In the Missouri Court of Appeals
Eastern District

DIVISION TWO

ANITA KARASE, Plaintiff/Respondent, v. CRAIG POLITTE, Defendant/Appellant.	)))))))))	ED113279 Filed: November 10, 2026

Appeal from the Circuit Court of St. Louis County
The Honorable Thomas C. Albus, Judge

INTRODUCTION

Appellant Craig Politte (Politte), licensed professional counselor, provided counseling services to respondent Anita Karase (Karase) during which they engaged in sexual activity. Karase sued Politte, and, after receiving leave to amend, filed a first amended petition alleging four counts and seeking punitive damages: medical negligence based on section 538.210.1[1] (count one), negligence per se (count two), battery (count three), and violation of the Missouri Merchandising Practices Act (MMPA) (count four).

[1] All statutory references are to RSMo Supp. 2020 unless otherwise indicated.

Politte moved to dismiss counts two, three, and four of the amended petition, arguing Karase's exclusive cause of action was for medical negligence under section 538.210.1. Additionally, Politte asserted count two failed as a matter of law because the regulations on which Karase relied do not give rise to independent duties supporting a claim for negligence per se.

The circuit court denied Politte's motion to dismiss, and the case proceeded to jury trial. The jury returned verdicts in favor of Karase on all four counts, and the circuit court entered its judgment awarding Karase total compensatory damages in the amount of $1,135,120, and punitive damages in the amount of $1,000,000.

Politte brings forth nine points on appeal arguing the circuit court erred in denying his motion to dismiss; submitting a jury instruction on future medical damages; entering judgment resulting in double recovery; and failing to amend the judgment per the statutory cap for medical negligence claims, the jury's assessment of Karase's comparative fault, and Politte's request for reduction of the punitive damages award.

This court finds the circuit court erred in denying Politte's motion to dismiss count two, because the regulations do not give rise to a claim for negligence per se. In every other aspect, the circuit court did not err. Accordingly, this court reverses and remands the circuit court's judgment, in part, and affirms the circuit court's judgment, in part.

FACTUAL AND PROCEDURAL BACKGROUND

In 2018, Politte provided counseling services through his private practice, Life Counseling Centers, LLC (LCC).[2] After initially counseling only Karase's husband, Politte provided couples therapy to Karase and her husband. Then, Politte counseled Karase individually. Politte did not discuss any potential conflict of interest created by his simultaneous provision of individual and couples counseling to Karase and her husband, and Karase did not sign an informed consent form.

Karase and her husband ended couples counseling sessions with Politte, but each continued to attend their individual sessions. Politte billed Karase's individual sessions through Karase's insurance. After several individual sessions, Karase told Politte she was attracted to him. During her sessions, physical touching between Karase and Politte intensified leading to sexual acts including intercourse. Politte and Karase never saw each other outside of Karase's scheduled therapy sessions at Politte's office, but they exchanged sexual emails and text messages.

In April 2019, Politte texted Karase he wanted to "go back to being professional." Karase replied she would be unable to handle this abrupt change in behavior and asked for a referral to another counselor. Politte ignored this request. Karase and Politte did not

[2] In her first amended petition, Karase included claims against LCC, but her counsel orally moved to voluntarily dismiss LCC as a party before voir dire. The circuit court granted the oral motion, but neither the notice of dismissal nor the circuit court's order granting the dismissal was reduced to writing. After order from this court for supplementation of the legal file to provide the missing voluntary dismissal and upon joint motion by the parties, the circuit court entered the written order of dismissal.

see each other in person after April 2019, but they continued to communicate via email and text. In some communications, Karase confided she was suicidal.

By this point, Karase and her husband were in divorce proceedings, and Karase disclosed to her husband she engaged in sexual acts with someone else. Hoping to protect Politte, Karase resisted identifying Politte. All the while, Politte continued to treat Karase's husband individually. When Karase began seeing a new therapist, Politte asked Karase to conceal what happened between them.

After discovering Politte engaged in sexual acts with Karase, Karase's husband filed a complaint against Politte with the Missouri Committee for Professional Counselors (Committee) alleging violations of ethics rules. The Committee investigated the complaint seeking information from Karase, but Karase refused. As a result of the investigation, the Committee disciplined Politte and placed his license on probation.

Later, Karase filed this civil lawsuit against Politte alleging Politte groomed and exploited Karase by convincing her they were in a consensual relationship when she lacked the capacity to consent. Because of Politte's exploitation of Karase, Karase sought therapy with three other providers paying $125 or $250 per therapeutic session.

