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

**1. *Ishoo v. University of New Mexico Hospital* (N.M. S.Ct.)**

The University Of New Mexico Hospital hired Dr. Edwin Ishoo as an assistant professor in its Department of Surgery, Division of Otolaryngology. Following an episode of uncontrolled anger, the hospital initiated a peer review action and the initial peer review panel found against Dr. Ishoo. Before the full peer review process could be completed, however, the hospital elected not to renew his contract. He thereby lost his medical staff privileges.

Dr. Ishoo sued the hospital for breach of contract in the state court. According to Dr. Ishoo's complaint, the "professional administrative standards" of the American Medical Association were "material terms" of his employment contract with the hospital. Dr. Ishoo's complaint also alleged that the hospital's decision had been influenced by the peer review action. That action, in turn and according to Dr. Ishoo, was supposedly motivated by his having been born in Iran.

Dr. Ishoo asked for extensive discovery from the hospital, including depositions of all or almost all of the physicians involved in the peer review process. The hospital objected. In considering the objection, the trial court found that the success or failure of Dr. Ishoo's lawsuit was likely to depend on the requested discovery. Without a detailed explanation of its reasoning, the trial court overruled the objection and compelled compliance with Dr. Ishoo's discovery requests.

The University of New Mexico petitioned the New Mexico Supreme Court for a "writ of prohibition and/or superintending control" to prevent the discovery from going forward. The University of New Mexico also asked the AMA to file an *amicus curiae* brief with the New Mexico Supreme Court.

Because of the AMA policies governing peer review and peer review confidentiality and because of Dr. Ishoo's assertion that his rights should be governed by AMA policies, the Litigation Center and the New Mexico Medical Society asked the New Mexico Supreme Court for leave to file an *amicus curiae* brief. However, the Supreme Court summarily denied the university's petition. The medical societies' motion thereby became moot and was also denied.

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

Over a period of several years, Lawnwood Regional Medical Center & Heart Institute ("the hospital"), the largest hospital in St. Lucie County, Florida, would repeatedly attempted to remove medical staff officers elected pursuant to the medical staff bylaws and to suspend physicians on

## Medical Staff Case Summary (A-08)

the medical staff under procedures contrary to those authorized by the medical staff bylaws. Each time, the medical staff would 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 provided 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” and have would basically undone the earlier court decisions.

Pursuant to the Governance Law, the hospital board proposed changes to the medical staff bylaws. The medical staff protested, and the hospital and the medical staff ended up suing each other, each seeking a judicial declaration as to the constitutionality of the Governance Law and whether the hospital could unilaterally amend the medical staff bylaws. Eventually, the trial court entered summary judgment in favor of the medical staff, finding that the Governance Law violated the Florida Constitution.

The hospital appealed to the Florida District Court of Appeal, which affirmed the trial court decision. The hospital then appealed to the Florida Supreme Court. On August 28, 2008, the Florida Supreme Court affirmed, holding the Governance Law unconstitutional.

The Litigation Center contributed financially toward the physicians’ litigation expenses. It also filed *amicus curiae* briefs in the District Court of Appeal and in the Florida Supreme Court to support the organized medical staff against the hospital. In addition, the Litigation Center attorney participated in the oral arguments on behalf of the medical staff at both the Florida District Court of Appeal and before the Florida Supreme Court.

### **3. *Mileikowsky v. West Hills Hospital* (Cal. S.Ct.)**

In this case, a hearing officer terminated a peer review proceeding, independently of the peer review panel itself, because the accused physician had violated a prehearing discovery order. The AMA believes that physicians are better able than lay hearing officers to appreciate the ramifications of a decision to terminate a peer review proceeding, even when that decision is based on a procedural issue. Accordingly, the Litigation Center joined with the California Medical Association in an *amicus curiae* brief to the California Supreme Court, which argued that only the peer review body itself – and not the hearing officer – should be allowed to terminate a peer review.

