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Smith V. Selma: Guidance For Peer Review Bodies

Law360, New York (August 27, 2008) -- In Smith v. Selma Community Hospital (Smith), the California Court of Appeal, Fifth Appellate District (Court) held that, unless circumstances indicate otherwise, a hospital may not rely solely on the peer review findings of another hospital when considering whether to terminate a physician's medical staff membership and clinical privileges.

The Court emphasized that it was not deciding that a hospital may never rely solely on the results of the peer review proceedings of another hospital in such situations. Rather, a hospital cannot make a decision based solely on external information if there is evidence questioning the reliability of the prior proceedings.

This California case provides important national guidance for peer review bodies, which frequently learn of and become concerned by information from other sources.

The primary implication of Smith is that a peer review body should evaluate outside information and review the practitioner's practice at its health care organization(s) to determine whether similar behavior, or practice, might occur, and then consider corrective action.

Factual Background

Dr. Branton R. Smith was a member of the medical staff of two hospitals in Hanford, California (the Hanford Hospitals) with common corporate ownership. Dr. Smith also was a member of the medical staff of Selma Community Hospital (Selma). All three hospitals are owned by Adventist Health System (Adventist).

Dr. Smith owned 11 clinics that competed with Adventist. He agreed to sell his clinics to one of the Hanford hospitals, Central Valley, but the transaction was not completed, and Central Valley sued him for his failure to complete the sale.

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In 2002, the Hanford Hospitals suspended Dr. Smith's medical staff membership and clinical privileges and charged him with substandard care, abusive behavior, and falsification of records.

Dr. Smith challenged the decision through the peer review process, but the Hanford Hospitals' governing boards affirmed his suspension.

Dr. Smith then sued Central Valley. In September 2002, Dr. Smith informed Selma of his suspension from the Hanford Hospitals.

In April 2004, the Medical Executive Committee (MEC) summarily suspended his medical staff membership and privileges at Selma based solely on his summary suspension at the Hanford Hospitals.

Dr. Smith requested a hearing before Selma's Judicial Review Committee (JRC) and filed suit against Selma. He obtained a temporary restraining order enjoining Selma from taking any action to suspend, restrict, or otherwise impede his medical staff membership and privileges.

In settlement discussions during May 2004, Selma offered to reinstate Dr. Smith in exchange for his dismissal of the lawsuit. Dr. Smith did not accept the offer. The MEC rescinded the summary suspension (thereby lifting the temporary restraining order) and recommended termination of Dr. Smith's medical staff membership and privileges.

In March 2005, Selma's JRC rejected the MEC's recommendation to terminate Dr. Smith's medical staff membership and privileges. The JRC found there was no evidence of substandard care by Dr. Smith while he was at Selma; that the MEC's actions appeared potentially financially motivated; and that the MEC did not persuade the JRC, by a preponderance of the evidence, that the MEC's action was reasonable and warranted.

The JRC stated, "[w]e believe that Selma must do their own investigation of Dr. Smith.

"The Selma Governing Board (Selma Board) reversed the JRC decision and found that the MEC's recommendation to terminate Dr. Smith's medical staff membership and privileges was reasonable and warranted, and that the JRC was obligated to accept the Hanford Hospitals' findings as conclusive.

Dr. Smith then sued Selma in the California Superior Court, Fresno County (Superior Court), which granted Dr. Smith's writ and directed Selma to reinstate the JRC's decision. Selma appealed.

Reliance On Other Hospitals' Peer Review

According to the Court, the "most significant controversy" between the parties concerned the legal effect of the Hanford Hospitals' findings on Dr. Smith's medical staff

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membership and privileges at Selma. Neither Selma's bylaws nor California's peer review statute addresses the role that the corrective action at one hospital plays in the peer review process of another hospital.

The Court held that the Hanford Hospitals' matter was not final, as Dr. Smith's suit against Central Valley was still being contested in Superior Court. Thus, the Court held that the Selma Board had erroneously ruled that the JRC could not substantively challenge, and was obligated to accept the Hanford Hospitals' findings as true.