Politte admitted his conduct fell below the standard of care for a counselor and the sexual acts were intentional and offensive causing Karase harm. Regulations specific to counselors make it plain a counselor cannot engage in sexual acts with a patient. When

Karase said she had feelings for him, Politte should have discussed "transference" with her and referred her to another counselor, but he did not.[3]

Karase's expert witness, licensed psychologist Dr. Catherine Hassler, testified Politte breached the standard of care in treating both Karase and her husband and failing to refer Karase to another counselor. Further, Politte breached the standard of care by violating regulations prohibiting him from engaging in sexual acts with clients. He groomed and assaulted Karase, because, as his client, Karase was incapable of consenting to any sexual activity with Politte. Karase will suffer long-term mental health ramifications because of Politte's conduct, requiring lifetime, weekly therapy for which Dr. Hassler charges $220 an hour.

Politte moved for a directed verdict mirroring arguments in the motion to dismiss, which the circuit court denied. The circuit court submitted four counts to the jury instructing the jury to consider Karase's comparative fault in assessing counts one and two and punitive damages in assessing all four counts. The jury returned a verdict in favor of Karase on all four counts:

- Count one for medical negligence (Verdict A): the jury assessed 99% fault to Politte and 1% fault to Karase and awarded Karase $250,000 for past non-economic damages; $89,700 for future medical damages; $100,000 for future non-economic damages; and $0 for punitive damages for a total of $439,700.

[3] Transference is the displacement of affect from one person or one idea to another; in psychoanalysis, generally applied to the projection of feelings, thoughts, and wishes onto the analyst, who has come to represent some person from the patient's past. *Transference*, STEDMAN'S MEDICAL DICTIONARY (27th edition 2000).

- Count two for negligence per se (Verdict B): the jury assessed 100% fault to Politte and 0% comparative fault to Karase and awarded Karase $250,000 for past non-economic damages; $89,700 for future medical damages; $100,000 for future non-economic damages; and $1,000,000 for punitive damages for a total of $1,439,700.
- Count three for battery (Verdict C): the jury awarded Karase $250,000 in actual damages and $0 in punitive damages.
- Count four for MMPA violations (Verdict D): the jury awarded Karase $5,720 in actual damages and $0 in punitive damages.

The circuit court entered judgment in accordance with the verdicts. Politte timely filed post-trial motions overruled by operation of Rule 78.06.[4] This appeal follows.

DISCUSSION

Points One, Two, and Three: Motion to Dismiss

Politte presents three points on appeal asserting the circuit court erred as a matter of law in denying his motion to dismiss counts two, three, and four of Karase's first amended petition.

Standard of Review

Generally, the denial of a motion to dismiss is not a final judgment and, therefore, not reviewable. *Harris v. Starbucks Corporation*, 731 S.W.3d 274, 283 (Mo. App. E.D. 2026). However, this court may review the denial of a motion to dismiss "as part of the

[4] All rule references are to Missouri Rules of Civil Procedure (2024) unless otherwise indicated.

appeal from a final judgment." *Id.* (internal quotation omitted). The "question of whether a petition states a claim for which relief can be granted is a question of law." *State ex rel. Community Treatment, Incorporated v. Missouri Commission on Human Rights*, 561 S.W.3d 107, 111 (Mo. App. W.D. 2018). "Questions of law are reviewed *de novo*." *Schoen v. Mid-Missouri Mental Health Center*, 597 S.W.3d 657, 659 (Mo. banc 2020).

"A motion to dismiss for failure to state a claim on which relief can be granted is an attack on the plaintiff's pleadings." *R.M.A. by Appleberry v. Blue Springs R-IV School District*, 568 S.W.3d 420, 424 (Mo. banc 2019) (internal citation omitted). "Such a motion is only a test of the sufficiency of the plaintiff's petition." *R.M.A.*, 568 S.W.3d at 424 (internal citation omitted). "When considering whether a petition fails to state a claim upon which relief can be granted, this Court must accept all properly pleaded facts as true, giving the pleadings their broadest intendment, and construe all allegations favorably to the pleader." *Id*. (internal citation omitted). This court "does not weigh the factual allegations to determine whether they are credible or persuasive." *Id*. "Instead, this Court reviews the petition to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case." *Id*. (quoting *Bromwell v. Nixon*, 361 S.W.3d 393, 398 (Mo. banc 2012).

Analysis

COUNT TWO (NEGLIGENCE PER SE)

In Politte's first point, he argues the circuit court erred in denying his motion to dismiss count two wherein Karase alleged Politte was negligent per se by breaching

duties set forth in these regulations: 20 CSR 2095-3.010(3), (8), (9), and (10)[5] (2009); 20 CSR 2095-3.010(12)(A)-(F)[6] (2009); and 20 CSR 2095-3.015(1), (4), and (7)[7] (2020).

