UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 540

September Term, 2015

SHEILA DAVIS, *et al.*

v.

FROSTBURG FACILITY OPERATIONS, LLC

Reed,
Friedman,
Rodowsky, Lawrence F.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: January 27, 2017

On October 23, 2014, Shelia and Robert Davis, appellants, filed suit against Frostburg Facility Operations, LLC, appellee, for injuries sustained by Shelia Davis, while being treated for rehabilitation following back surgery, in Frostburg Village ("Frostburg"), one of appellee's rehabilitation centers. Appellants' complaint, sounding generally in medical malpractice, alleged single counts of (1) negligence; (2) negligent hiring, supervision, and retention; (3) breach of contract; (4) false advertising/consumer protection; and (5) loss of consortium.

After appellees filed a Motion to Dismiss based on appellants' failure to submit their claims for arbitration before filing their action in the circuit court, appellants filed an amended complaint, which slightly altered their complaint in an attempt to remedy the deficiencies in their action. Following a second round of similar motions, the trial court held a motions hearing on February 13, 2015, and, three months later, granted appellee's Motion to Dismiss the Second Amended Complaint. Appellants timely appealed, and present the following questions for our review:

> 1. Did the [c]ircuit [c]ourt err in granting [a]ppellee's Motion to Dismiss on the ground that [a]ppellant was required to file in the Maryland Healthcare Alternative Dispute Resolution Office prior to filing the instant suit?
>
> 2. Was the Complaint sufficient on its face to grant the requested relief and survive [a]ppellee's Motion to Dismiss at the pleading stage?

For the following reasons, we answer in the negative to both questions, and affirm the judgment of the trial court.

FACTUAL BACKGROUND

Appellant's original complaint alleges that, on October 24, 2011, Shelia Davis was admitted to Frostburg, a nursing rehabilitation center, "pursuant to a signed contract and/or oral agreement between Ms. Davis and [appellee]," for recovery and physical rehabilitation following back surgery. Appellants allege that two days later, on October 26, 2011, "while lying in bed at Frostburg Village, Ms. Davis's mattress came loose from the bed and slid off the bed frame, causing Ms. Davis to fall to the floor."

After the fall, Ms. Davis' roommate called for a nurse, who arrived "[a]pproximately forty-five minutes later." Upon the nurse's arrival, Ms. Davis was "on the floor, on her knees, attempting to stand," and asked the nurse to help her stand. The nurse responded that she was not permitted to help lift Ms. Davis to return her to the bed because Frostburg was a "no-lift facility." According to appellants, the nurse then "pushed Ms. Davis back to the ground and retrieved a mechanical lift."

After returning with the mechanical lift, the nurse then "placed Ms. Davis in the net of the mechanical lift and lifted Ms. Davis above the height of the bed." According to appellants, "the nurse then caused the net to release Ms. Davis from the net before she was over the bed," causing her "to be dropped from above the height of the bed back to the floor," landing on her back. Subsequently, after this fall, the nurse "indicated that she had not operated the mechanical lift before." At that time, "other individuals entered the room, requesting that they be allowed to lift Ms. Davis back to her bed," but the nurse "indicated that they were not allowed to lift Ms. Davis, and that she would place Ms. Davis back in

the mechanical lift and attempt to place her in the bed again." Instead, "one of the individuals let Ms. Davis use his phone to call for an ambulance," and eventually, she was placed back into the bed by an EMT.

PROCEDURAL HISTORY

In addition to the above "facts common to all counts," appellants alleged in their original Complaint that "[w]ithin its nursing facility, it is the responsibility of [appellee], its agents, servants, and/or employees to take all appropriate measures to maintain safety on the premises and to properly inspect the premises for dangerous conditions." Appellants then proceeded to lay out their claims for: (I) Negligence; (II) Negligent Hiring, Supervision, and Retention; (III) Breach of Contract; (IV) False Advertising/Consumer Protection; and (V) Loss of Consortium. Essentially Counts I and II both alleged that appellee (1) "represented to the public and [appellants] that it possessed the degree of skill, knowledge, and ability ordinarily possessed by reasonably competent owners and operators of nursing home facilities"; (2) had a duty to conform to that standard; (3) breached that duty to appellants; and (4) "[a]s a direct and proximate result of [appellee's] negligence, Ms. Davis sustained serious bodily injuries." Counts III and IV contained similar language to Counts 1 and 2, but went a step further and alleged that appellee both breached the "signed contract and/or oral agreement" with appellant, and falsely advertised their services, generally citing Maryland's Consumer Protection Act, Md. Code (1975, 2013 Repl. Vol.), §§ 13-101 et seq. of the Commercial Law Article ("CL"). And finally, Count V of the original Complaint incorporated the previous four counts and alleged loss of consortium.

