

[J-77-99]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

TIMOTHY J. HAYES, M.D.,	:	3 M.D. Appeal Dkt. 1999
	:	
Appellee	:	Appeal from the Order of the
	:	Commonwealth Court entered on July 14,
	:	1998 at No. 2641 CD 1997 quashing and
v.	:	remanding the order of the Court of
	:	Common Pleas of Delaware County, Civil
	:	Division, entered September 24, 1997 at
MERCY HEALTH CORPORATION, T/A	:	No. 96-776
MERCY CATHOLIC MEDICAL CENTER	:	
A/K/A FITZGERALD MERCY HOSPITAL,	:	
	:	
Appellant	:	ARGUED: April 28, 1999

OPINION

MR. JUSTICE SAYLOR

DECIDED: October 1, 1999

The issue before us is whether the confidentiality provision of the Peer Review Protection Act (“the Act”), 63 P.S. §§425.1-425.4, applies to an internal hospital proceeding in which a physician challenges his own peer review process. We conclude that it does not, and therefore affirm the trial court.

In October of 1995, Appellant Mercy Catholic Medical Center (“the Hospital”) summarily suspended the clinical privileges of Appellee Timothy J. Hayes, M.D. (“Dr. Hayes”), a general surgeon. The apparent basis of the Hospital’s action was, in its words, “a serious issue involving patient care” that resulted in a medical malpractice action. Dr. Hayes requested a hearing before a peer review panel, as was his right under the Hospital’s bylaws. Numerous procedural complications ensued, leading both parties to

seek relief from the trial court. In July of 1997, after hearings had been held, the peer review panel unanimously recommended that the suspension be terminated “because the facts [of the underlying case] do not support suspension.”

Pursuant to the bylaws, the panel forwarded its recommendation to the Hospital’s Medical Board. At a meeting that was held in September of 1997, and recorded on audiotape, the Medical Board approved the panel’s recommendation with one change: instead of stating that the facts “do not support suspension,” the Medical Board stated that the facts “[do] not support continued suspension” (emphasis added). The Medical Board sent its recommendation to the Hospital’s Board of Directors for final action at its next meeting, scheduled for September 25, 1997.

Dr. Hayes sought to challenge the Medical Board’s recommendation because he feared that the Board, by advising against “continued” suspension, was implying that the initial suspension had been appropriate. In addition, a confidential source had allegedly informed him that some members of the Medical Board had acted in bad faith in making such recommendation. Wishing to learn what had transpired at the Medical Board’s meeting, Dr. Hayes asked the trial court to enjoin the Hospital from destroying the tape recording of the meeting and to order the Hospital to furnish a copy of the tape to him. The Hospital agreed to preserve the tape, but refused to provide a copy to Dr. Hayes. When the trial court ordered it to do so, the Hospital filed a notice of appeal with the Commonwealth Court, along with an emergency application for a stay of the trial court’s order.

On September 25, 1997, the Commonwealth Court granted a temporary stay. That same day, the Hospital’s Board of Directors voted to accept the recommendation of the Medical Board and reinstate Dr. Hayes’ clinical privileges. In an unreported opinion filed July 14, 1998, the Commonwealth Court quashed the Hospital’s appeal as moot, noting

that Dr. Hayes had obtained the reinstatement of his privileges and that the Board of Directors' decision to that effect was not subject to further hearing or review. The Hospital filed a petition for allowance of appeal, Dr. Hayes joined in that request, and allowance of appeal was granted.¹

Preliminarily, we observe that the Commonwealth Court erred in concluding that the present appeal is moot. Although Dr. Hayes' clinical privileges have been restored, his record continues to reflect a lengthy suspension of those privileges. Pursuant to the federal Health Care Quality Improvement Act of 1986 ("HCQIA"), 42 U.S.C. §§11101-11152, the Hospital is required to supply information concerning Dr. Hayes' suspension to a national data bank, and any hospital at which Dr. Hayes may seek employment or clinical privileges in the future will be required to review the information contained in the data bank.² See 42 U.S.C. §§11133(a), 11135(a); see generally Susan L. Horner, *The Health Care Quality Improvement Act of 1986: Its History, Provisions, Applications and Implications*, 16 AM. J.L. & MED. 455 (1990). Thus, the failure of the Hospital's Board of Directors to state that Dr. Hayes' initial suspension, not merely his "continued" suspension, was unwarranted may, if left unchallenged, continue to have a deleterious effect on Dr. Hayes' medical career.