---

[5] 20 CSR 2095-3.010 provides:

(3) A counselor shall not accept any form of remuneration that exploits the therapeutic relationship and a counselor shall not allow the pursuit of financial gain or other personal benefit to interfere with the exercise of sound, professional judgment and skills.
…
(8) For the purpose of the ethical standards for counselors, a therapeutic relationship shall encompass any of the following:
(A) A mutual understanding of the counseling process as evidenced by a signed informed consent agreement as defined in 20 CSR 2095-3.015(1)(A)-(H);
(B) Utilization of professional counseling skills as defined in section 337.500(7), RSMo;
(C) Utilization of the therapeutic relationship to assist the client in learning to relate to themselves and others;
(D) A relationship between a counselor and client seeking professional counseling service as defined in 337.500(7), RSMo; and
(E) Within the limitations of the law, a relationship in which the counselor shall not interfere with the client's right to make life decisions.
(9) For the purpose of these ethical standards for counselors, an exploitive relationship shall be defined as any relationship between the registered supervisor and counselor-in-training or provisional licensed professional counselor, or counselor and client that may exploit or cause harm to the counselor-in-training, provisional licensed professional counselor or client.
(A) For the purpose of these standards, to exploit means to take unfair advantage of the client, counselor-in-training, or provisional licensed professional counselor.
(10) The counselor shall not undertake or continue a therapeutic relationship with a client when the objectivity or competency of the counselor is or is reasonably expected to be impaired because of emotional, mental, psychological, or substance abuse disorder. If a counselor's objectivity or competency becomes impaired due to an emotional, mental, psychological or substance abuse disorder after a therapeutic relationship has been initiated, the counselor shall terminate the therapeutic relationship by notifying the client in writing of the termination and provide written documentation that the client was informed concerning the termination of the therapeutic relationship.
(A) Documentation shall be in writing and include information that a referral(s) was made.
…

[6] 20 CSR 2095-3.010(12) provides:

> While providing psychotherapy or professional counseling or within the twenty four (24) months following completion or termination of psychotherapy or professional counseling a counselor shall not engage in the following:
> (A) Sexual intercourse, defined as any genital contact with the client including, but not limited to, vaginal intercourse, sodomy, oral and/or anal copulation, or any penetration of the anal or vaginal opening by any body part or object;
> (B) Kissing with the mouth, lips, or tongue;
> (C) Touching or caressing of the client's breasts, genitals, or buttocks;
> (D) Touching or caressing the other body parts of a client in an exploitive manner;
> (E) Exposing one's breast, genitals or buttocks in an exploitive manner or encouraging another to expose him/herself for the purpose of the counselor's sexual gratification; and
> (F) Deliberate or repeated comments or gestures of an exploitive nature.

[7] 20 CSR 2095-3.015 provides:

(1) Before beginning a therapeutic relationship, a counselor shall explain and document the following elements of informed consent:
> (A) Goals of the therapeutic relationship;
> (B) Services the counselor will provide;
> (C) Behavior expected of the client;
> (D) Risks and benefits of therapeutic procedures;
> (E) Qualifications and credentials;
> (F) Financial considerations and arrangements;
> (G) Limits to confidentiality regarding individual, couple, family, and group therapy;
> (H) If utilized, taping or recording of sessions, and how the tapes will be used and stored

…
(4) A counselor shall not allow the pursuit of financial gain or other personal benefit to interfere with the exercise of sound professional judgment and skills.
> (A) In determining whether to offer therapeutic services to a person already receiving similar services elsewhere, the counselor shall consider the treatment issues and the welfare of the client. The counselor shall discuss these issues with the client to minimize the probable risks of confusion and conflict

…

But there is no language in these regulations, nor in the statutes from which they derive their authority, showing the regulations replace the general "reasonable person" standard of care in a negligence action. Nor is there language creating a private cause of action to enforce the regulations. As such, the regulations do not support a claim for negligence per se.

"Negligence per se arises where the legislature pronounces in a statute what the conduct of a reasonable person must be, whether or not the common law would require similar conduct, and the court then adopts the statutory standard of care to define the standard of conduct of a reasonable person." *Lowdermilk v. Vescovo Building & Realty Company*, 91 S.W.3d 617, 628 (Mo. App. E.D. 2002) (internal citation omitted). "As a result, the jury is instructed on the statutory standard of care rather than the care of the reasonable person." *Id.* "In addition to legislative enactments, courts may adopt the requirements of municipal ordinances and administrative regulations as the standard of conduct necessary to avoid liability for negligence." *Dibrill v. Normandy Associates, Incorporated*, 383 S.W.3d 77, 84 (Mo. App. E.D. 2012) (internal citation and quotation omitted).