Settlement Negotiations Admissible And Relevant

Selma claimed that the JRC did not provide a fair hearing process because the JRC considered irrelevant and inappropriate evidence, including the settlement negotiations between Selma and Dr. Smith. The Court disagreed.

The Court held that evidence of settlement negotiations between Selma and Dr. Smith was relevant because reasonable inferences could be drawn regarding the MEC's motive for treating the Hanford Hospitals' findings as conclusive (e.g., to gain leverage against Dr. Smith's competing clinics).

The Court also deemed as relevant evidence: (1) Adventist's economic interests in relation to Dr. Smith (who owned competing clinics); (2) the fact that all three hospitals were owned by Adventist; and (3) that Adventist had unsuccessfully attempted to buy Dr. Smith's competing clinics.

This evidence provided the JRC a rational reason to be skeptical of the Hanford Hospitals' findings. Thus, the Selma Board erroneously decided that the JRC had considered irrelevant evidence.

Common Ownership, Financial Interests Undermined Reliability Of Findings

The Court also held that the Selma Board erroneously concluded that the MEC improperly ignored other relevant evidence and that the evidence showed "significant conflicts between the interests of [Dr.] Smith and the interests of the Hanford Hospitals and their owner [Adventist]."

In particular, the evidence "provides some support for [Dr.] Smith's theory that the Hanford Hospitals were pursuing peer review proceedings against him in an attempt to gain a stronger position in [Adventist's attempt to buy Dr. Smith's clinics]."

Selma was unable to identify any instances of substandard care by Dr. Smith while at Selma. Coupled with expert testimony that refuted the Hanford Hospitals' findings, Selma's own experience with Dr. Smith "undermines the reliability of the findings of the Hanford Hospitals" and "provides additional support for the inference that the [findings] were motivated by concerns other than patient safety."

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The Court determined that the appropriate remedy for the MEC's error was the reinstatement of the JRC decision not to terminate Dr. Smith's medical staff membership and privileges.

Practical Advice For Peer Review Bodies

1. Peer review bodies and medical staffs should exercise caution when using the peer review findings of another health care organization as a basis for their own corrective actions. Smith illustrates how another health care organization's peer review findings cannot be the sole basis for corrective action if there are questions about the reliability of the findings. However, a peer review body should use the findings as a starting point to conduct its own internal evaluation.

2. Peer review bodies should comply with their governing documents, including, but not limited to, medical staff bylaws, internal rules, policies, or practices, and their peer review policies in particular. A peer review body should always seek legal advice if a proposed action is not expressly contemplated in its governing documents.

3. Peer review bodies should engage in progressive discipline, with summary suspension used only when clearly and legally justified (generally, to prevent imminent danger to the health of any individual).

4. Peer review bodies should be aware of any conflicts of interest. These conflicts can create the appearance that ulterior motives, and not patient safety and quality of care, are guiding the peer review process. Information regarding common ownership and economic interests might be relevant. If there are any participants in the process who cannot be objective, they should recuse themselves from both the discussion and the decision.

5. While settlement of a peer review action should be explored, peer review bodies and health care organizations must be cautious in the manner they communicate settlement offers because those communications might be introduced by the medical staff member during a peer review hearing.

Selma's JRC characterized Selma's settlement offer to rescind its summary suspension if Dr. Smith dismissed his lawsuit as follows: "This is hypocrisy if the hospital wants the panel to share their concerns about patient safety. This, in and of itself, makes it appear as if Selma and the Selma MEC has more economic concerns than patient safety worries."

6. The Health Insurance Portability Accountability Act (HIPAA) creates challenges to the sharing of information between peer review bodies. In addition, state confidentiality laws may create their own hurdles to sharing patient identifiable and peer review information. Health care organizations should consult legal counsel regarding those laws when a request is made to share such information.

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