

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GENUINE SOLUTIONS COUNSELING CENTER  
PLLC, and SCOTT A. HALL,

UNPUBLISHED  
June 20, 2024

Plaintiffs-Appellants,

v

No. 364180  
Court of Claims  
LC No. 21-000185-MM

GOVERNOR, STATE OF MICHIGAN,  
ATTORNEY GENERAL’S OFFICE, DENNIS J.  
PHENEY, JR., DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, STACIE SAMPSON, and  
KATE MASSEY,

Defendants-Appellees.

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Before: O’BRIEN, P.J., and M. J. KELLY and FEENEY, JJ.

PER CURIAM.

Plaintiffs, Genuine Solutions Counseling Center, PLLC and Scott Hall, appeal as of right the trial court order dismissing their claims against the Governor, Dennis Phenev, Jr., Stacie Sampson, and Kate Massey under MCR 2.116(C)(7) and (C)(8). They also challenge the court’s earlier order granting summary disposition in favor of the state of Michigan, the Attorney General’s office, and the Department of Health and Human Services (DHHS), under MCR 2.116(C)(7). We affirm because the trial court did not err.

I. BASIC FACTS

Hall is a licensed counselor and the sole owner of Genuine Solutions. He allowed graduate-level students from Michigan universities to intern as counselors at Genuine Solutions. Hall and Genuine Solutions billed Medicaid for the services provided by the interns through Medicaid-related managed health plans (MHPs) and through a Fee for Services (FFS) program. Hall believed this practice complied with the Public Health Code, MCL 333.1101 *et seq.*, which allows for the use of student interns if certain supervisory requirements are met.

In 2019, however, a confidential informant disclosed that Hall was billing Medicaid for services performed by unlicensed graduate-student interns when he was not present in the room.

A special agent investigated the matter, and Phenev was the lawyer assigned to the case. As a result of the investigation, Hall was indicted on allegations of Medicaid fraud. Thereafter, DHHS suspended Genuine Solutions and Hall from receiving Medicaid funds. This suspension caused the termination of the MHP contracts, but Hall and Genuine Solutions were not precluded from providing counseling services. Eventually, the criminal charges against Hall were dismissed after Phenev learned that his expert witness did not think that the billing practices were unlawful. DHHS then lifted the order of suspension.

Hall and Genuine Solutions subsequently filed a complaint against defendants, bringing claims for and seeking damages for (1) malicious prosecution, (2) violation of the “right against illegal seizure,” (3) violation of the right to procedural due process, (4) violation of the right to equal protection, (5) gross negligence, (6) intentional infliction of emotional distress, and (7) defamation. They also sought declaratory relief. In lieu of answering the complaint, defendants moved for summary disposition under MCR 2.116(C)(7), arguing that Genuine Solutions and Hall failed to satisfy the notice-and-verification requirements contained in MCL 600.6431 of the Court of Claims Act, MCL 600.6401 *et seq.* Following oral argument on the motion, the trial court granted summary disposition in favor of the state of Michigan, the Attorney General’s office, and DHHS. The remaining defendants—the Governor, Phenev, Sampson, and Massey—answered the complaint and later moved for summary disposition under MCR 2.116(C)(7) and (C)(8). The court granted their motion. This appeal follows.

## II. SUMMARY DISPOSITION

### A. STANDARD OF REVIEW

Genuine Solutions and Hall argue that the trial court erred by granting defendants summary disposition. Challenges to a trial court’s summary disposition decision are reviewed *de novo*. *Bailey v Antrim Co*, 341 Mich App 411, 421; 990 NW2d 372 (2022). Questions of constitutional law and regarding the application and interpretation of statutes are also reviewed *de novo*. *Id.* at 420-421.

### B. ANALYSIS

#### 1. NOTICE PROVISIONS

In order to bring a claim against the state or its departments, a plaintiff must comply with the notice requirements set forth in MCL 600.6431. *Fairley v Dep’t of Corrections*, 497 Mich 290, 292; 871 NW2d 129 (2015). As a result, the failure to comply with the notice provisions in MCL 600.6431 “provides a complete defense in an action against the state or one of its departments.” As relevant to this case, claims for “property damage or personal injuries” require the plaintiff to file the required notice “within 6 months after the event that gives rise to the claim.” MCL 600.6431(4). In contrast, for other claims against the state, notice must be provided “within 1 year after the claim has accrued.” MCL 600.6431(1).