---

(7) A counselor providing therapeutic services to a client shall maintain records that include the following:

(A) Informed consent as defined in subsections (1)(A) – (1)(H);
(B) The reason(s) for seeking therapeutic services, clinical impression(s), treatment plan, and documentation of termination;
(C) Date, fee, and therapeutic service provided by the counselor;
(D) Assessment results or the evaluative results relevant to the therapeutic relationship; and
(E) Evidence of receiving the client's consent concerning the counselor's consultation with others.

To establish a claim of negligence per se, then, four requirements must be met: (1) the defendant violated a statute or regulation; (2) the injured person was a member of the class of persons intended to be protected by the statute or regulation; (3) the injury complained of was of the kind the statute or regulation was intended to prevent; and (4) the violation of the statute or regulation was the proximate cause of the injury. *Id.* at 84-85 (internal citations omitted). Before reaching the question of whether a violation occurred, this court must first examine the statute or regulation to determine if it is one upon which negligence per se may be premised. *Lowdermilk*, 91 S.W.3d at 628. "The test to determine whether a violation of a statute may constitute negligence per se depends on legislative intent" and whether the statute was actually "intended to replace the standard of care in a negligence action." *See id.* at 629.

No Legislative Intent Regulations Replace the Standard of Care

The regulations at issue are part of an administrative structure overseeing specific professions. The general assembly established the Missouri Division of Professional Registration (Division) to provide administrative support to professional licensing boards and commissions. Section 324.001, RSMo Supp. 2018. Sections 337.500 through 337.540 regulate professional counseling (counseling statutes) and empower the Division to promulgate rules for the licensing of counselors and procedures for investigating, hearing, and determining violations of the counseling statutes.

The Committee guides the Division and assists with disciplinary processes. Section 337.535, RSMo 2016. To this end, the Committee investigates complaints arising under the counseling statutes and may issue or refuse to issue or renew any license of a

counselor for cause, including "Being guilty of unethical conduct as defined in the ethical standards for counselors" adopted by the Division. Section 337.525.2(15), RSMo 2016.[8] The ethical standards for counselors are set forth in the subject regulations, and a "violation of these standards constitutes unprofessional conduct and is sufficient reason for disciplinary action." 20 CSR 2095-3.010(1).

The regulations guide the profession, and, undoubtedly, Politte's conduct was unprofessional and reason for discipline. However, there is no indication in the counseling statutes or regulations that the general assembly intended the ethical standards to replace the standard of care of a reasonable person in a negligence action. With no express pronouncement by the general assembly that prescribed statutory or regulatory conduct replaces the general standard of conduct of a reasonable person, there is no basis for a negligence per se claim. *See Lowdermilk*, 91 S.W.3d at 629.

No Private Cause of Action

Some cases addressing whether a statute supports a negligence per se claim focus on whether the statute *creates a private cause of action* rather than whether the statute *prescribes a standard of conduct* that replaces the reasonable person standard. In these cases, "only those statutes which create a private right of action can form the basis for a negligence per se claim." *Howland v. Truman Medical Center, Incorporated*, 719 S.W.3d 98, 109-110 (Mo. App. W.D. 2025) (internal citation omitted).

[8] In addition to the authority given to the Committee to investigate and discipline those who violate the counseling statutes, the general assembly tasked the Department of Commerce and Insurance and the attorney general with specific actions to enforce regulation of the profession. Sections 337.530.1 and .3 and 337.530.4(2), RSMo 2016.

Using this approach, Karase's claim for negligence per se fails still. A statute does not create a private cause of action unless it appears by "express terms [or] clear implication" to have been the legislative intent. *See Imperial Premium Finance, Incorporated v. Northland Insurance Company*, 861 S.W.2d 596, 599 (Mo. App. W.D. 1993). There is no express pronouncement of any intent to create a private cause of action in the counseling statutes or regulations. When a statute does not provide a private right of action, a breach of that statute does not constitute negligence per se, and when a petition fails to state a claim for negligence per se upon which relief can be granted, the claim is rightfully dismissed. *See Howland*, 719 S.W.3d at 110; *see also Bradley v. Ray*, 904 S.W.2d 302, 314 (Mo. App. W.D. 1995).

Furthermore, this court declines to depart from the general rule "when the legislature has established other means of enforcement, we will not recognize a private civil action unless such appears by clear implication to have been the legislative intent." *Sullivan v. City of University City*, 677 S.W.3d 844, 850 (Mo. App. E.D. 2023) (internal citations omitted). The counseling statutes and regulations provide explicit methods of enforcement and redress for violations within them including the public complaint and administrative hearing process by the Committee. The general assembly would have manifested its intent to create a private cause of action had it intended to create additional or alternative means of enforcement outside of the disciplinary process and actions set forth within the statutes and regulations. *Sullivan*, 677 S.W.3d at 850.