¹ In October of 1997, Dr. Hayes, his wife, and his professional corporation commenced a civil action against the Hospital and others in the Court of Common Pleas of Philadelphia County. By a notice of records deposition, the plaintiffs indicated that they sought to obtain the audiotape of the Medical Board meetings. In response, the Hospital filed a motion for a protective order. The trial court denied the motion but certified its order for immediate interlocutory appeal pursuant to 42 Pa.C.S. §702(b). The Commonwealth Court granted permission to appeal and stayed oral argument pending our disposition of the present appeal.

² A hospital that fails to comply with this requirement will be "presumed to have knowledge of any information reported under this subchapter . . . with respect to the physician or practitioner" against whom a medical malpractice action is subsequently brought. 42 U.S.C. §11135(b).

See Cooper v. Delaware Valley Med. Ctr., 539 Pa. 620, 628-29, 654 A.2d 547, 551 (1995) (noting that “[f]inding gainful employment in the hospital setting after a poor review is unlikely as a result of the provisions of the [HCQIA]”). Because our resolution of the matter at issue will have a practical effect on Dr. Hayes’ ability to challenge the Board of Directors’ decision, and thus on Dr. Hayes’ professional future, this appeal is not moot. See Sonder v. Sonder, 378 Pa. Super. 474, 521, 549 A.2d 155, 179 (1988) (en banc) (stating that case is moot when determination sought could not have any practical effect on existing controversy).³

At issue is the following provision of the Act:

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

63 P.S. §425.4 (“Section 4”). In the interpretation of a statute, our overriding concern is to ascertain and effectuate the legislature’s intent in enacting the statute. 1 Pa.C.S. §1921(a); Pennsylvania Financial Responsibility Assigned Claims Plan v. English, 541 Pa. 424, 430, 664 A.2d 84, 87 (1995); Cooper, 539 Pa. at 632, 654 A.2d at 553. When the words of a statute are clear and free from ambiguity, the drafters’ intent is to be gleaned from those words. 1 Pa.C.S. §1921(b); English, 541 Pa. at 430, 664 A.2d at 87. We may not disregard the letter of the statute under the pretext of pursuing its spirit. 1 Pa.C.S. §1921(b); Cooper, 539 Pa. at 632, 654 A.2d at 553.

³ Although this matter could be remanded to the Commonwealth Court, in the interest of judicial economy we will instead decide the substantive issue before us. See generally Barbour v. Commonwealth, Dept. of Transp., Bureau of Driver Licensing, ___ Pa. ___, 732 A.2d 1157 (1999).

Significantly, Section 4 precludes the disclosure of peer review proceedings and recordings in certain specified circumstances, namely, in “civil action[s] . . . arising out of the matters which are the subject of evaluation and review by such committee.” These are words of limitation; “had the legislature intended the privilege to be absolute, it could have simply left these words out of the statute.” Sanderson v. Frank S. Bryan, M.D., Ltd., 361 Pa. Super. 491, 498, 522 A.2d 1138, 1142 (1987), appeal denied, 517 Pa. 624, 538 A.2d 877 (1988). Dr. Hayes contends that, as his internal challenge to the Medical Board’s recommendation did not arise out of the matters which were the subject of evaluation and review by the peer review committee, Section 4 does not preclude him from obtaining a copy of the tape recording of the Medical Board’s deliberations.⁴ We agree.