The trial court found that Hall and Genuine Solutions’ claims against the state of Michigan, the Attorney General’s Office, and DHHS were claims for “personal injuries.” Because their claims were filed outside the 6-month notice period, the court concluded that their claims were

barred and granted summary disposition. On appeal, Hall and Genuine Solutions argue that the trial court erred by interpreting the phrase “personal injuries” to include claims asserting the violation of constitutional rights. They contend that, instead, the phrase refers solely to claims arising from an injury to a person’s body.

In support of that contention, Hall and Genuine Solutions direct this Court to MCL 600.6301(b), which states that “[a]s used in this chapter: . . . ‘Personal injury’ means “bodily harm, sickness, disease, death, or emotional harm resulting from bodily harm.” The chapter referenced in the definition is chapter 63 of the Revised Judicature Act of 1961 (RJA), MCL 600.601 *et seq.* The notice provision at issue in this case appears in chapter 64 of the RJA. As a result, the definition of “personal injury” in MCL 600.6301(b) is not applicable. See *Farris v McKaig*, 324 Mich App 349, 358; 920 NW2d 377(2018) (stating that if the Legislature specifically limits the applicability of a statutory definition to a certain statutory provision, then this Court should not apply that definition to a different statutory provision).

Because there is no applicable statutory definition, we turn to the general rules of statutory interpretation. “The primary goal of statutory interpretation is to give effect to the intent of the Legislature.” *Bailey*, 341 Mich App at 421 (quotation marks and citation omitted). “If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted.” *Id.* (quotation marks and citation omitted). If a word or phrase is undefined by statute, it must be given its plain and ordinary meaning. *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008). Under such circumstances, we may consult dictionaries. *Id.*

According to *Random House Webster’s College Dictionary* (1997), “personal” is defined as “of, pertaining to, or concerning a particular person; individual; private.” In addition, “injury” is defined as “harm or damage done or sustained, esp. bodily harm,” and “any violation of the rights, property, etc., of another for which damages may be sought.” *Random House Webster’s College Dictionary* (1997). Similarly, *Black’s Law Dictionary* (9th ed), defines the term “personal injury” as:

1. In a negligence action, any harm caused to a person, such as a broken bone, a cut, or a bruise; bodily injury.
2. Any invasion of a personal right, including mental suffering and false imprisonment.

Accordingly, based upon the dictionary definitions, a “personal injury” is harm that is caused to an individual person’s body or an invasion of personal rights, including mental suffering. Thus, contrary to Hall and Genuine Solutions’ argument, claims for “personal injuries” are not limited solely to claims arising from an injury to a person’s body.

Hall and Genuine Solutions brought several claims against the state of Michigan, the Attorney General’s Office, and DHHS. With respect to their constitutional claims, an invasion of a constitutional right necessarily fits within the definition of “personal injury.” With respect to their claims of malicious prosecution, intentional infliction of emotional distress, and defamation claims, Hall and Genuine Solutions requested damages because the state of Michigan, the Attorney General’s office, and DHHS interfered with their ability to bill Medicaid for counseling services. These claims involve an invasion of a personal right, i.e., the ability to earn money. Therefore,

the malicious prosecution, intentional infliction of emotional distress, and defamation claims constitute claims concerning “personal injuries.” Because all of the claims against the state of Michigan, the Attorney General’s Office, and DHHS were claims for personal injuries, notice had to be provided within 6 months of their claims accruing under MCL 600.6431(4). And because they gave notice seven months after accrual, the trial court did not err by summarily dismissing their claims against the state of Michigan, the Attorney General’s Office, and DHHS.<sup>1</sup>

## 2. ABSOLUTE PROSECUTORIAL IMMUNITY

The trial court dismissed the claims against Phenev after concluding that he was entitled to absolute prosecutorial immunity. In Michigan and in federal courts, prosecutors are considered “quasi-judicial officers” and are entitled to absolute immunity from civil liability for conduct committed within the scope of prosecutorial duties or functions. *Bischoff v Calhoun Co Prosecutor*, 173 Mich App 802, 807-808; 434 NW2d 249 (1988). As a result, “a prosecutor is absolutely immune from civil suits arising out of the initiation, prosecution, and presentment of the state’s case.” *Id.* at 808. However, a prosecutor is only entitled to qualified immunity when engaging in “prosecutorial activity which is essentially investigative or administrative.” *Id.* at 809.