A Scheme of Licensure, Regulation and Discipline; Not a "Safety Statute"

Moreover, given their nature in regulating the business of counseling, the counseling statutes and regulations fall outside the class of "safety statutes" on which negligence per se is ordinarily based. "Negligence per se is in effect a presumption that one who has violated a *safety statute* has violated his legal duty to use due care." *Lowdermilk*, 91 S.W.3d at 628 (internal citation omitted) (emphasis added). As "a scheme of licensure, regulation and discipline" of professional counselors, the regulations are designed to ensure counselors display and maintain a certain standard of competence within their profession and do "not provide a cause of action for negligence per se." *See Imperial Premium Finance*, 861 S.W.2d at 599.

Still, Karase argues the intent of the regulations is to protect her from the harm she sustained; thus, she has a valid claim for negligence per se. However, there is no language indicating the intent is protection of the interests of a particular class of persons. To the contrary, the purpose of professional regulation is general protection of the public. *Bird v. Missouri Board of Architects, Professional Engineers, Professional Land Surveyors & Landscape Architects*, 259 S.W.3d 516, 523 (Mo. banc 2008). Even if Karase were a member of a protected class by being an inhabitant of this state or Politte's client, mere membership in the protected class of persons under the statutes and regulations is an insufficient basis on which to imply a private cause of action. *See Johnson v. Kraft General Foods*, 885 S.W.2d 334, 336 (Mo. banc 1994).

Finally, Karase argues the regulations at issue support a claim for negligence per se like the regulations in *Dibrill.* Yet, *Dibrill* differs fundamentally in that the design and intent of those regulations was protection of a specific class of persons from the specific

type of harm alleged. In *Dibrill*, the plaintiff alleged a claim for negligence per se based on violations of regulations issued by the Missouri Department of Health and Senior Services pursuant to its authority under the Omnibus Nursing Home Act (ONHA), section 198.079, RSMo 2000. 383 S.W.3d at 84. The regulations in *Dibrill* establish detailed standards for nursing home resident care as well as specific requirements for protection of resident rights. *Id.* at 85. Their precise purpose was prevention of physical injury, sickness, or abuse of vulnerable residents, not just the licensing and regulation of a profession.

Also, in assessing whether the plaintiff in *Dibrill* stated a claim, this court relied on *Stiffelman v. Abrams*, 655 S.W.2d 522, 531 (Mo. banc 1983). In *Stiffelman*, the Supreme Court found the general assembly, by enacting the ONHA, "intended to provide a remedy for physical and emotional abuse in the nursing home." *Dibrill*, 383 S.W.3d at 85. Explicitly, the ONHA provides the right for a private person to bring a civil cause of action for damages. Section 198.093.3, RSMo 2016; *see also Stiffelman*, 655 S.W.2d at 526. Conversely, the counseling statutes and regulations do not provide such a right.

For all these reasons, this court holds count two does not give rise to a cognizable cause of action for negligence per se. The circuit court erred in denying Politte's motion to dismiss count two, and the negligence per se claim should not have been submitted to the jury. Point one is granted. This court reverses and vacates the judgment entered on count two and remands the cause to the circuit court with instructions to enter judgment dismissing count two with prejudice.

COUNT THREE (BATTERY)

In his second point, Politte argues the circuit court erred in denying his motion to dismiss count three for battery because Karase's only claim was for medical negligence under section 538.210.1. Politte failed to preserve this point, and this court declines to exercise its discretion to review for plain error.

Rule 72.01(b) permits a motion for judgment notwithstanding the verdict ("JNOV") to raise any basis for setting aside a verdict raised in a motion for directed verdict at trial. Rule 78.07(a) requires *all* allegations of error, except claims raised in a motion for JNOV, to "be included in a motion for new trial in order to be preserved for appellate review." The collective operation of these rules required Politte to raise this error in his post-trial motion. His failure to do so precludes review of the claim. *DeWalt v. Davidson Service/Air, Incorporated*, 398 S.W.3d 491, 502 (Mo. App. E.D. 2013).

Plain Error Review

Under Rule 84.13(c), plain errors – that is, errors that are clear, obvious, and evident – affecting substantial rights may be considered on appeal, in the discretion of the court, though not raised or preserved, when the court finds manifest injustice or miscarriage of justice has resulted therefrom. *K.L.H. v. N.R.*, 726 S.W.3d 772, 776 (Mo. App. E.D. 2025). Plain error in a civil case requires reversal where the error is so egregious as to weaken the very foundation of the process and seriously undermine confidence in the outcome of the case. *Id.* at 776-77.

