



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

Topics Covered: Peer Review

## **Outcome: Unfavorable**

### **Issue**

The issue in this case was whether peer review proceedings should be privileged from legal discovery.

### **AMA Interest**

The AMA seeks to preserve the confidentiality of the peer review process.

### **Case Summary**

The University of New Mexico Hospital (UNMH) hired Dr. Edwin Ishoo as an assistant professor in its Department of Surgery, Division of Otolaryngology. Dr. Ishoo became embroiled in a dispute with personnel of a separate hospital, and UNMH initiated a peer review action against him. The initial peer review panel found against Dr. Ishoo, but before the full peer review process could be completed Dr. Ishoo and UNMH terminated their arrangement.

Dr. Ishoo subsequently sued UNMH for breach of contract in a 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 UNMH, and UNMH had violated those standards. Dr. Ishoo also alleged that the peer review action had been motivated by his having been born in Iran.

Dr. Ishoo asked for extensive discovery from UNMH, including depositions of all or almost all of the physicians involved in the peer review process. UNMH objected to this discovery. 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. The trial court overruled the objection and compelled compliance with Dr. Ishoo's discovery requests.

UNMH then petitioned the New Mexico Supreme Court for a "writ of prohibition and/or superintending control" to prevent the discovery from going forward. UNMH also asked the AMA to file an *amicus curiae* brief with the New Mexico Supreme Court. However, the Supreme Court summarily denied the UNMH petition.

### **Litigation Center Involvement**

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 medical societies' motion became moot and was denied when the New Mexico Supreme Court denied the UNMH petition.