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Why Hospitals Should Closely Follow the PRPA When Conducting Peer Review-Type Activities

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In an important recent decision, the Pennsylvania Supreme Court held that a performance review of an emergency medicine physician who was employed by an independent contractor corporation staffing a hospital's emergency department was not protected from discovery under the Peer Review Protection Act. Discovery privileges such as the PRPA have historically been narrowly construed and the Court's decision in Reginelli v. Boggs reaffirms it will continue to strictly apply the evidentiary protections of the PRPA. This decision demonstrates the need to closely

follow the PRPA when conducting peer review-type activities and highlights the benefit of a consistent and unified front between a hospital and the entities that staff physician in its departments.

I. The Peer Review Protection Act and its Scope

The Peer Review Protection Act provides limited confidentiality to health care providers with respect to post-care review and investigation and is intended to allow candid discussion within the health care community to improve the quality of patient care. The PRPA has never provided a wholesale, blanket protection over every review or investigation of care rendered to a patient or by a healthcare provider. Instead, peer review means 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. The confidentiality provisions of the PRPA protect only those activities conducted by a peer review committee to gather and review information for the purpose of:

- Evaluating and improving the quality of health care rendered;
- Reducing morbidity or mortality;
- Establishing and enforcing guidelines designed to keep within reasonable bounds the cost of health care;
- Reviewing the professional qualifications or activities of medical staff or applications for admission thereto; or
- Reviewing the operation of hospitals, nursing homes, convalescent homes or other healthcare facilities.

II. Background of Reginelli v. Boggs

Reginelli involved an emergency medicine physician's alleged failure to diagnose a cardiac condition when Mrs. Reginelli presented to Monongahela Valley Hospital's Emergency Department, which plaintiffs contended resulted in a heart attack. The emergency medicine physician, Dr. Boggs, was a member of the Hospital's medical staff but employed by ERMI, a physician practice group that staffed the Hospital's emergency department. The plaintiffs filed a four-count complaint sounding in: (1) negligence against Dr. Boggs; (2) corporate negligence against MVH; (3) vicarious liability against MVH and ERMI; and (4) loss of consortium. MVH was represented by one defense firm; ERMI and Dr. Boggs were represented by another.
The plaintiffs deposed Dr. Walther, a physician employed by ERMI and the Medical Director of the Emergency Department. During her deposition, Dr. Walther testified that she maintained a performance file on Dr. Boggs as part of her regular practice of reviewing randomly selected charts associated with patients treated by ERMI-employed physicians. The plaintiffs sought the performance file on Dr. Boggs prepared by Dr. Walther from MVH. MVH objected on the basis of the PRPA, but the trial court granted the plaintiff's motion to compel. ERMI then moved for a protective order, arguing that Dr. Walther's review was conducted solely on behalf of ERMI and that ERMI was entitled to protect the review as separate, outside peer review. The motion for protective order was denied.
Both the Hospital and ERMI appealed. MVH argued that Dr. Walther's review was done in her capacity as an ERMI supervisor and as the Director of the Emergency Department. On the other hand, ERMI argued that Dr. Walther's performance evaluation of Dr. Boggs was "created and maintained solely by Dr. Walther on behalf of [ERMI]." The Supreme Court rejected both defendants' arguments.

A. Holding: No Peer Review Protection for ERMI because it is not a licensed medical provider.

The Supreme Court held that the PRPA was inapplicable to ERMI because the PRPA applies only to professional healthcare providers. The Court reasoned that, to be considered a professional healthcare provider for purposes of the PRPA, the entity must be "approved, licensed or otherwise regulated to practice or operate in the healthcare

field." ERMI, which was a physician practice group that is not licensed to provide medical care, did not qualify as an entity entitled to peer review protection. The Court also reaffirmed that the PRPA privilege does not apply "any time that an activity consistent with the PRPA's definition of peer review occurs," but instead is strictly limited to the "proceedings and records of a review committee," which must act on behalf of a professional healthcare provider. Accordingly, even though Dr. Walther, a healthcare provider, reviewed the professional activities of Dr. Boggs, another healthcare provider, the PRPA could not apply to ERMI, a non-healthcare provider.

B. Holding: No Peer Review Protection for MVH because it did not contend Dr. Walther was part of the peer review committee and did not submit an agreement shifting responsibility to ERMI to conduct peer review.

While MVH qualified as a professional healthcare provider and could be entitled to protection, the Supreme Court held the privilege was inapplicable because the record before the Court lacked suitable evidence on the issue. In response to MVH's argument that Dr. Walther was part of the hospital's peer review committee, the Court noted that such a contention was not supported by the record. In response to MVH's argument that it contracted with ERMI to conduct peer review on its behalf, the Court noted that the emergency services agreement was not part of the certified record and, therefore, could not be considered. The Court concluded that Dr. Walther's performance review of Dr. Boggs was not conducted pursuant to a peer review committee's actions and, therefore, not entitled to protection.

III. Analysis and Takeaways

Throughout the Court's decision are references to the competing and contradictory arguments advanced by MVH and ERMI. While MVH contended Dr. Walther's actions were a peer review activity conducted on behalf of the hospital pursuant to its emergency services agreement, ERMI contended that Dr. Walther's actions were done solely for the practice's own benefit. The emergency services agreement was not submitted in the record. The Court simply had no basis to conclude Dr. Walther had the responsibility or ability to conduct the review or maintain a performance file on behalf of the hospital. In that regard, the Court left open the possibility that a physician practice group could perform peer review activities on behalf of the hospital pursuant to an agreement if faced with a fully developed record.

For this reason, it is imperative that hospitals and physicians continue to understand that not every review of a healthcare provider by a healthcare provider will be protected, and that closely following the PRPA is the best way to guard against disclosure of candid and potentially critical professional evaluations. This decision provides a timely opportunity to evaluate contracts, policies, and procedures relevant to peer review activities by contracted providers, to ensure that the responsibility for a physician practice to conduct any form of peer review on behalf of the hospital is clearly delineated and supportable. This decision also highlights the benefit of joint representation to ensure multiple parties at defense table are not advancing competing positions to the detriment of all parties.

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