Battery Distinct From Medical Negligence

Chapter 538 governs tort actions arising from the rendering of or failure to render healthcare services. Section 538.210.1. "Health care services" are defined as services

rendered by a healthcare provider to a patient in the ordinary course of the provider's profession. Section 538.205(6). Although Missouri courts look to the substance and true nature of a claim rather than its label, the mere fact an alleged tortfeasor is a healthcare provider does not, standing alone, establish every act giving rise to liability constitutes the rendering of healthcare services. *Devitre v. Orthopedic Center of Saint Louis, LLC*, 349 S.W.3d 327, 331-34 (Mo. banc 2011).

A claim in battery will lie if a healthcare provider performs an act without the patient's consent. *Wilkerson v. Mid-America Cardiology*, 908 S.W.2d 691, 699 (Mo. App. W.D. 1995) (internal citation omitted). This is a separate and distinct claim from a claim for medical malpractice based on the negligence of the healthcare provider in failing to meet the required standard of care in the rendering or failure to render healthcare services. *Id.* "To recover damages for a battery, the plaintiff must plead and prove an intended, offensive bodily contact with another person." *Devitre*, 349 S.W.3d at 334 (internal citation and quotation omitted). "Within the context of medical examinations, a battery occurs when a physician performs a medical procedure without valid consent." *Id.* "To establish battery based on lack of consent, a plaintiff is only required to prove the occurrence of unconsented touching." *Id.* "Therefore, a plaintiff must plead and prove that he or she did not give consent or that he or she withdrew consent." *Id.*

Here, the record established intentional, offensive, and nonconsensual touching sufficient to support a battery claim. Karase pleaded Politte intentionally engaged in sexual contacts without her consent. This claim does not transform into a medical

negligence claim purely because Politte is a healthcare provider or because other conduct involved the provision of healthcare services. The circuit court did not commit a clear, obvious, and evident error in denying the motion to dismiss count three. Because there was no plain error, there is no manifest injustice or miscarriage of justice warranting discretionary review under Rule 84.13(c). And so, this court denies point two.

COUNT FOUR (MMPA)

In his third point, Politte argues the circuit court erred in denying his motion to dismiss count four for violations of the MMPA, because section 407.025.3 states, "No action may be brought under this section to recover damages for personal injury or death in which a claim can be made under chapter 538."[9] Politte's argument is not persuasive, as Karase did not seek to recover damages for personal injury or death in count four.

The MMPA provides in pertinent part that an "act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce … is declared to be an unlawful practice." Section 407.020.1. To prevail on a claim under the MMPA, a plaintiff must plead and prove she: (1) purchased merchandise (which includes services) from defendant; (2) for personal, family or household purposes; and (3) suffered an ascertainable loss of money or property; (4) as a result of an act declared unlawful under

[9] Pursuant to section 510.262, section 407.025 is part of the statute changes implemented by Senate Bill Number 591, and, as such, applies to causes of action filed on or after August 28, 2020. Section 510.262. Since Karase filed this case in December 2020, section 407.025(3) applies.

the MMPA. *Murphy v. Stonewall Kitchen, LLC*, 503 S.W.3d 308, 311 (Mo. App. E.D. 2016) (internal citations omitted).

The purpose of the MMPA is "to preserve fundamental honesty, fair play and right dealings in public transactions." *Schuchmann v. Air Services Heating & Air Conditioning, Incorporated*, 199 S.W.3d 228, 233 (Mo. App. S.D. 2006) (internal citation and quotation omitted). The prohibitions of the MMPA are construed broadly to reach any deception or unfair practice, including the concealment of facts. *Ward v. West County Motor Company, Incorporated*, 403 S.W.3d 82, 84 (Mo. banc 2013). False and misleading representations can serve as unlawful acts prohibited by the MMPA. *See State ex rel. Webster v. Milbourn*, 759 S.W.2d 863-64 (Mo. App. E.D. 1988).

Medical goods and services meet the statutory definition of merchandise as defined by section 407.010(4), RSMo 2016. *Planned Parenthood of Saint Louis Region & Southwest Missouri v. Bailey*, 715 S.W.3d 167, 181 (Mo. App. E.D. 2025) (internal citation omitted). By providing and billing for counseling services, Politte's business practices fall squarely within the MMPA. *See* section 407.010(4), (7), RSMo 2016; *see also Planned Parenthood*, 715 S.W.3d at 181. So, any act of deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with Politte's provision of counseling services can be an unlawful practice under the MMPA. *See* section 407.020.

