

# Iowa court shouldn't allow “negligent credentialing” lawsuits

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**Editor's note:** *The Iowa Supreme Court in May declined to rule on the issue of whether the state recognizes a negligent credentialing claim. The state's highest court, citing an 1982 state court ruling, said “reviewable issues must ‘be presented in the parties’ briefs, not an amicus brief,” as was the case here.*

*The Iowa Supreme Court assumed for the appeal—without deciding the issue—that a negligent credentialing tort is cognizable. It vacated the court of appeals ruling in the case, along with the initial district court judgment and sent the lawsuit back to the lower court for further proceedings.*

Imagine a system where your hospital would have to immediately limit, restrict or suspend any credentialed physician as soon as it received notice that the state medical board of medicine had an inquiry or was investigating that doctor.

It's what hospitals are potentially forced to do if a state recognizes “negligent credentialing” as something for which patients can bring a lawsuit. Now the Supreme Court of Iowa is set to decide whether this new tort should be recognized.

If the court recognizes this new tort, Iowa patients could see access to care reduced and a negative impact on the quality of care as physicians become less likely to participate in credentialing committees, peer review boards and other quality assurance activities, the Litigation Center of the American Medical Association and State Medical Societies tell the state's high court in an amicus brief it filed with the Iowa Medical Society and the Iowa Hospital Association.

“The wide-reaching, negative impact imposing such a duty would have on the availability of health care for Iowans cannot be understated. ... Iowa has federal and state designated primary health care shortages in approximately 57 of its 99 counties,” the brief tells the court in the case, *Rieder v. Segal*. “Nevertheless, plaintiffs ... ask this court to potentially remove approximately 10% of the practicing physicians in Iowa from practice each year just because a complaint is filed or investigation initiated or a hospital otherwise receives notice of a complaint or investigation.”

The brief notes just 5% of investigations in Iowa resulted in a physician being disciplined in 2018.

The AMA Litigation Center brief, which doesn't comment on the underlying dispute, calls on the Supreme Court of Iowa to overturn an Iowa Court of Appeals ruling. The appellate court reversed two summary judgment rulings from the district court that agreed with the hospital's assertions that there was no factual basis to support the claim of negligent credentialing and that the hospital does not have a duty to immediately limit, restrict or suspend a credentialed physician "merely upon the notification of an inquiry and/or investigation."

Find out more about the cases in which the AMA Litigation Center is providing assistance and learn about the Litigation Center's case-selection criteria.

## Quality of care jeopardized

Iowa laws are designed to allow physicians to speak openly and honestly about all review organization functions, including credentialing. If the court allows lawsuits based on negligent credentialing, "physicians would naturally fear that their candor would be subsequently punished or at issue in later lawsuits," the brief says.

"Instead of improving the quality of a hospital's medical staff, creating a new cause of action ... is more likely to deter physician participation and impede the quality and candor of the evaluations by physicians who do participate," the brief says. "The unintended consequences would undermine the overall integrity of the credentialing process and negatively impact the quality of patient care provided within a hospital."

## Patients already protected

Before a physician applies for hospital credentials, other stakeholders have already evaluated and validated a physician's competence and qualifications, the brief says. Also, regulators routinely monitor and re-evaluate a physician's qualification through license renewal and have the ability to suspend, limit or discipline a physician when appropriate.

"Further, a hospital should not be subjected to greater liability than the state's own 'gatekeepers' of the medical profession simply because a physician has selected the hospital as a venue to care for the physician's patients," the brief says. "Nevertheless, recognition of the tort of negligent credentialing would do just that."

Also, patients already have numerous causes of actions that allow them to hold Iowa hospitals and

clinics accountable and be compensated for any injuries a credentialed physician may cause. In addition, patients have “well-established” causes of actions for injuries resulting from a physician’s alleged professional negligence.

The brief says “there is no need for yet another tort, particularly one which will inevitably interfere with an already heavily regulated and nuanced relationship between independently licensed physicians, independently licensed hospitals and the state’s regulatory bodies.”