HEALTH CARE

Legal News Alert™

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Medical Staff Peer Review Privilege Is Dealt Yet Another Blow

On June 12, 2007, the protections associated with medical staff peer review information suffered another blow. In *Adkins v. Christie, et al*. (*Adkins*), the U.S. Court of Appeals for the Eleventh Circuit (Court) held that a state law granting a privilege for medical staff peer-review information does not apply in federal civil rights cases. The Court considered the issue, one of first impression in the circuit, and concurred with the Fourth and Seventh Circuits, which also have refused to recognize the privilege in federal civil rights cases.

Dr. Russell E. Adkins, an African-American urologist, had medical staff membership and privileges at Houston Medical Center. Dr. Adkins filed a federal civil rights lawsuit alleging that the hospital discriminated against him on racial grounds in the implementation and utilization of its medical staff peer-review process. During the discovery phase of the litigation, Dr. Adkins sought the medical peer-review information of all physicians at the hospital during the seven years he was a member of the medical staff. The hospital moved for a protective order, claiming the information was privileged under Georgia law.

The district court ruled that the privilege applied to federal civil rights actions, but ordered the hospital to provide Dr. Adkins with limited information. After a nonpublic review of the documents, the district court granted summary judgment in favor of the hospital. Dr. Adkins appealed, contending that the district court improperly recognized the privilege and improperly limited the scope of his discovery request.

The Medical Staff Peer Review Privilege

All 50 states and the District of Columbia have privilege statutes that protect peer review records of medical staff members. Some states such as Georgia and California also provide a statutory immunity from discovery of peer review records. This protection excludes from discovery records containing performance reviews and assessments of physicians by their peers, primarily in connection with their practices at hospitals.

The philosophy underlying the privilege is that physicians must be encouraged to be candid and vigorous in the performance evaluations of their peers, without fear

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that those evaluations would be used for improper purposes (e.g., medical malpractice lawsuits). At issue in *Adkins* was the Georgia statute, which states "[t]he proceedings and records of medical review committees shall not be subject to discovery or introduction into evidence in any civil action against a provider of professional health services arising out of the matters which are the subject of evaluation and review by such committee."

The Court weighed the policy interests supporting the statute against those eliminating discrimination in employment. It noted that privileges are viewed with disfavor in federal courts and generally are not warranted absent a situation where recognizing the privilege would achieve "a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth." On balance, the Court found that the interests in facilitating the eradication of employment discrimination prevailed and that the medical staff peer review process "does not warrant the extraordinary protection of an evidentiary privilege in federal civil rights cases."

Accordingly, the Court held that the district court improperly limited the scope of discovery, and its judgment was vacated.

Hospitals and Medical Staffs Should Be Prepared

The *Adkins* decision highlights the need for hospitals and medical staffs to recognize that the protections afforded by state courts under state law will likely be unavailable in federal courts, at least in civil rights cases. Planning for other protections, or maximizing existing protections is, therefore, an increasingly important part of hospitals' functions, and hospitals should work closely with legal counsel in such planning.

You can access a copy of the Court's decision online at: http://www.ca11.uscourts.gov/opinions/ops/200613107.pdf

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