In the present case, the subject of the peer review proceeding was the quality of medical care provided by Dr. Hayes to a particular patient. If, as in fact happened, the patient in question were to sue Dr. Hayes and/or the Hospital to recover damages for Dr. Hayes’ allegedly substandard care, the confidentiality provision of Section 4 would apply, as such a lawsuit would “arise out of” the matter -- the quality of care rendered by Dr. Hayes -- which was the subject of the peer review proceeding.⁵ See Sanderson, 361 Pa.

⁴ The phrase “arising out of” is not defined in the Act or in Title 1 of the Pennsylvania Consolidated Statutes, nor have our appellate courts provided a precise definition of the phrase as it is used in the Act. Cf. McCabe v. Old Republic Ins. Co., 425 Pa. 221, 224, 228 A.2d 901, 903 (1967) (stating that phrase “arising out of,” used in insurance policy exclusion, denoted “but for” or “cause and result” relationship).

⁵ Such a lawsuit would also be, without question, a “civil action” for purposes of Section 4, since the Pennsylvania Consolidated Statutes define “action” as a “suit or proceeding in any court of this Commonwealth.” 1 Pa.C.S. §1991. The Hospital argues that the present proceeding is a civil action because, although the proceeding began as an internal administrative appeal, Dr. Hayes eventually sought and obtained the desired relief -- an order directing the Hospital to furnish him with a copy of the tape -- by filing the present action in equity, No. 96-776, in the Court of Common Pleas of Delaware County. In essence, the Hospital argues that even though a complaining physician may be entitled to (continued...)

Super. at 501, 522 A.2d at 1143 (holding that Section 4 precludes medical malpractice plaintiff from discovering peer review information related to his own and other patients' cases).

Dr. Hayes' challenge to the proceeding, however, did not arise out of that substantive issue of patient care. In his emergency petition seeking preservation of the tape, Dr. Hayes asserted the following:

It is believed and therefore averred that the revision in Dr. Hayes' recommendation [from the conclusion that the facts did not support suspension, to the conclusion that the facts did not support continued suspension] was unlawfully and improperly accomplished through coercion condoned and promoted by the Hospital. Moreover, it is believed and therefore averred that evidence of this coercion (and, hence, unmitigated subversion of Dr. Hayes' minimum due process rights) exists on the tape employed to record the Medical Board's meeting.

Dr. Hayes' counsel expanded on these allegations at the hearing on his request for the tape, where he maintained that "[unnamed persons] who were present at [the] Medical Board meeting . . . have made it clear that there were some physicians there with ulterior motives, in fact, two physicians who are responsible for the summary suspension"

The ulterior motive of those physicians, according to Dr. Hayes' counsel, was "fabricating

(...continued)

obtain peer review information in an internal hospital proceeding, nevertheless if the hospital's obstinate refusal to provide such information forces the physician to seek equitable relief in a court of law, the physician thereby forfeits whatever right he may otherwise have had to obtain the information. Such argument violates the presumption that the legislature, in enacting a statute, does not intend an absurd or unreasonable result. 1 Pa.C.S. §1922(1); English, 541 Pa. at 430-31, 664 A.2d at 87. In any event, the present proceeding, even if it were to be considered a "civil action," is not one "arising out of the matters which are the subject of evaluation and review by [the peer review] committee." See infra.

a record to protect themselves” against an eventual lawsuit alleging the destruction of Dr. Hayes’ professional reputation.⁶ In short, Dr. Hayes’ concern was not the underlying medical matter which led to his suspension, but rather the fairness and integrity of the Medical Board’s review of that suspension.

As the Superior Court has pointed out, it was a similar concern on the part of the legislature which led it to reject a more comprehensive draft of Section 4. Sanderson, 361 Pa. Super. at 500, 522 A.2d at 1143. That draft provided as follows:

All data and information acquired by a review organization, in the exercise of its duties and functions, shall be held in confidence and shall not be disclosed to any person except to the extent that may be necessary to carry out the purposes of the review organization and shall not be admissible as evidence in any other civil proceeding.

