

IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

Supreme Court of Kentucky **FINAL**

2008-SC-000181-MR

DATE 11-13-08 EIA Grant, D.C.

UNIVERSITY OF KENTUCKY MEDICAL CENTER
(A/K/A UKMC)

APPELLANT

ON REVIEW FROM COURT OF APPEALS
CASE NUMBER 2007-CA-002139
V. FAYETTE CIRCUIT COURT NOS. 06-CI-05390 AND 07-CI-02069

HONORABLE SHEILA R. ISAAC
(JUDGE, FAYETTE CIRCUIT COURT);
KAREN PAULY
(REAL PARTY IN INTEREST-EXECUTRIX
OF THE ESTATE OF DARYL PAULY);
KAREN Y. PAULY
(REAL PARTY IN INTEREST - INDIVIDUALLY);
AND JEAN KATHERINE PAULY
(REAL PARTY IN INTEREST)

APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

The University of Kentucky Medical Center (UKMC) appeals from an order of the Court of Appeals denying UKMC's petition for a writ to prohibit the trial court from enforcing its order compelling UKMC to disclose trauma conference minutes in an underlying medical malpractice action. UKMC argues that these peer review materials are protected from discovery under KRS 311.377(2).¹ The lower courts disagreed, with

¹ KRS 311.377(2) provides that:

"At all times in performing a designated professional review function, the proceedings, records, opinions, conclusions, and recommendations of any committee, board,

the Court of Appeals specifically relying on our decision in Sisters of Charity Health Systems, Inc. v. Raikes,² which held that the peer review privilege provided in KRS 311.377(2) did not apply to medical malpractice actions.³

Because the lower courts properly followed binding precedent and as we agree with the Court of Appeals that the standard for granting a writ of prohibition has not been met in this case,⁴ we affirm the Court of Appeals' denial of the writ.

All sitting. All concur.

commission, medical staff, professional standards review organization, or other entity, as referred to in subsection (1) of this section shall be confidential and privileged and shall not be subject to discovery, subpoena, or introduction into evidence, in any civil action in any court or in any administrative proceeding before any board, body, or committee, whether federal, state, county, or city, except as specifically provided with regard to the board in KRS 311.605(2). This subsection shall not apply to any proceedings or matters governed exclusively by federal law or federal regulation.”

² 984 S.W.2d 464 (Ky. 1998).

³ *Id.* at 470.

⁴ See Hoskins v. Maricle, 150 S.W.3d 1, 10 (Ky. 2004) (stating that a writ of prohibition may be granted only “upon a showing that (1) the lower court is proceeding or is about to proceed outside its jurisdiction and there is no remedy through an application to an intermediate court; or (2) that the lower court is acting or is about to act erroneously, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great injustice and irreparable injury will result if the petition is not granted”).

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