



Allred v. Saunders, 2014 UT 43 (Utah 2014)

Topics Covered: Peer Review

Outcome: Very Favorable

Issue

The issues in this case were (a) whether Utah's peer review confidentiality laws apply to the documents in a medical staff credentialing file and (b) how specifically peer review documents must be described in order to invoke the peer review confidentiality privilege.

AMA Interest

The AMA believes that all documents submitted for purposes of peer review should be protected from legal discovery.

Case Summary

Lisa Allred and her husband, Marlin Allred, accused Ronald J. Saunders, MD, a urologist, of having negligently performed a lithotripsy procedure, as a result of having misdiagnosed a pulmonary embolism. They sued Dr. Saunders for medical malpractice. The Allreds subpoenaed American Fork Hospital, the hospital in which the incident took place, for (a) Dr. Saunders's medical staff credentialing file and (b) the "file or case investigation records" pertaining to Mrs. Allred's care.

Dr. Saunders moved for a protective order and/or to quash the subpoena, to the extent it sought production of the hospital's credentialing file. He asserted that the Utah privilege against production of medical peer review documents protected against such production. In support of his motion, he submitted an affidavit from the medical director at American Fork Hospital. The affidavit indicated that the credentialing file consisted of Dr. Saunders's applications for original and then renewal privileges, documents confirming his graduation from medical school, board certification documents and personal references, and similar documents relating to his general competence as a physician. The credentialing file did not include documents concerning the quality of Dr. Saunders's care for specific patients or concerning identifiable incidents in which Dr. Saunders's competence may have been questioned.

The court found that Dr. Saunders's motion should be governed by Utah Code § 26-25-1(g) and by Utah Rule of Civil Procedure 26(b)(1). Section 26-25-1(g) states that the peer review privilege includes "data relating to the condition or treatment of any person." The court then found the records in Dr. Saunders's credentialing file "appear[ed] to be about Dr. Saunders, and not about any particular patient." Thus, these records concerned Dr. Saunders's general qualifications and did not "relat[e] to the condition or treatment of any person." Accordingly, they fell outside § 26-25-1(g) and were not privileged. The court ordered their production.

Both Dr. Saunders and the hospital moved for a protective order and/or to quash the subpoena, to the extent it sought production of any incident reports concerning Mrs. Allred's treatment. They supported their motion with an affidavit from a hospital official, which acknowledged that the hospital had prepared an incident report in connection with Mrs. Allred's care. The affidavit generally described the hospital review process and concluded that the report in question had been prepared as part of that process.

The court observed that this latter affidavit was "vague." It further observed that, while the medical peer review privilege did exist and the affidavit at least arguably established that the privilege might apply to the incident report, the applicability of that privilege should not depend on the unilateral assertions of the parties claiming the privilege. Accordingly, the court ordered that the alleged peer review documents be submitted for in camera review as to whether the privilege should apply.

Dr. Saunders and American Fork Hospital appealed to the Utah Supreme Court.

The Supreme Court held that the Utah legislature can define the scope of the medical peer review privilege, even if the privilege is not explicitly set forth in the Utah Rules of Evidence. It also held that both Dr. Saunders' credentialing file and the hospital's incident report file were privileged from discovery. It reversed the lower court ruling and remanded for further proceedings.

Litigation Center Involvement

The Litigation Center, along with the Utah Medical Association filed an *amicus* brief in support of Dr. Saunders and American Fork Hospital.

Utah Supreme Court brief