

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

ANDREW DEMPSEY

v.

JULIAN MATTIELLO, M.D.

&

ANDREW FREESE

&

BRANDYWINE VALLEY NEUROSURGERY

APPEAL OF: COATESVILLE HOSPITAL  
CORPORATION D/B/A BRANDYWINE  
HOSPITAL (INCORRECTLY DESIGNATED  
AS "BRANDYWINE HOSPITAL")

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1788 EDA 2013

Appeal from the Order May 30, 2013  
In the Court of Common Pleas of Chester County  
Civil Division at No(s): 11-05774

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ANDREW DEMPSEY

v.

JULIAN MATTIELLO, M.D. , ANDREW  
FREESE, M.D., AND BRANDYWINE  
VALLEY NEUROSURGERY AND SPINE,  
LLC, AND COATESVILLE HOSPITAL  
CORPORATION D/B/A BRANDYWINE  
HOSPITAL

APPEAL OF: JULIAN MATTIELLO, M.D.,  
AND BRANDYWINE VALLEY  
NEUROSURGERY AND SPINE, LLC

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1889 EDA 2013

Appeal from the Order May 30, 2013  
In the Court of Common Pleas of Chester County  
Civil Division at No(s): 11-05774

BEFORE: BENDER, P.J.E., PANELLA, J., and LAZARUS, J.

MEMORANDUM BY LAZARUS, J.

**FILED JUNE 19, 2014**

Julian Matiello, M.D., Andrew Freese, M.D., Brandywine Valley Neurosurgery and Spine, LLC, and Coatesville Hospital Corporation d/b/a/ Brandywine Hospital (collectively, "Defendants") seek review of the order entered in the Court of Common Pleas of Chester County directing Brandywine Hospital to produce specific documents over its claim of privilege.<sup>1</sup> After our review, we affirm in part and reverse in part.

These consolidated appeals<sup>2</sup> arise out of a medical malpractice and corporate negligence action filed by Andrew Dempsey ("Plaintiff") against Defendants. In his complaint, Plaintiff alleged that as a result of his back surgery, performed by Dr. Mattiello on September 16, 2009 at Brandywine

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<sup>1</sup> Such orders are reviewable by this Court as collateral orders under Pa.R.A.P. 313. **See *Dodson v. DeLeo***, 872 A.2d 1237 (Pa. Super. 2005) (discovery order entered in professional negligence action that requires hospital to disclose information hospital contended was protected from discovery under Peer Review Protection Act was appropriate subject of collateral review, where, if trial granted disclosure in error, confidential nature of alleged protected documents would be irreparably lost); 63 P.S. §§ 425.1- 425.4; **see also** Pa.R.A.P. 313(b) (collateral order is order separable from and collateral to main cause of action where right involved is too import to be denied review and question presented is such that if review is postponed until final judgment, claim will be irreparably lost). Plaintiff/Appellee does not dispute that the instant matter is appealable pursuant to Pa.R.A.P. 313.

<sup>2</sup> Brandywine Hospital filed an appeal on June 21, 2013; the remaining Defendants, Julian Mattiello, M.D. and Brandywine Valley Neurosurgery and Spine, LLC, filed a separate appeal on June 28, 2013. This Court, *sua sponte*, consolidated the appeals for review. **See** Pa.R.A.P. 513.

Hospital, he suffered numerous permanent injuries, including nerve damage, misalignment of the spine, radiating back pain, discrepancy in leg length, and the need for additional surgery. Plaintiff alleged Dr. Mattiello was incompetent, inexperienced, and suffered impairment from depression and narcolepsy as well as from the side effects of his medications. Plaintiff further alleged that Brandywine Hospital did not properly investigate Dr. Mattiello's credentials and failed to properly supervise and proctor him.