Id. at 500, 522 A.2d at 1142 (quoting Hearing on H.B. No. 1729, 158 Pa. Legis. J. -- House at 4438 (1974)).

The [legislative] discussion [of this alternative draft] centered around the potential for misusing the peer review process to make false charges against the person subject to review. Though such action is prohibited under section three of the Act [63 P.S. §425.3⁷], a strict application of section four, as drafted,

⁶ Our purpose in reciting these allegations is merely to illustrate Dr. Hayes’ reasons for requesting the tape. We express no view as to the veracity of the allegations.

⁷ Section 3 of the Act affords limited immunity from civil and criminal liability to participants in the peer review process. Cooper, 539 Pa. at 631, 654 A.2d at 552. Immunity does not apply, however, if an individual is motivated by malice, id. at 633, 654 A.2d at 553, or deliberately provides false information to a peer review committee, Steel v. Weisberg, 368 Pa. Super. 590, 598, 534 A.2d 814, 818 (1987), appeal dismissed as improvidently granted, 525 Pa. 503, 582 A.2d 648 (1990). This Court has observed that lawsuits originating in the peer review setting are judicially cognizable if based on legitimate contract and tort theories. Cooper, 539 Pa. at 631, 654 A.2d at 552; see also Steel, 368 Pa. Super. (continued...)

would have prohibited the person being reviewed from discovering the nature of the charge against him as well as the identity of the person making the charge. Concern was expressed that a “star-chamber type inquiry” would evolve. Hearing, at 4438-39 (statement of Representative McCue).

Id. at 500, 522 A.2d at 1142-43. Faced with these concerns, the legislature declined to preclude the disclosure of peer review information in “any other civil proceeding,” choosing instead to limit such preclusion to “civil actions . . . arising out of the matters which are the subject of evaluation and review by [the peer review] committee.”

Thus, the intent of the legislature, as revealed by the plain language of Section 3 and confirmed by its legislative history, was to prevent the disclosure of peer review information to outside parties seeking to hold professional health care providers liable for negligence, while at the same time ensuring that such guarantee of confidentiality did not operate to shield from discovery those rare instances in which the peer review process was misused. Dr. Hayes sought to learn, through internal hospital proceedings, whether such misuse had occurred in his case. Section 4 does not bar him from obtaining a copy of the audiotape in issue for such purpose.

Accordingly, we reverse the order of the Commonwealth Court quashing the present appeal as moot and affirm the trial court’s order directing that the Hospital provide a copy of the tape to Dr. Hayes, without prejudice to the Hospital’s right to seek a protective order

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at 598-99, 534 A.2d at 818-19 (concluding that if information sought by plaintiff-physician in defamation action were to be held confidential under Section 4, individual who deliberately provided false information to peer review committee would be shielded from liability despite opposite legislative intent expressed in Section 3).

ensuring confidentiality and limiting disclosure of the tape's contents to such uses as would be consistent with this Opinion.⁸

Madame Justice Newman files a Concurring and Dissenting Opinion.

⁸ The concurring and dissenting opinion expresses the view that confidentiality and limited use conditions would unduly restrict Dr. Hayes' ability to utilize peer review materials in his separate civil proceeding against the Hospital and others. Such provisions, however, are implicated by the very nature of the disclosure of materials otherwise subject to Section 4 in order to avoid vitiating its protective purpose. See 63 P.S. §425.4 (“[t]he proceedings and records of a review committee shall be held in confidence . . .”). Moreover, we do not, as suggested in the concurring and dissenting opinion, intimate that discovery of the audiotape is limited solely to Dr. Hayes' challenge to the Medical Board's recommendation. The question of Dr. Hayes' ability to utilize the peer review materials in his civil proceeding is the subject of a separate appeal before the Commonwealth Court, which has been stayed pending decision in this case.