



Memo to: Organized Medical Staff Section

From: Leonard A. Nelson

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Subject: Medical Staff Cases

Those cases involving medical staff issues in which the Litigation Center has been involved during the last 12 months are as follows:

1. *Becker v. Mayo Foundation (Minn. S. Ct.)*

This case involved an attempt to establish a new cause of action, which would potentially affect physicians, based on a Minnesota statute requiring hospitals to report instances of child abuse to county authorities. The plaintiffs were the adoptive parents of a child who suffered permanent injuries from the repeated physical abuse of her birth parents. As a result of these injuries, she was unable to walk, talk, feed, or dress herself.

The child had been brought into the emergency room at St. Mary's Hospital, part of the Mayo Clinic in Rochester, Minnesota, on four occasions for treatment of various injuries. Initially, the birth parents explained that her injuries were accidental, and the treating physicians accepted those explanations. However, as the injuries became more severe, the physicians suspected abuse as their cause and notified the county authorities. The plaintiffs alleged that the physicians should have reported the child's injuries the first time they saw her. Thus, according to the plaintiffs, the physicians had negligently violated the Minnesota Child Abuse Reporting Act ("CARA"). The trial court dismissed the action, holding that there was no private right of enforcement under CARA, and the Minnesota Court of Appeals affirmed the trial court's decision. The plaintiffs then appealed to the Minnesota Supreme Court.

On August 16, 2007, the Minnesota Supreme Court affirmed, holding that CARA does not create a cause of action. However, the Supreme Court also held that the plaintiffs might pursue a common law claim of medical malpractice for failure to report the abuse.

The Litigation Center, along with several other medical societies, filed *amicus curiae* briefs in the Court of Appeals and in the Supreme Court in support of the defendants. The AMA opposes the expansion of physicians' tort liability, based on novel legal theories.

2. *Cathey v. Baptist Health* (Ark. Cir. Ct.)

This case arose out of the economic credentialing policy of Baptist Health. That policy provides that physicians on the Baptist Health medical staff who hold a direct or indirect financial interest in a competing facility are to be decertified.

Although no one questioned her clinical competence, Baptist Health sought to terminate the medical staff membership of Dr. Janet Cathey because her husband, who was also a physician, owned an interest in Arkansas Surgical Hospital, a competing hospital. Dr. Janet Cathey, a gynecologist, could not herself compete with Baptist Health, since the Arkansas Surgical Hospital was not equipped for gynecological care. Dr. Cathey sued Baptist Health for a court order preventing the termination of privileges. The Litigation Center, along with the Arkansas Medical Society, provided financial support and legal guidance to Dr. Cathey.

Ultimately, Dr. Janet Cathey's husband sold his interest in the surgical hospital. She then dismissed her lawsuit, and the hospital agreed not to contest her privileges.

3. *Crow v. Penrose-St. Francis Healthcare System* (Colo. S. Ct.)

Dr. Crow, a physician on the medical staff of Penrose-St. Francis Hospital, brought a lawsuit to challenge a peer review action pending against him. He alleged that the peer review proceedings were procedurally flawed in many respects, and he asked that the peer review be enjoined and that he be awarded monetary damages. The hospital moved to dismiss the trial court suit, primarily on grounds of ripeness, but that motion was denied. After the trial court refused to dismiss the case, the hospital filed an original action in the Supreme Court, asking that the Supreme Court order the trial court to dismiss Dr. Crow's suit. The hospital asserted that Dr. Crow's suit would chill the conduct of further peer review actions if allowed to continue prior to the completion of the peer review proceedings.

On March 26, 2007, the Litigation Center filed an *amicus curiae* brief to advise the Supreme Court how organized medicine believes Dr. Crow's due process rights should be balanced against the public interest in peer review. The brief recommended that the Colorado Supreme Court decline jurisdiction and allow the trial court to hear the case. The Colorado Supreme Court is still considering how it will decide the case.

4. *Higgins v. Baptist St. Anthony's* (Tex. Dist. Ct.)

This case arose out of an attempt by a managed care network to deselect the plaintiff physicians from the network's provider panel, in retaliation for the physicians' investment in a surgical hospital. The parent company of the managed care network urged Blue Cross Blue Shield of Texas ("Texas Blue") to deselect the physicians and other investors in the surgical hospital from the Texas Blue provider network. These actions were motivated by a general hospital's efforts to stop the surgical hospital's competition. The managed care network and the general hospital have common ownership and management. The physicians sued the managed care network to prevent the terminations, claiming a violation of the Texas antitrust laws. The Litigation Center contributed financially toward the physicians' litigation expenses.

The case subsequently settled, with the hospital reportedly buying a majority ownership in the surgical hospital and then dropping its objection to the physicians' investment.

5. *Larson v. Wasemiller* (Minn. Sup. Ct.)

The plaintiffs in this case sued a medical clinic and a hospital, based on a theory of negligent medical staff credentialing. The defendants moved to dismiss, asserting that the plaintiffs had not stated a recognized cause of action. The court denied the defendants' motion, finding that although a negligent credentialing claim had never been adjudicated in Minnesota courts, it could exist. The court certified the question for immediate appeal as a novel and important issue of law.

