relevant discovery requests. After the AHC granted the Board’s motion to compel, Dr. Putnam filed a petition for a writ of prohibition in the circuit court, seeking to prevent the relevant discovery. The circuit court denied a permanent writ of prohibition, and Dr. Putnam appeals.

AFFIRMED IN PART AND REVERSED IN PART.

Special Division holds:

Although § 334.097.6, RSMo, generally provides that the Board may only obtain patient medical records through the issuance of a subpoena or with patient authorization, § 334.100.7, RSMo, specifically provides that, in physician disciplinary proceedings, such records “shall be discoverable by the board . . . regardless of any statutory or common law privilege which [the physician] . . . might otherwise invoke.” Section 334.100.7 governs the discovery sought by the Board in this disciplinary proceeding, and takes precedence over the more general provisions of § 334.097.6. Section 334.100.7 creates an exception to the statutory physician-

patient privilege and to a physician's fiduciary duty of confidentiality, which might otherwise prevent disclosure of the relevant records. In addition, the discovery the Board sought does not violate the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

The Board's request that Dr. Putnam disclose "the substance" of oral statements his legal representatives obtained from the relevant patients, or the "substance" of any person's knowledge relevant to the disciplinary proceeding, improperly sought disclosure of attorney work product. The work product doctrine precludes discovery of the mental impressions and legal theories developed by counsel in defense of litigation. In *State ex rel. Atchison, Topeka & Santa Fe Ry. Co. v. O'Malley*, 898 S.W.2d 550 (Mo. 1995), the Missouri Supreme Court held that the protection for attorney work product prevented a plaintiff from propounding interrogatories which asked the defendant to identify persons from whom statements had been obtained, and the particulars of those statements.

Opinion by: Alok Ahuja, Judge

December 7, 2021

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