On appeal, Hall and Genuine Solutions assert that Phenev was not entitled to absolute prosecutorial immunity because he was acting in an investigative capacity. The record reflects that Phenev, who was working as an assistant attorney general in the Health Care Fraud Division of the Attorney General’s office, was the lawyer that was assigned to Hall and Genuine Solutions’ case. As noted *supra*, a special agent investigated the matter, and Phenev’s name appeared on the special agent’s reports. But there is no indication from the investigation reports that Phenev determined which witnesses to interview, questioned witnesses personally or determined what questions to ask, observed interviews, or gathered documentary evidence before charges were initiated. The investigation reports only support that the special agent interviewed former interns and the parents of minor clients. Based upon the evidence gathered by the special agent, and information gathered during Hall’s interview, Phenev believed probable cause existed to support pursuing criminal charges against Hall. Thereafter, Phenev filed a felony complaint. Thus, even when viewing the evidence in a light most favorable to plaintiffs, the record does not support a finding that the functions of Phenev and the special agent are the same. Instead, the evidence supports a finding that Phenev reviewed the evidence collected by the special agent and determined probable cause existed to pursue criminal charges. “[A]cts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial,” are entitled to absolute immunity. *Buckley v Fitzsimmons*, 509 US 259, 273; 113 S Ct 2006; 125 L Ed 2d 209 (1993). Under these facts, the

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<sup>1</sup> On appeal, plaintiffs argue in their reply brief that the doctrine of tolling should be applied. Parties are not permitted to raise new arguments in reply briefs. MCR 7.212(G). Moreover, because this issue was not raised in the trial court, plaintiffs have waived it. See *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW3d \_\_\_ (2023) (Docket No. 359090); slip op at 2-5.

trial court did not err by concluding Phenev was entitled to absolute immunity and by granting summary disposition in his favor on the tort and constitutional claims.

Although Hall and Genuine Solutions cursorily assert that summary disposition was premature because ongoing discovery could reveal that Phenev was acting in an investigative capacity, they do not explain or rationalize what factual development could provide a basis for recovery. “It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Consequently, we conclude that this argument is abandoned.<sup>2</sup>

### 3. QUALIFIED IMMUNITY—INTENTIONAL TORTS

Hall and Genuine Solutions next argue the trial court erred by granting summary disposition on the intentional-tort claims against Massey and Sampson. We disagree. In Michigan, for governmental employees to be entitled to qualified immunity from intentional torts, the governmental employee must “establish that (1) the employee’s challenged acts were undertaken during the course of employment and that the employee was acting, or reasonably believed he was acting, within the scope of his authority, (2) the acts were undertaken in good faith, and (3) the acts were discretionary, rather than ministerial, in nature.” *Odom v Wayne Co*, 482 Mich 459, 461; 760 NW2d 217 (2008). Whether a defendant acted in “good faith” is subjective in nature. *Id.* at 481-482. A defendant does not act in good faith where he or she exhibits “malicious intent, capricious action or corrupt conduct, or willful and corrupt misconduct.” *Id.* at 474-475.

Hall and Genuine Solutions alleged that Massey and Sampson could not have been acting within the scope of their authority because their actions were not based upon actual law.<sup>3</sup> Here, Sampson, Director of the Integrity Division in the Office of Inspector General (OIG), approved Hall’s suspension “following a thorough review of the facts and evidence as presented by the MDHHS OIG sanctions analyst.” Massey, Director of the Medical Services Division of DHHS at the time, signed the “Order of Summary Suspension for Genuine Solutions and Hall after [she] reviewed that the Order was complete.” Massey did so “per the IOG’s request.” According to Massey, the IOG was not permitted “to unilaterally sign orders related to provider status, including suspensions, because [she] served as the Medicaid program administrator.” The “specific facts of the case involving Genuine Solutions and Hall were not shared with [Massey] outside of those which were contained in the Order itself.”

