

Proctoring as a Restriction of Privileges – A Case Study: Columbus Clinic, P.C. v. Williams

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The Court of Appeals of Georgia recently issued a decision concerning proctorships and whether they constitute a restriction of a physician's clinical privileges.¹ The various trial court and appeals court decisions are especially interesting in light of changes to the National Practitioner Data Bank's guidance regarding the reporting of certain proctorships.

In 2008, Dr. Reginald Williams ("Dr. Williams") entered into an employment contract ("Contract") with Columbus Clinic, P.C. ("Clinic") to provide medical services. Section 7.1 of the Contract provided that the Clinic had the right to terminate the Contract if Dr. Williams' privileges or membership "at any hospital are terminated, revoked, suspended (other than for infrequent occurrences due to the failure to complete medical records in a timely manner), restricted, or terminated in any way (except for voluntary termination of privileges undertaken at the request and with the consent of [the Clinic])."²

In 2010, Dr. Williams was placed on a performance improvement plan at Doctors Hospital ("Hospital"), which included a three-month proctorship.³ Subsequently, the Clinic informed Dr. Williams that it was terminating the Contract based upon the imposed proctorship, reasoning that such proctorship constituted a restriction of his privileges at the Hospital. Dr. Williams quickly filed suit.⁴ The trial court granted summary judgment in favor of the Clinic on the basis that the language in the Contract was clear and unambiguous and that the proctorship constituted a restriction of Dr. Williams' privileges at the Hospital. Dr. Williams appealed this decision to the Court of Appeals of Georgia ("Court of Appeals").⁵

The Court of Appeals reversed the trial court's grant of summary judgment on the basis that there was a question of material fact as to whether the proctorship constituted a "restriction" of Dr. Williams' privileges. The Court of Appeals specifically looked at the National Practitioner Data Bank's ("NPDB") then-current Guidebook regarding proctorships and when proctorships constituted a restriction of privileges that required reporting to the NPDB. Ultimately, the Court of Appeals found that the imposition of a proctorship in and of itself did not necessarily mean that a practitioner's privileges were restricted. At that time, the record did not contain evidence as to the final terms of the proctorship to which the parties agreed.⁶ As such, the case was remanded to the trial court.

Once the case was remanded, both parties filed motions for summary judgment on the issue of

whether the proctorship constituted a restriction of Dr. Williams' privileges within the meaning of the Contract. The trial court granted summary judgment in favor of Dr. Williams after reviewing the final terms of the proctorship. Of note, the terms of the proctorship stated: (1) Dr. Williams could not schedule an elective case with less than 12 hours' notice to the proctor, unless the proctor agreed otherwise; (2) the proctor had the authority to intervene in the case if necessary to protect the patient from harm; (3) if the proctor disagreed with the decision to operate, the operation intended, or the specific technique to be used, Dr. Williams should follow the advice of the proctor, but the final decision belonged to Dr. Williams; (4) the role of the proctor was not to substitute their judgment for that of Dr. Williams, but to assist, advise as requested, observe, and report; (5) the proctor need not concur in the selection of the surgical procedure, but the proctor's concerns or disagreement should be noted and evaluated; and (6) the proctoring requirements were not reportable to the NPDB and did not constitute an adverse action that gave rise to the right to request a hearing.⁷

The Clinic then appealed the trial court's grant of summary judgment to the Court of Appeals of Georgia. The Court of Appeals reversed the trial court's judgment and ruled that neither party had cited evidence or a principle of contract construction that resolves the ambiguity regarding whether the proctorship constituted a restriction of Dr. Williams' privileges as a matter of law; therefore, neither party was entitled to summary judgment.⁸

In support of its ruling, the Court of Appeals stated that the ability of the proctor to intervene generally indicates that the proctorship was a restriction of Dr. Williams' privileges; however, the other provisions stating that the final decision regarding any procedure and the technique to be used weighs in favor of the proctorship not being a restriction of Dr. Williams' privileges.⁹ As such, the Court of Appeals reversed the judgment and remanded the case to the trial court.¹⁰

Notably, the NPDB Guidebook has been updated and the reporting requirements for proctoring have changed. Prior to 2015, the NPDB Guidebook required reporting when "[b]ased on an assessment of professional competence, a proctor [was] assigned to a physician or dentist for a period of more than 30 days [and] [t]he practitioner [was required to] be granted approval before certain medical care [was] administered."¹¹ If the practitioner could provide care without the proctor's "prior approval," the proctorship was not required to be reported to the NPDB and, it could be argued, was not considered a restriction of privileges.

In 2015, the NPDB updated its Guidebook and stated, "[i]f, for a period lasting more than 30 days, the physician or dentist cannot perform certain procedures without proctor approval or without the proctor being present and watching the physician or dentist, the action constitutes a restriction of clinical privileges and must be reported to the NPDB."¹² Thus, if the proctor was required to simply be present for procedures after 2015, the proctorship must be reported to the NPDB and the 2015 Guidebook specifically called such action a "restriction of clinical privileges." Arguably, pre-2015 proctorships, like that imposed upon Dr. Williams, were not considered restrictions on a physician's privileges unless the proctor had to grant preapproval of medical procedures.

At this time, it does not appear the parties have appealed the judgment of the Court of Appeals.

1 *Columbus Clinic, P.C. v. Williams*, 2020 WL 1181269 (Ct.App. Georgia 2020).

2 *Id.* at 1.

3 *Id.*

4 *Id.* at 2.

5 *Williams v. Columbus Clinic, P.C.*, 773 S.E.2d 457 (Ct.App. Georgia 2015).

6 *Id.* at 461-462.

7 *Columbus Clinic*, 2020 WL 1181269 at 5-6.

8 *Id.* at

9 *Id.* at 8.

10 *Id.*

11 See 2001 NPDB Guidebook P. E-21.

12 See 2015 NPDB Guidebook P. E-37.

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