In response, appellee filed a Motion to Dismiss and a Memorandum of Law in Support, based on (1) appellants' failure to first file their claim with the Health Care Alternative Dispute Resolution Office ("ADR Office"), pursuant to the Health Care Malpractice Claims Act ("Health Claims Act" or the "Act"), Md. Code (1974, 2013 Repl. Vol.), § 3-2A-01 through § 3-2A-09 of the Courts & Judicial Proceedings Article ("CJP"). Appellee further argued that Counts II, III, and IV failed for failing to state a claim for which relief can be granted.

Before the circuit court could rule on the Motion to Dismiss, appellants filed an Amended Complaint on December 8, 2014. In their Amended Complaint, appellants removed the allegation that the "nurse then caused the net to drop," and changed the language about appellee owing Ms. Davis "the duty to conform" to the standard "expected of a reasonably competent owner and operator of a nursing home facility situated in the same or similar community," to simply alleging that "[appellee] owed Ms. Davis the duty to exercise reasonable care in providing a bed that was safe for ordinary use" and breached that duty by failing to attach her mattress securely—changes, it appears, that were an attempt to bring appellants' claims outside of the purview of the Health Claims Act by suggesting that Ms. Davis was merely renting the space in Frostburg, rather than receiving medical care. In addition, appellants added another count, titled as "Count Three: Negligence, *Respondeat Superior*," thereby bringing another claim specifically against the nurse, too.

Approximately one month later, appellee, again, filed a Motion to Dismiss, based on the same arguments as in their first Motion, and, appellants, again, filed another

amended complaint. In their Second Amended Complaint, appellants further narrowed their original arguments to say that "Frostburg Village also served as a residence for Ms. Davis," and that Ms. Davis was "simply lying in bed," and "not receiving medical treatment or services when the mattress came lose [*sic*] and she fell to the floor"—therefore removing any doubt of appellants' intentions to portray Ms. Davis as a mere *renter of* (as opposed to *patient in*) the room in Frostburg.

On February 13, 2015, a Motions Hearing was held, where appellee served appellants with its Motion to Dismiss Second Amended Complaint, again incorporating the arguments of its original Motion to Dismiss. After considering the various pleadings and hearing arguments from both sides, the circuit court granted appellee's motion to dismiss on April 28, 2015. Appellants timely noted their appeal on May 27, 2015, and this appeal followed.

STANDARD OF REVIEW

This appeal comes by way of the circuit court's grant of a motion to dismiss. An appellate court "reviews the grant of a motion to dismiss for legal correctness." *Rounds v. Maryland-Nat. Capital Park and Planning Com'n*, 441 Md. 621, 635 (2015). Put another way:

> "The proper standard for reviewing the grant of a motion to dismiss is whether the trial court was legally correct. In reviewing the grant of a motion to dismiss we must determine whether the complaint, on its face, discloses a legally sufficient cause of action." In reviewing the complaint, we must "presume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom." "Dismissal is proper only if the facts and allegations, so viewed, would nevertheless fail to afford plaintiff relief if proven."

Higginbotham v. Public Service Com'n of Maryland, 171 Md. App. 254, 264 (2006) (quoting *Britton v. Meier*, 148 Md. App. 419, 425 (2002)). Furthermore,

> [c]onsideration of the universe of "facts" pertinent to the court's analysis of the motion are limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any. The well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice.

State Center, LLC v. Lexington Charles Ltd. Partnership, 438 Md. 451, 497 (2014) (quoting *RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643-44 (2010)).