In count four, Karase alleged she purchased counseling services from Politte for personal and family purposes. She further alleged she suffered an ascertainable and actual loss of money or property because of Politte's deception in prioritizing his sexual

gratification over the counseling services Karase was entitled to receive. Nowhere in count four does Karase seek to recover damages for personal injury or death. Hence, section 407.025.3 does not preclude Karase's MMPA claim, and the circuit court did not err in denying the motion to dismiss. This court denies point three.

Point Four: Duplicative Recovery

In his fourth point, Politte argues the circuit court committed plain error in entering duplicative monetary judgments on verdicts A, B, C, and D, because the judgments allow Karase to recover the same compensatory damages for one wrong committed by Politte. A close inspection of the record reveals no clear, obvious, and evident error; therefore, this court declines to exercise its discretion to review for plain error.

Standard of Review

This court's review of point four is for plain error under Rule 84.13(c) set forth in discussion of point two.

Analysis

"The purpose of an award of damages is to make the injured person whole by money compensation." *BMK Corporation v. Clayton Corporation*, 226 S.W.3d 179, 197 (Mo. App. E.D. 2007) (internal citation omitted). "While a single transaction may invade more than one right and an injured party may sue on more than one theory of recovery, a plaintiff may not receive more than one full recovery for the same harm." *Id.* "Thus, a plaintiff must establish a separate injury on each theory." *Id.* (internal citation and quotation omitted). "If the damages asserted in two causes of action are the same, the

damage awards should be merged." *Id.* (internal citation omitted). "However, if the damages are not coextensive with each other, a party may recover damages proved in two or more causes of action." *Id.*

Here, the issue is whether Karase received duplicative awards to make the doctrine of merger applicable. Given the breadth of the allegations, various acts committed by Politte, and separate harms suffered by Karase, this court cannot say the jury awarded Karase the same compensatory damages for one wrong committed by Politte.[10] The evidence established separate injuries and damages suffered by Karase under each theory of recovery. The jury allocated and quantified Karase's damages differently under each theory even finding Karase comparatively at fault on the medical negligence count and awarding Karase the costs of services on her MMPA count. The jurors understood the separate wrongs committed by Politte and the separate harms sustained by Karase. The circuit court did not commit plain error by entering judgment in accordance with the verdicts. This court denies point four.

Point Five: Future Damages

In his fifth point, Politte argues the circuit court erroneously submitted the issue of future medical damages to the jury in Instruction Number 7, because Karase did not submit evidence of her life expectancy, and, absent that evidence, the award of future

[10] This court's disposition of point one renders moot any question whether the damages awarded for the negligence per se claim are duplicative of damages awarded for the medical negligence claim.

medical damages is speculative. Karase adduced evidence supporting the instruction, and the circuit court did not err.

Standard of Review

To reverse a jury verdict on the ground of instructional error, the party challenging the instruction must show: (1) the instruction at issue misled, misdirected, or confused the jury; and (2) prejudice resulted from the instructional error. *SKMDV Holdings, Incorporated v. Green Jacobson, Professional Corporation*, 494 S.W.3d 537, 559 (Mo. App. E.D. 2016). The question of whether a jury is properly instructed is a question of law we review *de novo*. *Klotz v. Saint Anthony's Medical Center*, 311 S.W.3d 752, 766 (Mo. banc 2010) (internal citations omitted). This court reviews the circuit court's decision in the light most favorable to submission of the requested instruction, and if it is supportable by any theory, submission is proper. *Id.* This court will reverse only where the instructional error resulted in prejudice that materially affected the merits of the action. *Id.*

Analysis

In addition to compensation for past or present injuries caused by the defendant, a plaintiff may recover for future medical damages. *Ball v. Allied Physicians Group, LLC*, 548 S.W.3d 373, 382 (Mo. App. E.D. 2018) (internal citation omitted). A "plaintiff is entitled to recover for an injury that has not yet occurred if the injury is reasonably certain to occur in the future." *Swartz v. Gale Webb Transportation Company*, 215 S.W.3d 127, 130 (Mo. banc 2007). A "plaintiff can use evidence of future medical consequences from the present injury to establish either the value of the present injury,

or, separately, to recover a monetary award to reimburse the plaintiff for the actual medical costs to treat a secondary injury that has not yet occurred but is a consequence of the original injury." *Ball*, 548 S.W.3d at 382.

