

Pennsylvania Courts Discuss Documents Shielded by Peer Review Protection Act

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In a Common Pleas Court decision, the Honorable Terrence R. Nealon set forth a detailed discussion concerning what materials are discoverable in a medical malpractice action under the **Peer Review Protection Act (“PRPA”)**. 63 P.S. §§425.1 – 425.4.

In ***Vaccaro v. Scranton Quincy Hospital Company, LLC***, plaintiffs allege obstetrical and hospital negligence leading to a minor plaintiff suffering an acute hypoxic ischemic brain injury, resulting in catastrophic injury and disability. The case involves an alleged failure to promptly diagnose and treat a placental abruption, and asserts that objective signs indicating a need for emergency cesarean section were ignored, leading to the alleged brain injury.

Under the PRPA, records generated or maintained as part of a peer review or quality assurance process by a hospital “review organization” benefit from the prohibition against discovery. “Peer review” is defined by the PRPA as “the procedure for evaluation by professional health care providers of the quality and efficiency of services ordered or performed by other professional health care providers”... and the “compliance of a hospital with the standards set by an association of health care providers and with applicable laws, rules and regulations.” A “review organization” can include a hospital board, a hospital committee or individuals reviewing professional qualifications or activities of persons on a medical staff. The peer review process must be undertaken as part of an evaluation for purposes of improving quality and health care for the records to be protected.

Conversely, records that are generated or maintained by hospitals in the ordinary course of business are not shielded from discovery by the PRPA.

In the *Vaccaro* case, plaintiffs seek documents from the defendant-obstetrician’s credentials file. Defendants contend that these “credentials file” materials are protected from discovery by the PRPA. Plaintiffs appealed the denial of their motion to compel the defendant hospital to produce: (1) the malpractice litigation history records relating to the defendant obstetrician in connection with his initial application for clinical privileges; (2) biannual professional practice evaluation reports prepared by the hospital with respect to the defendant-obstetrician; and (3) two warning letters that the hospital’s chief medical officer and medical records consultant forwarded to the defendant obstetrician regarding delinquent medical records.

Judge Nealon was tasked with determining whether the records at issue are protected from disclosure under the PRPA because they were “developed by or for a peer review body or patient safety committee for quality assurance purposes.”

Judge Nealon reviewed extensive case law, including a trilogy of rulings in 2005 by the Superior Court addressing discovery for credentials files of physicians. The *Troescher* case involved credentialing materials that were prepared by the hospital’s legal counsel and found to be immune from discovery under §425.4. In *Harrison v. Hayes*, the court ordered the defendant hospital to provide copies of the doctor’s initial staff application, and reappointment and re-privileging applications, with all supporting documents. The court found the documents did not contain information generated by a review committee as part of a deliberative process, nor would disclosure implicate any public policy concerns or impact other hospitals or applicants. The *Dodson* matter addressed discoverability of documents in a doctor’s credentialing file which reviewed a physician’s surgical cases and “charted problems and potential problems with the doctor’s performance.”

In comparing and contrasting these decisions, Judge Nealon concluded that records which are maintained by hospitals in the ordinary course of their business, including incident reports of untoward medical events, are not shielded from discovery — even if they are ultimately shared with a peer review committee. Further, application forms and supporting documents that are submitted by doctors for a credentialing process are non-peer review business records and do not involve disclosure of peer review information generated by a review organization.

However, Judge Nealon determined that a physician’s performance review, which is prepared by a hospital’s peer review, patient safety or similar department for quality purposes, but contained in credentialing files, is protected from disclosure under the PRPA.

With regard to the defendant doctor’s medical claims history records, compiled by the hospital in connection with his initial application for clinical privileges, Judge Nealon determined that those records were never presented to a peer review committee or are maintained exclusively within the peer review files. Further, those records are relevant to plaintiffs’ claim that the hospital breached its duty to provide privileges only to competent physicians. Thus the claims records constitute documents that may have been submitted to the Credentials Committee with regard to application for clinical privileges, but they are discoverable as records maintained by the hospital in the ordinary course of business.

Judge Nealon found the medical charting warning letters are discoverable. The letters were issued by administration and designed to compel the doctor to complete medical records in a timely manner and/or warnings to the physician to remedy these delinquencies. The letters were not forwarded to the Quality Management Department or considered part of the peer review process. As a result, Judge Nealon determined that the letters were analogous to incident or event reports that were prepared within the ordinary course of hospital business.

Finally, the bi-annual Ongoing Professional Practice Evaluation Reports were prepared by the OB/GYN Department Chair and submitted to the Quality Management Department for assessing ongoing professional practice and competence. The plaintiffs submitted that these materials were relevant to their claims against the hospital for failing to properly determine the defendant-obstetrician’s qualifications before granting privileges, failing to supervise and monitor the medical care and treatment rendered to the plaintiffs, and neglecting to exercise care in the hiring, appointment, reappointment, and supervision of physicians. The medical staff by-laws stated that the OPPE reports are “an element of the peer review process and confidential and privileged to the

fullest extent permitted by applicable law.” Hence, Judge Nealon found those documents are protected from discovery.

The hospital was directed to produce the requested malpractice claims information, and the warning letters, but are entitled to withhold from discovery the Ongoing Professional Practice Evaluation Reports.

Notably, the medical malpractice history materials and medical records admonitions were not entitled to peer review protection merely by being placed in the obstetrician’s credentials file.

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National Law Review, Volumess VII, Number 96

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