During discovery, Plaintiff sought documents that Defendants claimed were privileged under the Peer Review Protection Act (PRPA), 63 P.S. §§ 425.1- 425.4. In that motion, filed on January 10, 2013, Plaintiff sought *in camera* review of the documents in order to determine discoverability. Defendants filed a response in opposition. On February 1, 2013, the Honorable Edward Griffith entered an order granting Plaintiff's request for *in camera* review of the documents. After *in camera* review, Judge Griffith entered an order directing Brandywine Hospital to produce the documents over Defendants' claim of privilege. This appeal followed.

Defendants raise the following claim:

Did the lower court err, in contravention of the Peer Review Protection Act, 63 P.S. § 425.1 *et seq.*, in compelling Brandywine Hospital to produce the documents enumerated below when these documents were prepared and utilized for peer review, were used by Brandywine Hospital to insure the quality and efficiency of services ordered and/or performed by its physicians, and/or were used by Brandywine Hospital to determine whether or not to grant staff privileges to Dr. Mattiello?

The General Assembly enacted the PRPA to serve the legitimate purpose of maintaining high professional standards in medical practice for the protection of patients and the general public. ***Cooper v. Delaware Valley Medical Center***, 630 A.2d 1 (Pa. Super. 1993). The goal of the PRPA is to facilitate comprehensive, honest and potentially critical evaluations of medical professionals by their peers. ***See Dodson, supra.*** ***See also*** 63 P.S. §§ 425.1-425.4. The PRPA represents the determination by the legislature that, because of the expertise and level of skill required in the practice of medicine, the medical profession itself is in the best position to police its own activities. ***Dodson, supra; Young v. The Western Pennsylvania Hospital***, 722 A.2d 153, 156 (Pa. Super. 1998).

The documents at issue, all identified with the prefix BWH00, were characterized by Judge Griffith as follows:

- A. 612, 617, 619, 620-25, 639-44, 663-71, 997-1002, 1010-1014, 1036-1038** - These documents relate to the proctoring of Dr. Mattiello. As the Honorable Jacqueline C. Cody noted in the case of *Dorsey v. Mattiello et al.*, docket number 2010-04220-CA, the proctoring program and the peer review proceedings are two distinct programs.
- B. 680, 682, 691, 695, 708, 1003**, excluding any handwritten notes - These documents are titled Medical Staff Peer Review Form; however, the pages noted [ ] contain an overview of events, without discussion, analysis or evaluation.
- C. 687** - This document is titled Patient Family Complaint and Grievance Form and the page indicated is a factual record of the family's complaint and contains no actions or opinions of a peer review organization.

**D. 1035** -This is merely a letter written by Dr. Mattiello voluntarily withdrawing certain of his privileges.<sup>3</sup>

Generally, an appellate court's standard of review of a trial court's evidentiary rulings is whether the trial court abused its discretion. However, where the ruling turns on a question of law our review is plenary. **Dodson**, 872 A.2d at 1241, citing **Zieber v. Bogert**, 773 A.2d 758, 761 n. 3 (Pa. 2001).

Because this issue is one of statutory interpretation, we must determine whether the trial court committed an error of law. **Zane v. Friends Hosp.**, 575 Pa. 236, 836 A.2d 25, 30 n.8 (2003). Our standard of review is *de novo*. **Id.** When interpreting statutes, our goal is to effectuate the intention of the legislature. **Id.** at 30. We do so primarily by looking to the plain language of the statute. **Id.** If the language of the statute is clear and unambiguous, we will not disregard it under the pretext of pursuing its spirit. **Id.**

**Dodson**, 872 A.2d at 1241.

The PRPA provides, in pertinent part:

**The proceedings and records of a review committee shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action against a professional health care provider arising out of the matters which are the subject of evaluation and review by such committee and no person who was in attendance at a meeting of such committee shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such committee or as to any findings, recommendations, evaluations, opinions or other actions of such committee or any members thereof: **Provided, however, that information, documents or records otherwise available from original sources are not to be construed as immune from discovery or use in****

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<sup>3</sup> This appeal does not involve the document identified as BWH001035.