### **4. *Murphy v. Baptist Health* (Ark. Cir. Ct.)**

The issues in this case are whether a hospital’s policy on economic credentialing threatens a tortious interference with the patient-physician relationship and violates the Arkansas Deceptive Trade Practices Act as an illegal restraint of trade.

The plaintiff physicians, six cardiologists, have held professional staff appointments or clinical privileges at the Baptist Health Medical Center in Little Rock, Arkansas, a general purpose hospital. Baptist Health Medical Center is owned by Baptist Health, the largest hospital system in Arkansas. The physicians are also minority owners of Little Rock Cardiology Clinic (“LRCC”). LRCC is a part owner of Arkansas Heart Hospital (“AHH”), and some of the plaintiff physicians

have independent, direct ownership interests in AHH. AHH specializes in cardiac care and competes with Baptist Health for cardiac patient referrals.

Effective May 22, 2003, Baptist Health adopted a conflict of interest policy, entitled “BAPTIST HEALTH CONFLICT OF INTEREST POLICY (Economic Credentialing)” (“the conflict policy”). As justification for its adoption, the conflict policy includes numerous “whereas” recitals. These clauses aver that, at least in their own eyes, Baptist Health hospitals face increasing competition from other hospitals. The recitals go on to state that physicians on the Baptist Health medical staffs who own interests in competing hospitals may have a financial incentive to steer profitable cases to the competing hospitals, while steering unprofitable cases to Baptist Health hospitals. Such conflicts of interest could jeopardize the long-term financial viability of the Baptist Health hospitals. The conflict policy provides that any member of the medical staff at a Baptist Health hospital who acquires or holds a direct or indirect ownership or investment interest in a competing hospital is ineligible to remain on the medical staff.

When the plaintiff physicians learned of their pending loss of medical staff privileges, they sued to have the conflict policy declared invalid. They also moved for a preliminary injunction to prevent Baptist Health from terminating their privileges during the pendency of the lawsuit. On March 22, 2004, the trial judge granted their motion and entered the requested injunction. Baptist Health appealed.

After hearing the case twice, the Arkansas Supreme Court affirmed the preliminary injunction. The Supreme Court held that the plaintiff physicians had demonstrated a reasonable likelihood that they would be able to prove, at trial, that the Baptist Health conflict policy is unconscionable because it (1) threatens to interfere tortiously with the relationships between the plaintiffs and their patients and the relationships between the plaintiffs and their referral sources, and (2) violates the Arkansas Deceptive Trade Practices Act. Following the Supreme Court affirmance, the case was remanded to the trial court.

On October 1, 2007, the Litigation Center, through the AMA and the Arkansas Medical Society, intervened in the *Murphy* case as additional plaintiffs. A bench trial was held from March 10, 2008 through March 20, 2008, and post-trial briefing was completed in June, 2008. On September 26, 2008, Baptist Health moved to dismiss the lawsuit under a newly advanced theory of *res judicata*. Baptist Health asserted that a federal court had recently entered a decision against some of the physician plaintiffs in an anti-trust suit involving Baptist Health and Arkansas Blue Cross Blue Shield. In their response to the Baptist Health motion, the medical societies pointed out that they had not been parties in the federal anti-trust suit, so there was no reason to dismiss the suit against them.

In addition to its intervention, the Litigation Center provided modest financial assistance to the plaintiff physicians.

##### **5. *Phelps v. Physicians Insurance Company of Wisconsin* (Wis. S.Ct.)**

The trial court in this case found a first year resident physician negligent in his care for an expectant mother who had been hospitalized in anticipation of giving birth to twins. As a result of

his neglect, one of the twins unfortunately died shortly after birth. The issues in the appeal are (1) whether the resident physician should be considered a “borrowed employee” of the hospital for purposes of the statutory cap on non-economic damages in Wisconsin medical malpractice suits, and (2) whether a father who was present during the birth can received “bystander damages”.

On August 29, 2008, the Litigation Center and the Wisconsin Medical Society filed an *amicus curiae* brief to support the physician. However, the plaintiffs moved to strike part of the brief. The Court has not yet ruled on that motion.

**6. *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 will 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>.