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<sup>2</sup> Given our resolution, the remainder of plaintiffs’ arguments concerning Phenev are moot and will not be considered. See *Mich Republican Party v Donahue*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW3d \_\_\_ (2024) (Docket No. 364048); slip op at 3 (“As a general rule, this Court does not decide moot issues.”).

<sup>3</sup> We note that Hall and Genuine Solutions contended that Massey and Sampson were involved in a “revocation of [Hall’s] license.” However, Hall’s license to counsel was not suspended. Indeed, Hall continued to counsel patients at all relevant times.

Both the claims for defamation and intentional infliction of emotional distress are premised upon Massey and Sampson’s involvement in issuing the order of suspension. Only the first page of the order of suspension was included in the lower court record. It provides:

The Michigan Department of Health and Human Services (MDHHS) Office of Inspector General (OIG) has determined that emergency action is necessary to protect the State’s interest in medically indigent individuals and the public funds of the medical assistance program under MCL 400.111f.

1. On February 10, 2020, Hall was charged with one count of Medicaid Fraud—False Claim in violation of MCL 400.607(1). Allegations include:

a. Hall billed Medicaid for behavior health counseling sessions conducted by unlicensed student interns. These services were provided at Genuine Solutions.

b. It was further alleged that the unlicensed interns were alone with the patient when the counseling session occurred. Hall was not in the room supervising the sessions that resulted in the claims billed to Medicaid.

2. On February 21, 2020, Hall was bound over to the Ingham County 30th Circuit Court for trial.

3. Genuine Solutions self-reported to Michigan Medicaid that Hall is the sole owner.

We conclude that the undisputed evidence establishes Massey and Sampson reasonably believed that they were acting within the scope of their authority and acted in good faith, i.e., without “malicious intent,” “capricious action,” or “corrupt conduct, when signing the order of suspension. See *Odom*, 482 Mich at 474-475. MCL 400.111f(1)(b) permits “emergency action” to be taken if there is “[a] reasonable belief that the provider has violated the medicaid false claims act. . . .” Massey and Sampson were presented with evidence that Hall, who was a provider, had been *charged with* Medicaid fraud. This was accurate information and was reflected in the order of suspension. Because a genuine issue of material fact does not exist for trial on the issue of whether Massey and Sampson are entitled to qualified immunity on the defamation and intentional infliction of claim, the trial court did not err by dismissing those claims.

#### 4. GROSS-NEGLIGENCE CLAIMS

Next, Hall and Genuine Solutions contend that the trial court erred by summarily dismissing their gross-negligence claims against Massey and Sampson. We disagree once again.

“The GTLA . . . affords broad immunity from tort liability to governmental agencies and their employees whenever they are engaged in the exercise or discharge of a governmental function.” *Beals v Michigan*, 497 Mich 363, 370; 871 NW2d 5 (2015). “The GTLA provides several exceptions to this general rule, all of which must be narrowly construed.” *Id.* As relevant here, “[a]n employee of a governmental agency acting within the scope of his or her authority is immune from tort liability unless the employee’s conduct amounts to gross negligence that is the

proximate cause of the injury.” *Kendricks v Rehfield*, 270 Mich App 679, 682; 716 NW2d 623 (2006); MCL 691.1407(2). Under the GTLA, “ ‘[g]ross negligence’ means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.” MCL 691.1407(8)(a). Generally, a determination of whether an individual was grossly negligent is a decision for the finder of fact. *Jackson v Saginaw Co*, 458 Mich 141, 146; 580 NW2d 870 (1998). “However, if, on the basis of the evidence presented, reasonable minds could not differ, then the motion for summary disposition should be granted.” *Id.* (quotation marks and citation omitted.)