Karase sought recovery of future medical damages arising from a continued need for therapy to treat consequences from Politte's conduct. Instruction Number 7 defined "future medical damages" as "those damages arising in the future for medical expenses such as necessary drugs, therapy, and medical, surgical, nursing, X-ray, dental, custodial, and other health and rehabilitative services." The jury awarded Karase future medical damages in the amount of $89,700.[11]

The instruction was not based on speculation. Karase received mental health treatment from other providers because of Politte's conduct. She paid $125 or $250 for each therapy session. Per Dr. Hassler, Karase will suffer long-term mental health ramifications necessitating lifetime, weekly therapy, and Dr. Hassler charges $220 an hour for those sessions. Karase met her burden to submit an instruction on future medical damages, and Politte has not shown the instruction misled, misdirected, or confused the jury or resulted in prejudice. The circuit court did not err in submitting Instruction Number 7, and this court denies point five.

Point Six: Non-Imposition of Statutory Cap

In his sixth point, Politte argues the circuit court erred in denying his motion to amend the judgment because the total amount of the awards of non-economic damages

[11] Though the jury awarded Karase future medical damages on count two, this court's disposition of point one renders this issue moot as to count two.

exceeded the statutory cap in section 538.210.2. Because the statutory cap on non-economic damages in section 538.210.2 applies only to count one for medical negligence and the non-economic damages awarded for this count is less than the cap, the circuit court did err in denying the motion to amend the judgment.

Standard of Review

This court reviews a circuit court's denial of a motion to amend the judgment for abuse of discretion. *Pendergraft v. Mason*, 700 S.W.3d 532, 533 (Mo. App. S.D. 2024) (internal citation omitted). A circuit court abuses its discretion when its ruling shocks the sense of justice, shows a lack of consideration, and is obviously against the logic of the circumstances. *Id.* "If reasonable persons can differ as to the propriety of the trial court's action, then it cannot be said that the trial court abused its discretion." *Id.*

Analysis

Section 538.210.2(1) states: "In any action against a health care provider for damages for personal injury arising out of the rendering of or the failure to render health care services, no plaintiff shall recover more than four hundred thousand dollars for noneconomic damages irrespective of the number of defendants." Pursuant to section 538.215.3 (2016), "Any award of noneconomic damages in excess of the limit provided herein shall be reduced by the court to the maximum amount." Politte argues section 538.215.3 required the circuit court to reduce the non-economic damages across the verdicts to comport with the statutory cap because Karase's exclusive claim was for medical negligence. This court rejects Politte's contention.

The statutory cap for non-economic damages arising from medical negligence in 2024, the year in which the judgment was entered, was set at $465,530. *See* 49 MISSOURI REGISTER Number 4, 305 (February 15, 2024). On count one for medical negligence, the jury awarded Karase $250,000 for past non-economic damages and $100,000 for future non-economic damages for a total of $350,000 in non-economic damages. The award is clearly below the statutory cap and does not require reduction. The jury award on count three was for an intentional tort and the jury award on count four was for violation of the MMPA. Neither is subject to the cap in section 538.210.2(1). The circuit court did not abuse its discretion in denying Politte's motion to amend the judgment to reduce the non-economic damages awarded to Karase. This court denies point six.

Points Seven and Eight: Punitive Damages

In his seventh and eighth points, Politte asserts the circuit court erred in entering a punitive damages award in the amount of $1,000,000 because the amount is excessive, violates due process, and went beyond a sum necessary to punish and deter Politte. Due to the disposition of point one, this court finds points seven and eight moot.

Point Nine: Comparative Fault

In his final point, Politte argues the circuit court abused its discretion in denying Politte's post-trial motion to amend the judgment by reducing Verdict A in accordance with the 1% comparative fault assessed against Karase. The judgment itself undercuts Politte's argument, because the circuit court reduced the judgment in accordance with the verdict.

Standard of Review

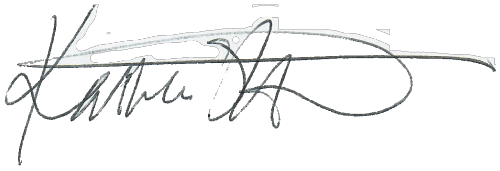
This court's review of point nine is for abuse of discretion as set forth in discussion of point six.

Analysis

In Verdict A, the jury awarded Karase $439,700 in total damages and determined Karase was 1% at fault. The circuit court reduced the judgment on Verdict A by 1% entering judgment in the amount of $435,303. The circuit court did not abuse its discretion in denying Politte's motion to amend the judgment. This court denies point nine.

CONCLUSION

This court reverses and vacates the judgment entered on count two for negligence per se and remands this matter to the circuit court with instructions to dismiss count two with prejudice. This court affirms the judgment in all other respects.



Kathleen Hamilton, Judge

Michael S. Wright, Presiding Judge and
Virginia W. Lay, Judge, concur.