DISCUSSION

I. APPLICABILITY OF THE HEALTH CLAIMS ACT

A. Parties' Contentions

The main thrust of appellants' argument is that they were not required to first file their claim with the ADR Office because "the injuries sustained while residing at [a]ppellee's facility were not attributable to [a]ppellee's rendering or failure to render healthcare." As a result, appellants contend, the injuries alleged in their complaint were sustained as a result of ordinary negligence, not medical malpractice, and therefore, their suit falls outside the scope of the Health Claims Act, and was properly filed in circuit court. Appellants argue that the fact that Ms. Davis was "within a facility that provides healthcare services" doesn't automatically render any injury sustained inside the facility medical malpractice. Appellants conclude that their "pleadings are adequate to show that the claim is based upon negligence, and thus it is not necessary for [appellants] to show that the claim is not within the scope of the [Health Claims Act]."

The main thrust of appellee's argument is that the circuit court did not err in dismissing the suit because "[a]ppellants asserted claims sounding in medical malpractice, and therefore are subject to" the Health Claims Act. Appellee asserts that despite appellants efforts to bring their claim outside the jurisdiction of the ADR Office, "the nature of their amendments highlight the true nature of their claims, as a medical malpractice action." Appellee essentially contends that no matter how appellants attempt to characterize the events, they themselves "assert that Ms. Davis was to receive 'full time nursing and medical care'" at Frostburg, and therefore, her injuries were not sustained in the course of being a mere renter of a room. Appellee concludes that appellants were thus first required to file with the ADR Office, and as a result, the circuit court properly dismissed the claim.

B. Analysis

The Health Claims Act provides that "[a]ll claims, suits, and actions . . . by a person against a health care provider for medical injury allegedly suffered by the person" must be filed with the ADR Office. CJP § 3-2A-02(a)(1). As such, "[a]bsent a waiver by the parties, the Health Care Malpractice Claims Act requires the submission of malpractice claims against health care providers to an arbitration proceeding as a condition precedent before maintaining a tort action in the circuit court." *Goicochea v. Langworthy*, 345 Md. 719, 725 (1997). As evident in the various permutations of appellants' complaints, the dispute in this case therefore hinges on: (1) whether the incident of October 26, 2011, constituted a "medical injury" to Ms. Davis; and (2) whether Frostburg is a "health care provider" within the meaning of the Act. In order to resolve the dispute, we necessarily must make a brief

determination regarding the latter, before turning to the former—though they are undoubtedly intertwined in the facts of this case.

The Health Claims Act defines a "health care provider" as, *inter alia*, "a hospital, [or] a related institution as defined in § 19-301 of the Health—General Article[.]" CJP § 3-2A-01(f)(1). In turn, Md. Code (1982, 2015 Repl. Vol.) § 19-301 of the Health—General Article ("HG") provides:

> (1) "Related institution" means an organized institution, environment, or home that:
>
> > (i) Maintains conditions or facilities and equipment to provide domiciliary, personal, or nursing care for 2 or more unrelated individuals who are dependent on the administrator, operator, or proprietor for nursing care or the subsistence of daily living in a safe, sanitary, and healthful environment; and
> >
> > (ii) Admits or retains the individuals for overnight care.

HG § 19-301(o)(1).

The progression in appellants' amended complaints reveals a recurring theme: that Frostburg merely served as a "residence" for Ms. Davis. Before this Court, however, it appears as though appellants have either abandoned, or at least backed away from, that line of argument, and rightfully so. It cannot be seriously contended that Frostburg is not a "health care provider"—either by the letter of the law, or even a lay definition. While the argument vaguely resurfaces later in appellants' appeal, we are unpersuaded for the purposes of determining the applicability of the Health Claims Act.

On appeal, appellants instead focus more on the nature of Ms. Davis' injuries. The Health Claims Act defines a "medical injury" as an "injury arising or resulting from the

rendering or failure to render health care." CJP § 3-2A-01(g). The crux of appellants' argument appears to be that, regardless of how we categorize Frostburg, the injuries sustained by Ms. Davis did not arise or result from the rendering or failure to render healthcare. Put another way, they argue that simply because Ms. Davis was within a facility that rendered healthcare does not mean that every injury sustained in that facility amounts to medical malpractice. In support of that proposition, Appellants principally rely on three Maryland cases: *Nichols v. Wilson*, 296 Md. 154 (1983); *Afamefune v. Suburban Hospital, Inc.*, 385 Md. 677 (2005); *Swam v. Upper Chesapeake Medical Center, Inc.*, 397 Md. 528 (2007). While that is arguably an accurate restatement of the law as stated in those cases, we believe the facts of those cases render them inapposite to the facts presented here.