The Court of Appeals reversed the trial court, holding that Minnesota does not recognize a cause of action for negligent credentialing or privileging of a physician. However, the plaintiffs appealed to the Minnesota Supreme Court.

On August 16, 2007, the Minnesota Supreme Court reversed the Court of Appeals decision and recognized negligent credentialing as a viable cause of action. The court observed that a hospital has a duty to protect its patients, and the careful credentialing of physicians is a part of that duty. While the Supreme Court recognized that the preservation of peer review confidentiality poses certain barriers to the adjudication of a negligent credentialing case, it felt those barriers were not insuperable.

The Litigation Center, along with the Minnesota Medical Association and the Minnesota Hospital Association, filed *amicus curiae* briefs in the Minnesota Court of Appeals and in the Minnesota Supreme Court to support the defendants. The briefs argued that a cause of action for negligent credentialing would undermine the goals of the confidentiality provisions of the Minnesota peer review law. The brief also argued that a negligent credentialing claim would lead to the introduction of prejudicial evidence and prevent a fair trial.

6. *Lawnwood Medical Center v. Lawnwood Medical Center Medical Staff* (Fla. S.Ct.)

During the past several years, Lawnwood Regional Medical Center & Heart Institute ("the hospital"), the largest hospital in St. Lucie County, Florida, has repeatedly attempted to remove medical staff officers elected pursuant to the medical staff bylaws and to suspend physicians on the medical staff under procedures contrary to those authorized by the medical staff bylaws. Each time, the medical staff was able to defeat these attempts in court. In 2003, the Florida legislature enacted a law known as the "St. Lucie County Hospital Governance Law" (the "Governance Law"), which basically undoes the earlier court decisions and provides that "in the event of a conflict between bylaws of a hospital corporation's board of directors and a hospital's medical staff bylaws, the hospital board's bylaws shall prevail." Pursuant to the Governance Law, the hospital board proposed changes to the medical staff bylaws, to confirm that it, rather than the medical staff, would control the areas delineated in the Governance Law. After repeated protests from the medical staff, the hospital filed a preemptive action against the medical staff, seeking a judicial declaration that the Governance Law is constitutional and that the hospital is empowered to overrule certain provisions of the medical staff bylaws. The medical staff filed a counterclaim for a declaratory judgment of the unconstitutionality of the Governance Law and a permanent injunction. Eventually, the trial court entered summary judgment in favor of the physicians, finding that the Governance Law violated several provisions of the Florida Constitution.

The hospital appealed to the Florida District Court of Appeal, which affirmed the trial court decision. The hospital has now appealed to the Florida Supreme Court.

The Litigation Center contributed financially toward the physicians' litigation expenses. It has also filed *amicus curiae* briefs in the District Court of Appeal, and it will be filing an *amicus curiae* brief in the Florida Supreme Court to support the organized medical staff against the hospital. In addition, the Litigation Center attorney participated in the oral argument on behalf of the medical staff at the Florida District Court of Appeal.

7. *Murphy v. Baptist Health* (Ark. Cir. Ct.)

This is a companion case to *Cathey v. Baptist Health*, discussed above, involving the economic credentialing policy of Baptist Health. The plaintiffs, all cardiologists, have held professional staff appointments or clinical privileges at the Baptist Health, and are also minority owners of Little Rock Cardiology Clinic. Since the plaintiffs were covered by Baptist Health's economic credentialing policy and stood to lose their medical staff privileges under it, they sued to have the policy declared "illegal, unconscionable, and unfair." The trial court granted a preliminary injunction to prevent the termination of the plaintiffs' privileges, and the hospital then appealed the temporary injunction to the Arkansas Supreme Court. The Supreme Court subsequently affirmed the trial court's order, finding that a hospital's interference with a physician's patient relationships could violate the Arkansas Deceptive Trade Practices Act. The case is now back before the same trial judge who entered the preliminary injunction.

The Litigation Center has contributed to the plaintiffs' legal fees. More importantly, though, the AMA and the Arkansas Medical Society have intervened in the lawsuit as additional plaintiffs in order to establish a favorable precedent for all Arkansas physicians and perhaps for similarly situated physicians around the country. Trial is scheduled to begin on March 10, 2008.

8. *Prospect Medical Group v. Northridge Emergency Medical Group* (Cal. S.Ct.)

The principal issues in this case are (a) whether, under California law, out-of-network emergency room physicians (and other health care providers who provide emergency services) can balance bill patients who subscribe to managed care plans and (b) whether, under California law, the Medicare rate for physician services (and the services of other health care providers) should be deemed, *ipso facto*, "reasonable" compensation for those services. The California Court of Appeal resolved both of these issues in favor of the emergency room physicians, but the California Supreme has agreed to hear the case.

The Litigation Center filed an *amicus curiae* brief with the California Medical Association. The Litigation Center, also with the California Medical Association, paid most of the legal expenses for the physicians' appeal.

Further information about these cases and about the Litigation Center can be found at:
<http://www.ama-assn.org/ama/pub/category/4618.html>.