

Peer Review Privilege Continues to Weaken

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Healthcare Alert

2.17.20

In a further erosion of the peer review privilege, the Superior Court in, *Leadbitter v. Keystone Anesthesia Consultants, Ltd.*, affirmed a discovery order compelling the production of the complete, un-redacted credentialing file of a hospital's orthopedic surgeon in a medical malpractice action. Prior to this decision, hospitals routinely shielded providers' evaluations in credentialing files from discovery as privileged materials, pursuant to the Pennsylvania Peer Review Protection Act (PRPA).

Credentialing is the process by which hospitals, and other organizations, obtain and evaluate a medical provider's background before allowing a provider to treat its patients. A key component of the credentialing file is assessment by former peers and supervisors who understand the process to be confidential. The privileged nature of the process fosters candid feedback and helps to ensure patient safety by weeding out unqualified providers.

In general, the PRPA protects from disclosure any peer review activity. The Act defines peer review simply as "any evaluation of the quality and efficiency of services ordered or performed by one health care provider by another provider." The overarching goal of the PRPA is to improve future patient care by encouraging free and frank evaluations.

Despite the PRPA's broad definition of what constitutes protected peer review, the trend of late has been to narrow the scope of the privilege by strictly construing terms in the Act to limit an institution's ability to preserve otherwise confidential evaluations. For instance, the Pennsylvania Supreme Court in *Reginelli v. Boggs*, 181 A.3d 293 (Pa. 2018), reasoned that the PRPA created a distinction between a peer a "review committee" versus a "review organization," protecting only the activities of a review committee.

Here, "constrained" to apply the *Reginelli's* court's distinction, the Superior Court concluded that Pennsylvania law did not protect the evaluations in the surgeon's credentialing file. It noted while the evaluations are considered protected "peer review" documents, they were reviewed by a peer "review organization" rather than a peer "review committee" which negated that protection. Notably, the Superior Court encouraged the Pennsylvania Supreme Court to grant allocatur to address this issue directly, underscoring the need for credentialing committees to obtain candid evaluations which is the express purpose of the PRPA as it will improve future patient care. Indeed, it shared the observation of the dissent in *Reginelli* that the distinction between a review "organization" and review "committee" will result in the "same chilling effect upon free and frank discussions aimed to ensure and improve an appropriate quality of care that PRPA strives to vitiate." *Reginelli*, 181 A.3d at 315 (Wecht, J., dissenting).

It remains to be seen whether the Pennsylvania Supreme Court will accept the invitation to revisit the peer review "organization" versus "committee" distinction. Meanwhile, the current state of the law will impede the ability of hospitals to fully evaluate medical providers thereby weakening a key patient safety tool that the PRPA was designed to protect.

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