In *Nichols*, a five-year-old minor was admitted to the hospital for removal of sutures from the minor's left cheek. *Nichols*, 296 Md. at 155 n.2. While on the operating table, "[b]efore suture removal and while [the minor] was being held down, without provocation, [the doctor], intentionally, violently, maliciously, wantonly and recklessly struck with his hand the left cheek of [the minor] with great force." *Id*. The minor's mother brought suit against the doctor for assault and battery, negligence, and intentional infliction of emotional distress, and the doctor moved to dismiss based on failure to file with the ADR Office. *Id*. at 155-56. The Court of Appeals held that the claim was *not* within the scope of the Health Claims Act, explaining that

> In our view, the legislature did not intend that claims for damages against a health care provider, arising from non-professional circumstances where there was no violation of the provider's professional duty to exercise care, to be covered by the Act. It is patent that the legislature intended only those

> claims which the courts have traditionally viewed as professional malpractice to be covered by the Act.

Nichols, 296 Md. at 160 (citation omitted).

In *Afamefune*, a fourteen-year-old minor was admitted to the hospital for injuries she sustained from jumping from a moving vehicle. *Afamefune*, 385 Md. at 680. A week later, "while a patient in the psychiatric ward, being treated for depression, she was assaulted and raped or attempted to be raped by a male patient." *Id*. at 680-81. The minor's mother brought suit against the hospital for negligence, and the hospital filed a motion to dismiss based on the mother's failure to first file with the ADR Office. *Id*. at 681. The Court held that the claim was *not* within the scope of the Act, and noted the similarities to *Nichols*:

> This case is much like *Nichols v. Wilson*, although the injuries in this case did not occur during the rendering of health care, at least not directly at the moment of the injury. Like the slap, the assault, rape or attempted rape by the male patient bore no relationship to the medical treatment for which Stephanie was hospitalized. What the Court said in *Nichols v. Wilson* thus applies with equal, if not greater—the medical provider did not cause the injury in this case—, force here: "[i]n no way can it be said that the legislature intended such a claim to be within the Act."

Afamefune, 385 Md. at 695-96 (quoting *Nichols*, 296 Md. at 161, 460 A.2d at 61.)

Finally, in *Swam*, Ms. Swam was accompanying her father to the hospital where he was scheduled to undergo surgery when she was accidentally "stuck by an uncapped hypodermic needle" as she rested her hand on a waiting room counter. *Swam*, 397 Md. at 531-32. After being diagnosed with an infection, she brought suit against the hospital with the ADR Office, alleging that the hospital "was negligent in its 'disposal and/or storage of regulated waste and/or contaminated sharps including without limitation, needles.'" *Id*. at

532. The Court held that the claim was *not* within the scope of the Act and therefore tolled the statute of limitations, because

> the allegations of negligence in the complaint all relate to the disposal of medical waste and not to medical treatment. Such alleged conduct is not within the scope of the Health Claims Act, and therefore the Swams filed their action in the wrong forum when they filed with the Health Care Office. The appropriate avenue for the Swams was to proceed directly to Circuit Court because the injury was not a "medical injury" as defined by the Health Claims Act.

Id. at 539.

Turning to the case at hand, we believe the circumstances in which Ms. Davis was injured are readily distinguishable from the cases appellants rely on. Clearly, in *Nichols* and *Afamefune*, the Court of Appeals held that those cases were outside the scope of the Health Claims Act because they both alleged *intentional* torts by a patient of the health care provider or a doctor in the employ of the hospital against the victim, whereas here, appellants made no such allegations. And in *Swam*, the victim was not a patient at all, rather, a third party who was injured by an event so entirely attenuated that it bore no relation to any 'health care'—not even as to her own presence, but even wholly unrelated to the actual patient's reason for being admitted to the hospital.

