



Dwyer v. Ascension/Crittenton Hospital, 2020 WL 1649783 (Mich. Ct. App. 2020)

Topics Covered: Peer Review

Outcome: Very Favorable

Issue

The issue in this case was whether hospital peer review documents should be produced in discovery.

AMA Interest

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

Case Summary

Lisa Dwyer alleged that her orthopedic surgeon performed surgery improperly on her knee. She further alleged that the hospital where the surgery had been performed had negligently granted medical staff privileges to the surgeon. She moved, over the hospital's objections, for production of the hospital's privileging file relating to the surgeon. The hospital, in turn, sought a protective order to preclude discovery of the credentialing file and other peer review information.

After *in camera* review, the trial court ordered production of several e-mails from the credentialing file. The court found that the peer review privilege only applies to a peer review committee's deliberative functions, and the e-mails in question were simply information brought to the attention of the hospital credentialing committee. Thus, they did not reflect the committee's deliberations and were not privileged.

The hospital has now made an emergency appeal to the Michigan Court of Appeals. It is arguing that the peer review privilege applies to all materials brought to the attention of the credentialing committee and not just the records of its deliberations. The Court of Appeals stayed further proceedings in the trial court, pending resolution of the appeal.

On April 2, 2020, the Court of Appeals ruled that the trial court erred by concluding that the three e-mails were not protected by the peer review privilege.

Litigation Center Involvement

The Litigation Center, along with the Michigan State Medical Society, filed two *amicus* briefs in support of the hospital in the Court of Appeals. The first brief supported the hospital's application for leave to appeal and the importance of the issue to health care. The second brief addressed the merits of the appeal. Both briefs argued that the peer review privilege is needed

to enhance patient care in hospitals, and the value of the privilege would be undercut if it did not extend to non-deliberative materials.

Michigan Court of Appeals brief (merits)