**any such civil action merely because they were presented during proceedings of such committee,** nor should any person who testifies before such committee or who is a member of such committee be prevented from testifying as to matters within his knowledge, but the said witness cannot be asked about his testimony before such a committee or opinions formed by him as a result of said committee hearings.

63 P.S. § 425.4 (emphasis added).

In ***Dodson***, this Court was presented with the question of whether specific documents were protected under the PRPA. There were four documents at issue, each used exclusively for “quality assurance purposes,” and “utilized exclusively within a physician’s credentialing file.” ***Id.*** at 1240-41. Additionally, each document was a report generated by the “Performance Improvement Department.” ***Id.*** Relying on an affidavit from a peer review administrator, which alleged that the documents were “generated exclusively for peer review purposes” and were “maintained exclusively within peer review files,” ***id.*** at 1243, this Court concluded that the documents were entitled to protection under the PRPA. We explained:

The documents chart problems and potential problems with the doctor’s performance. Each of these problems and potential problems is rated on a scale of one to five, with one indicating “No Problem” and five indicating “Deviation in patient management with adverse effects.” Our review of the record reflects that the requested documents do indeed contain peer review material. . . . That some of the information contained within these documents may be available from other sources does not alter the result. Clearly, a hospital cannot create protection for a document simply by sending it to the peer review committee. On the other hand, documents generated by a peer review committee specifically for use in the peer review process are not discoverable simply because some of the information contained therein is available elsewhere.

***Id.*** (citations omitted).

Defendants Mattiello and Brandywine Neurosurgery and Spine argue that the documents at issue, which the trial court characterized as involving the proctoring program, are not discoverable. Essentially, Defendants argue that “proctoring” is equivalent to “peer review.” Plaintiff argues that Defendants have not met their burden of establishing that the documents are subject to privilege. The question, then, is whether the documents generated as part of the proctoring program, the proctoring process, and the proctoring of Dr. Mattiello, were the actions or opinions of a peer review organization.

The PRPA defines peer review, in relevant part, as follows:

“Peer review” means the procedure for evaluation by professional health care providers of the quality and efficiency of services ordered or performed by other professional health care providers, including practice analysis, inpatient hospital and extended care facility utilization review, medical audit, ambulatory care review, claims review, and the compliance of a hospital, nursing home or convalescent home or other health care facility operated by a professional health care provider with the standards set by an association of health care providers and with applicable law, rules and regulations.

63 P.S. § 425.2. A “review organization” is defined as:

Any committee engaging in peer review, including a hospital utilization review committee, a hospital tissue committee, a health insurance review committee, a hospital plan corporation review committee, a professional health service plan review committee, a dental review committee, a physicians’ advisory committee, a veterinary review committee, a nursing advisory committee, any committee established pursuant to the medical assistance program, and any committee established by one or more State or local professional societies, to gather and review information relating to the care and treatment of patients for the purposes of (i) evaluating and improving the quality of health

care rendered; (ii) reducing morbidity or mortality; or (iii) establishing and enforcing guidelines designed to keep within reasonable bounds the cost of health care. **It shall also mean any hospital board, committee or individual reviewing the professional qualifications or activities of its medical staff or applicants for admission thereto.** It shall also mean a committee of an association of professional health care providers reviewing the operation of hospitals, nursing homes, convalescent homes, or other health care facilities.

63 P.S. § 425.2 (emphasis added). **See *Troescher v. Grody***, 869 A.2d 1014, 1022 (Pa. Super. 2005) (“review organization” is entity or individual engaged in peer review).

In order to maintain the confidentiality of peer review proceedings, courts have adopted a “relatively strict interpretation of the [A]ct.” ***Young v. Western Pa. Hosp.***, 722 A.2d 153, 156 (Pa. Super. 1998). “[T]he need for confidentiality in the peer review process stems from the need for comprehensive, honest, and sometimes critical evaluations of medical providers by their peers in the profession.” ***Id.***

With these principles and explanations in mind, we review each group of documents.