Here, rather, Ms. Davis was admitted to Frostburg for round-the-clock care for—as appellants themselves explain—"recovery and physical rehabilitation" following her back surgery. Accepting all of appellants' allegations as true, we are unpersuaded that either the original fall or the subsequent fall from the lift machine cannot be considered a "medical injury" in these circumstances. Appellants clearly contemplated that Ms. Davis' back surgery would require more robust care than she would be able to receive in her own home;

including, for instance, a bed that was more conducive to rehabilitation from back surgery. Besides, even if the first fall was not a "medical injury," the fall from the lift machine certainly was. That holds true even if, as alleged, the nurse had never used the lift before the time she dropped Ms. Davis. The machine still presumably requires a level of training beyond that of an average person, and in this case, the lift was being operated by a trained nurse, whose job was to provide the elevated level of care appellants sought when they chose Frostburg for Ms. Davis' recovery. It follows, therefore, that regardless of whether Frostburg is alleged to have either failed to properly attach the mattress to the bed or failed to properly replace her back in it, Frostburg is alleged to have committed ordinary negligence that, in this case, could constitute medical malpractice, which in turn required the claim to filed with the ADR Office before the circuit court.

Moreover, as the Court of Appeals has explained, even when "the proper forum for the filing of a borderline medically-related claim may not always be apparent . . . the Health Care Office possesses the authority to determine whether a claim constitutes a 'medical injury' in a borderline case and is therefore subject to the Health Claims Act." *Swam*, 397 Md. at 541. Accordingly, appellants should have filed first with the ADR Office, who would utilize its statutorily-conferred powers to make the decision for them. Rather than provide an explanation as to why they did not first file with the ADR Office, however, appellants instead chose to amend their complaint on two separate occasions to attempt to bring their claim outside the scope of the Act. We are unpersuaded.

To be sure, appellants did nothing inherently wrong in filing their amended complaints, as the rule governing amendment of pleadings itself states that "[a]mendments

shall be freely allowed when justice so permits." Md. Rule 2-341(c). Even if we were to assume that appellants amended their complaint with the express desire to perform an end-around of the ADR Office's jurisdiction, it is of no moment here. Merely changing the description of the nature of the relationship between appellants and appellee does nothing to alter the factual landscape: Ms. Davis was admitted to Frostburg for medically-specific recovery and physical rehabilitation, and in the course of her stay, Frostburg likely committed some sort of professional negligence—by either failing to properly attach her bed to its frame, or by failing to properly utilize the machine that was likely designed with this exact situation in mind. Accordingly, we hold that the circuit court did not err by dismissing appellants' Second Amended Complaint, as appellants failed to properly file their claim in the ADR Office before the circuit court, pursuant to the Health Claims Act.

II. SUFFICIENCY OF THE REMAINDER OF THE SECOND AMENDED COMPLAINT

A. Parties' Contentions

Appellants argue that they "set forth cognizable causes of action" in the remaining counts—namely, "breach of contract, consumer protection, and loss of consortium"—and they "asserted sufficient facts" for those claims to survive the dismissal motion. As to the contract count, appellants argue that they entered into a contract with appellee for their services, and appellee breached that contract—and that the terms of the contract are a "discovery issue." Regarding the consumer protection count, appellants argue that they "rented a room and the contents of the room, including the bed and mattress, from [a]ppellee. Therefore, the bed in which [Ms. Davis] slept was a consumer good and there are sufficient facts alleged" in their complaint for the Maryland Consumer Protection Act

to apply." Finally, appellants argue that they alleged sufficient facts for their traditional loss of consortium claim to survive the dismissal.

In response, appellee argues that appellants failed to state a cause of action for each of those remaining counts. As to the contract claim, appellee argues that appellants "fail[ed] to provide . . . a single term of the alleged contract," and failed to even distinguish between "a signed contract and/or oral agreement," instead choosing to refer to a "standard of care" and that appellee "breached [its] duty" to appellants. Appellee argues that the consumer protection claim fails because "[a]ppellants are not 'consumers' and did not contract for, or otherwise receive, 'consumer goods' or 'consumer services.'"