To support the gross-negligence claims against Sampson and Massey, Hall and Genuine Solutions alleged that Massey and Sampson improperly barred them from participating in Medicaid services that they “are legally entitled to participate in.” Yet, the record reflects that Sampson approved the suspension “following a thorough review of the facts and evidence as presented by the MDHHS OIG sanctions analyst.” Massey signed the “Order of Summary Suspension for Genuine Solutions and Hall after [she] reviewed that the Order was complete.” The order reflected that Hall, who was a provider, had been charged with Medicaid fraud. MCL 400.111f(1)(b) permits “emergency action” to be taken if there is “[a] reasonable belief that the provider has violated the medicaid false claims act. . . .” Even to the extent Massey’s and Sampson’s actions could amount to ordinary negligence, “evidence of ordinary negligence does not create a material question of fact concerning gross negligence.” See *Maiden*, 461 Mich at 122-123. Sampson and Massey, therefore, are entitled to immunity on the gross-negligence claims under MCL 691.1407(2).

Hall and Genuine Solutions also argue that summary disposition on the intentional tort and gross-negligence claims against Massey and Sampson were premature because discovery was ongoing. However, we fail to see how further discovery would uncover factual support for plaintiffs’ position. Indeed, Massey and Sampson submitted unrefuted, detailed affidavits concerning their involvement in this matter. Given the facts of this case, further discovery would not assist Hall and Genuine Solutions.

## 5. CONSTITUTIONAL CLAIMS

Finally, Hall and Genuine Solutions argue that summary disposition on their federal and state constitutional claims against Massey and Sampson was improper. They brought three claims under 42 USC 1983 against Massey and Sampson: (1) illegal search and seizure in violation of the Fourth Amendment to the United States Constitution; (2) violation of procedural due-process rights under the Fifth and Fourteenth Amendments to the United States Constitution; and (3) violation of equal-protection rights under the Fourteenth Amendment to the United States Constitution. In order to prevail on a claim under 42 USC 1983, “[a] plaintiff must demonstrate that the defendants, acting under color of state law, deprived [him or her] of a right secured by the constitution or the laws of the United States.” *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 195; 761 NW2d 293 (2008). Stated differently, “[t]here must be an underlying violation of the federal constitution or a federal law, in order for a § 1983 claim to lie.” *Id.* at 196.

Moreover, qualified immunity is an established federal defense against claims for damages under § 1983. *Morden v Grand Traverse Co*, 275 Mich App 325, 340; 738 NW2d 278 (2007). If applicable, qualified immunity shields government officials from liability for civil damages for the violation of an individual’s federal constitutional rights. *Id.* The issue of qualified immunity is

distinct from the merits of the plaintiff's claim. *Id.* at 342. Once the defense is raised, the burden is on the plaintiff to demonstrate that the officials are not entitled to qualified immunity. *Moldowan v Warren*, 578 F3d 351, 375 (CA 6, 2009). In order to do so, the plaintiff must establish two requirements: (1) the defendant violated a constitutional right, and (2) the right at issue was "clearly established" at the time of the defendant's misconduct. *Walsh v Taylor*, 263 Mich App 618, 635-636; 689 NW2d 506 (2004). For the constitutional right to have been "clearly established," the plaintiff must prove the contours of the right were so sufficiently clear that a reasonable official would understand what he or she was doing violated that right. *Kennedy v Villa Hills*, 635 F3d 210, 214 (CA 6, 2011). Mere negligence or recklessness is insufficient "to successfully remove the cloak of qualified immunity" from a defendant; rather, the plaintiff must establish that the defendant acted knowingly or intentionally in violating the plaintiff's constitutional right. *Ahlers v Schebil*, 188 F3d 365, 373 (CA 6, 1999).

In this case, Hall and Genuine Solutions alleged that Sampson and Massey effectively "seized" Hall's license to practice counseling. They contend that the license was rendered effectively useless because Hall was unable to bill Medicaid for counseling services. To support this, Hall submitted an affidavit in the trial court, which alleged that his livelihood was effectively seized by the entry of the order of suspension. However, "the Fourth Amendment of the United States Constitution guarantees the 'right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . . .'" *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 23; 672 NW2d 351 (2003), quoting US Const, Am IV (alteration in original). Persons, houses, papers, and effects are tangible. Because Hall's livelihood is not a tangible item that is able to be physically seized for purposes of the Fourth Amendment, Hall's Fourth Amendment rights were not violated by the entry of the order of suspension. We conclude, therefore, that the claim that Massey and Sampson violated Const 1963, art 1, § 11 fails as a matter of law. Summary disposition on that claim was proper under MCR 2.116(C)(8).