**A. Proctoring documents, 612, 617, 619, 620-25, 639-44, 663-71, 997-1002, 1010-1014, 1036-1038**

These documents, **except for those numbered 622-25, 639-44, 663-71, 997-1002, and 1010-1013**, relate to the policies and procedures



of the proctoring program and specifically to the assignment of a proctor to Dr. Mattiello.<sup>4</sup> They are not protected under the PRPA.

Our review of the excepted documents, enumerated above, indicates that they were specific evaluations of Dr. Mattiello. Although generated as part of the proctoring program, the documents were, for all intents and purposes, "peer review" of Dr. Mattiello. The documents, like those in ***Dodsen, supra***, chart problems and potential problems with the doctor's performance. Each category, Pre-Operative, Intraoperative, Retrospective Observations and Overall Performance is rated as "acceptable," "marginal," or "not acceptable," the latter two ratings requiring written explanation. Their purpose, through "practice analysis," is to evaluate a practitioner's competency, "the quality and efficiency of services ordered or performed by other professional health care providers[.]" 63 P.S. § 425.4 That the documents emanate from the proctoring program does not alter the result. ***Dodsen, supra***. The purpose of the proctoring program is to assist the Credentials Committee in assessing practitioner competence. **See** Brandywine Hospital Policy for "Proctoring for Privileged Practitioners," BWH000734, R.155a. The completed forms are part of the "physician's quality file" and recommendations based on these evaluations are forwarded to the Credentials Committee. ***Id.***, R. BWH000735, R.156a. Documents

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<sup>4</sup> A review of these enumerated documents indicates that they were specific evaluations of Dr. Mattiello. Clearly, these were "peer review" documents.

generated by the proctoring program for use in the peer review process are not discoverable simply because the proctoring and peer review processes are distinct programs. The forms were generated from individual review of the professional qualifications and activities of Dr. Mattiello. **See** 63 P.S. § 425.2. They are protected under the clear language of the PRPA. **See Young, supra** at 156 (“Documents used in the determination of staff privileges are exactly the type of documents the legislature contemplated when drafting the Peer Review Protection Act. Granting, limiting, or revoking staff privileges is one of the strongest tools the medical profession uses to police itself.”).<sup>5</sup>

**B. Medical Staff Peer Review Form -680, 682, 691, 695, 708, 1003 – excluding handwritten notes**

We agree with Judge Griffith’s characterization of these forms. Without the handwritten notes, the forms are purely objective summaries of the procedures performed. These documents are not protected under the PRPA.

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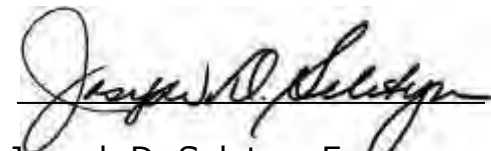
<sup>5</sup> We note that these excepted documents, in addition to their being labeled as “proctoring” documents, also have as their heading, “Peer Review Document: Confidential, pursuant to the Peer Review Protection Act, 63 PAS 425 et seq and Health Care Quality Improvement Act.” Notwithstanding the label of “peer review,” we look to the substance of the form and the purposes for which it is used. We caution, however, that if the “proctor” or “individual” reviewing the quality of care cannot rely on that title and the protections it suggests, we impede the PRPA’s goal of candid peer evaluation.

**C. 687 - This document is titled Patient Family Complaint and Grievance Form and the page indicated is a factual record of the family's complaint and contains no actions or opinions of a peer review organization.**

We agree with Judge Griffith's characterization of this form. Even though the title states "Peer Review Purposes Only," the document is a factual account of a family's complaint (not Plaintiff here). There is no action or opinion of an individual or group reviewing the professional qualities or activities of Dr. Mattiello, and thus it contains no actions or opinions of a peer review organization. Defendants have not sustained their burden to establish that this document is protected from discovery by the PRPA.

Affirmed in part; reversed in part. Case remanded for further proceedings. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

Date: 6/19/2014