



Doctors Entitled to Immunity for Revoking Surgeon's Privileges

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Physicians, who served on a peer review panel for a Rhode Island hospital, were entitled to immunity from liability under the Health Care Quality Improvement Act (HCQIA) for their role in determining a surgeon's privileges should be revoked.

On October 30, 2009, a judge with the Superior Court in Providence dismissed all claims of a surgeon, who formerly had clinical privileges with a local non-profit acute care hospital since 1984 until the privileges were revoked on July 23, 2007. In addition to asserting claims for defamation and tortious interference with business relations, the surgeon alleged his privileges were revoked due to age discrimination.

The revocation of privileges arose following a complaint made on May 17, 2007 concerning the surgeon's treatment of a patient and the allegation that he backdated an entry in the patient's record. Previously, the surgeon had a history of complaints dating since 1987. One prior complaint in 2002 arose when the surgeon took inappropriate photos of a patient following a colonoscopy procedure. The surgeon admitted the conduct and was suspended for two weeks. Another complaint filed in November 2002 for unprofessional conduct resulted in a three-month suspension of privileges.

During the surgeon's appeal process of the November 2002 decision, he entered into a consent agreement, which provided any future action would be determined by a three-member panel. The agreement further provided he expressly waived his right to any other internal process available under the hospital bylaws and the panel could consider other complaints and disciplinary procedures in his file. It also provided the surgeon waived the right to appeal.

The HCQIA, 42 U.S.C. § 11111 (2000), provides, if a professional review body meets specified standards, immunity is provided to: (A) the body, (B) any person acting as a member or staff to the body, (C) any person under contract with the body, and (D) any person who participates or assists the body with respect to the action. This immunity does not apply with respect to claims brought under federal or state civil rights laws.



In order to meet the HCQIA standards, the actions of a professional review body must be taken: (1) in the reasonable belief that it is in the furtherance of quality health care, (2) after a reasonable effort to obtain the facts in the matter, (3) after adequate notice and hearing procedures or other procedures as are fair under the circumstances are afforded to the physician, and (4) in the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain the facts and after satisfying procedural requirements under the HCQIA.

In finding that the panel was entitled to immunity under the HCQIA, the judge noted the HCQIA expressly provides compliance with its procedural terms is not essential if the physician voluntarily waives them. Although an immunity privilege may be asserted with respect to defamation claims, many states recognize the privilege is not absolute and can be negated by proving the primary motivating force was ill will or spite. In the context of this matter, the judge found the primary concern was patient care and the work environment. He also rejected the claim for age discrimination finding no reasonable jury could infer discrimination from the totality of circumstances.

This case emphasizes the benefit of HCQIA immunity for physicians who participate in a peer review process and ensuring the review body proceedings comply with HCQIA requirements.

Feller v. The Miriam Hospital, C.A. No. PB 07-5603, 2009 R.I. Super. LEXIS 133 (R.I. Oct. 30, 2009)

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