With respect to their federal due-process claim under § 1983, Hall and Genuine Solutions alleged violations of their Fifth and Fourteenth Amendment rights under the United States Constitution. However, the Fifth Amendment does not support a claim against state actors such as Massey and Sampson. See *Scott v Clay Co*, 205 F3d 867, 873 n 8 (CA 6, 2000) ("The Fourteenth Amendment's Due Process Clause restricts the activities of the states and their instrumentalities; whereas the Fifth Amendment's Due Process Clause circumscribes only the actions of the federal government."). Accordingly, summary disposition in favor of Massey and Sampson was proper on the Fifth Amendment claim.

The Fourteenth Amendment, which concerns state actors, states: "No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . ." US Const, Am XIV. To establish a federal due-process claim through 42 USC 1983, the plaintiff must either: (1) "[demonstrate] that he is deprived of property as a result of established state procedure that itself violates due process rights;" or (2) "[prove] that the defendants deprived him of property pursuant to a 'random and unauthorized act' and that available state remedies would not adequately compensate for the loss." *Macene v MJW, Inc*, 951 F2d 700, 706 (CA 6, 1991). "[T]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Duckett v Solky*, 341 Mich App 706, 721; 991 NW2d 852 (2022).



Hall and Genuine Solutions allege that they are entitled to damages because the Medicaid suspension was akin to a partial license suspension. However, a hearing was held before an administrative law judge in relation to the order of suspension. Hall participated in the hearing. Massey and Sampson did not. And, although Hall and Genuine Solutions allege that the hearing was not meaningful because Hall could not present certain evidence and arguments, the alleged limitation on the evidence presented was because of the administrative law judge. Because Massey and Sampson did not deprive Hall and Genuine Solutions of “the opportunity to be heard at a meaningful time and in a meaningful manner,” see *id.*, Massey and Sampson are entitled to qualified immunity on plaintiffs’ Fourteenth Amendment claim. Summary disposition under MCR 2.116(C)(7) was proper. Likewise, the allegations in the complaint concerning the alleged violation of Const 1963, art 1, § 17, do not support the conclusion that Massey and Sampson deprived Hall and Genuine Solutions of “the opportunity to be heard at a meaningful time and in a meaningful manner.” See *id.* Thus, that claim also fails as a matter of law, and summary disposition was proper under MCR 2.116(C)(8).

With respect to Hall and Genuine Solutions’ federal equal protection claim under § 1983, they alleged violations of their rights under US Const, Am XIV. The purpose of the equal-protection guarantee is to secure every person “against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.” *Village of Willowbrook v Olech*, 528 US 562, 564; 120 S Ct 1073; 145 L Ed 2d 1060 (2000) (quotation marks and citations omitted). The Equal Protection Clause “keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike.” *Nordlinger v Hahn*, 505 US 1, 10; 112 S Ct 2326; 120 L Ed 2d 1 (1992).

To support the equal-protection claim, Hall and Genuine Solutions allege in the complaint that Massey and Sampson entered the order of suspension even though their billing practices were legal. According to Hall and Genuine Solutions, “thousands” of other providers “conduct business as Plaintiffs were accused of conducting their business, and none of them have been indicted or suspended from Medicaid for such conduct.” Therefore, they are alleging that Massey and Sampson treated other similarly situated providers differently. Yet, because Hall and Genuine Solutions do not allege “intentional and arbitrary discrimination,” “by express terms of a statute or by its improper execution through duly constituted agents,” Massey and Sampson are entitled to qualified immunity on plaintiffs’ federal equal-protection claim. See *Village of Willowbrook*, 528 US at 564 (quotation marks and citations omitted). Summary disposition under MCR 2.116(C)(7) was therefore proper. For these same reasons, summary disposition was proper on the Const 1963, art 1, § 17, claim under MCR 2.116(C)(8).

Affirmed. Defendants may tax costs under MCR 7.219(A).

/s/ Colleen A. O’Brien

/s/ Michael J. Kelly

/s/ Kathleen A. Feeney