COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 033706-04**

Walter Ayala	Employee
Restaurant Cuscatlan	Employer
Massachusetts General Hospital	Third Party Claimant
Workers' Compensation Trust Fund	Insurer

REVIEWING BOARD DECISION
(Judges Carroll, McCarthy and Horan)

APPEARANCES
Richard W. McLeod, Esq., for the third party claimant
Charles J. Crowley, Esq., for the Workers' Compensation Trust Fund

CARROLL, J. The Workers' Compensation Trust Fund appeals an administrative judge's decision awarding a third party provider payments for medical treatment under §§ 13 and 30. The sole issue on appeal is whether, on the facts of this case, proof of the underlying claim can be made through hospital records admitted under G L. c. 152, § 20.[1] We affirm the decision.

The third party provider, Massachusetts General Hospital (MGH), sought reimbursement for its treatment of the employee, whose claim had never gone to dispute resolution. The alleged employer was uninsured. The Workers' Compensation Trust Fund (Trust Fund) defended against the claim on the basis

[1] General Laws c. 152, § 20, provides:

> Copies of hospital records kept in accordance with section seventy of chapter one hundred and eleven, certified by the persons in custody thereof to be true and complete, shall be admissible in evidence in proceedings before the division or any member thereof. The division or any member, before admitting any such copy in evidence, may require the party offering the same to produce the original record. All medical records and reports of hospitals, clinics and physicians of the insurer, employer, or of the employee shall be filed with and open to the inspection of the division so far as relevant to any matter before it. Such reports shall be open to the inspection of any party.

that MGH could not prove an employee/employer relationship and the occurrence of a personal injury under the act. (Dec. 2.)

The judge relied on statements in the hospital records, which he found to be reliable as to the history of the injury, the name of the employer, the address and phone number of the employer, and the contact person for the employer. The judge found, based on the hospital admitting records, that on August 17, 1998, the employee suffered a deep laceration to the ulnar border of his left wrist, with profuse bleeding, during the course of his employment with the employer restaurant. (Dec. 4.)

The judge concluded that MGH could rely on the hospital records to prove its third party claim for payment under §§ 13 and 30, pursuant to G. L. c. 152, § 20. That latter section provides that such records are admissible in evidence in proceedings before dispute resolution, without limitation as to any matter contained therein. Therefore, with the proper authentication, the records could be considered on the question of liability: whether an industrial accident actually occurred and whether the injury was therefore within the scope of the act. (Dec. 3-4.) Determining that MGH could use the records for this purpose, the judge awarded payments totaling $16,559.15 under §§ 13and 30 for reasonable and necessary medical treatment. (Dec. 6.)

The Trust Fund contends that the decision is contrary to law, because MGH relied entirely on hospital records to prove its third party claim. We agree that the method of proof of this third party claim was unusual. However, that does not mean that it failed as a matter of law. General Laws c. 152, § 20, provides for broad use of hospital records in workers' compensation proceedings. Its provisions clearly establish an overall exception for the hearsay nature of hospital records. Section 20 does not limit the non-hearsay use of hospital records, as do

G. L. c. 233, §§ 79[2] and 79G,[3] sections the Trust Fund argues are governing. Those sections do not include liability in the designated non-hearsay provisions for use of medical and hospital records in court and agency proceedings. Unlike c. 233, § 79, G. L. c. 152, § 20, does not restrict the use of such records as evidence on the "question of liability." Pinhancos v. St. Luke's Hosp., 17 Mass. Workers' Comp. Rep. 413, 419 n.7 (2003). See also Dupuis v. Phillip Beaulieu Home Improvement, 19 Mass. Workers' Comp. Rep. 33 (2005)(finding of intoxication warranted by evidence properly admitted under G. L. c. 152, § 20).

While we have concluded that § 79 and § 79G apply to workers' compensation proceedings, see Moseley, infra, at 322-323, we do not agree with the Trust Fund that those sections may be read to trump the more specific application of G. L. c. 152, § 20. "[T]o the extent a conflict between . . . two statutes exists, 'the more specific statute controls over the more general one.' "

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[2] General Laws c. 233, § 79, provides, in pertinent part:

> Records kept by hospitals, dispensaries or clinics, and sanatoria under section seventy of chapter one hundred and eleven shall be admissible . . . as evidence in the courts of the commonwealth so far as such records relate to the treatment and medical history of such cases and the court may, in its discretion, admit copies of such records, if certified by the persons in custody thereof to be true and complete.

"[I]n construing statutes governing the admission of evidence, the Board has been found to be included in that statutory term ['court']." Moseley, v. New England Fellowship for Rehab. Alternatives, 13 Mass. Workers' Comp. Rep. 316, 323 (1999), overruled on other grounds, citing Pigeon's Case, 216 Mass. 51, 56 (1913).

[3] Section 79G applies to all medical records and reports, not just hospital records, and sets out service requirements to be followed by parties seeking to introduce same in proceedings "in any court, commission or agency." G. L. c. 233, § 79G.

Commonwealth v. Houston, 430 Mass. 616, 625 (2000)(Marshall, C.J., concurring), quoting 2B Singer, Sutherland, Statutory Construction, § 51.02 (5th ed. 1992). For example, a statute specifically addressing standing to challenge a permit action of an agency was held to prevail over the more general statute providing standing to anyone aggrieved by any action of the agency. Planning Board of Hingham v. Hingham Campus, LLC, 438 Mass. 364, 367-368 (2003). Section 20 addresses only workers' compensation proceedings; it is more specific in its scope and application than §§ 79 and 79G. We conclude that its plain meaning must be read to allow the judge to use it in the very manner that he did. The judge could rely on the references to the occurrence of an industrial accident made in the hospital records, and draw reasonable inferences from them. This was not a case in which the judge needed expert medical testimony in order to find the treatment of this severe laceration to be reasonable and necessary. See Lovely's Case, 336 Mass. 512 (1957).

The decision is affirmed.

So ordered.

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Martine Carroll
Administrative Law Judge

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William A. McCarthy
Administrative Law Judge

Filed: **October 17, 2006**

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Mark D. Horan
Administrative Law Judge