B. Analysis

In light of our primary holding—that the circuit court did not err in dismissing the complaint for appellants' failure to properly file for arbitration—we further hold that the rest of the counts were properly dismissed as well, pursuant to the Court of Appeals' holding in *Nichols*. In *Nichols*, as discussed *supra*, the mother brought charges in the circuit court against the doctor for (1) assault and battery, (2) negligence, and (3) intentional infliction of emotional distress. *Nichols*, 296 Md. at 155. After the doctor filed a motion to dismiss for failure to comply with the Health Claims Act, the mother "amended the negligence count (Count II) to reduce the ad damnum clause therein to $5,000.00, which, of course, would have the effect of removing that count from coverage under the Act." *Id*. at 157.[1] The mother argued that since there was "no medical malpractice claim left in the

[1] *See* CJP § 3-2A-02(a) (requiring damages in claims filed under the Act to be "more than the limit of the concurrent jurisdiction of the District Court").

action," and therefore, the other counts were "clearly not covered under the Act." *Nichols*, 296 Md. at 157.

In dealing with the "threshold question" of whether remaining counts of a complaint survive if a medical malpractice-type count is no longer "left in the action," the Court of Appeals in *Nichols* explained:

> We recognize that in the instant case the appellants have incorporated, by reference, all allegations of fact previously set forth in preceding counts. Thus, if the negligence count itself were arbitrable, all counts would likewise be arbitrable. We believe this result consonant with the efficient administration of justice and, of course, it avoids the piecemeal resolution of controversies.

Nichols, 296 Md. at 158-59. The Court found further support in a case decided earlier that same year in *Cannon v. McKen*, 296 Md. 27, (1983), where the Court stated in a footnote: "We hasten to add that claims of strict liability and breach of warranty may not always be arbitrable; however, if such claims are related to and incorporate a negligence claim, as here, which may be arbitrable, then all counts will be arbitrable." *Cannon*, 296 Md. at 38 n.4.

Here, the circumstances of this case are practically indistinguishable from those in *Nichols*. Because we hold that appellants' amendments did not change the nature of the case as one sounding in medical malpractice, all of their claims must have accompanied the negligence claims as well. For example, appellants expressly argued in their consumer protection claim that appellee "represented to the public and [a]ppellants that it possessed a degree of skill, knowledge, and ability ordinarily possessed by reasonably competent owners and operators of nursing home facilities." Putting aside the fact that such a

statement is nearly identical to the standard of care that health care providers are held to in *medical malpractice claims*,[2] appellant does not attempt to explain, nor are we able to on their behalf, how this would not be a prime example of the "piecemeal litigation" our judiciary constantly strives to prevent. Accordingly, we hold that the remaining counts of appellants' Second Amended Complaint were properly dismissed as well.[3]

JUDGMENT OF THE CIRCUIT COURT FOR ALLEGANY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.

[2] *See, e.g.*, *Crise v. Maryland General Hosp., Inc.*, 212 Md. App. 492, 521 (2013) ("Ordinarily, the duty of care in a medical malpractice action arises from the health care provider-patient relationship. That duty, stated more fully, is to exercise the degree of care or skill expected of a reasonably competent health care provider in the same or similar circumstances.") (citations omitted). *See also*, *Board of Trustees, Community College of Baltimore County v. Patient First Corp.*, 444 Md. 452, 479 (2015) ("The duty owed by a medical professional is to exercise the degree of care or skill expected of a reasonably competent health care provider in the same or similar circumstances.").

[3] In any event, were we to reach the merits, our decision would not change. Appellants failed to allege facts with the requisite level of specificity for a breach of contract claim under Maryland law. *See Polek v. J.P. Morgan Chase Bank, N.A.*, 424 Md. 333, 362-64 (2012). Further, appellants failed to state a claim under the Maryland Consumer Protection Act for at least two reasons. First, despite their attempts to portray Ms. Davis as a "mere renter" of a room in Frostburg, this case involved neither a "consumer" nor "consumer goods" or "consumer services" within the meaning of the Consumer Protection Act. *See Hogan v. Maryland State Dental Ass'n*, 155 Md. App. 556, 563-64 (2004); CL § 13-101(c). Second, under the Consumer Protection Act, appellee is (a) not a "merchant," *see* CL § 13-101(g); and (b) likely specifically exempted from its coverage, *see* CL § 13-104 (exempting, *inter alia*, "[t]he professional services of a . . . physical therapist[.]").