



# Reginelli v. Boggs, 2018 Pa. LEXIS 1503 (Pa. 2018)

Topics Covered: Peer Review

## **Outcome: Highly unfavorable**

### **Issue**

The issue in the case was whether the Pennsylvania Peer Review Protection Act, 63 P.S. §§ 425.1, et seq. (PRPA) privilege against legal discovery should apply when an independent contractor of a hospital reviewed the performance of a physician on the hospital's medical staff.

### **AMA Interest**

The AMA believes medical staff peer review documents should be privileged from discovery.

### **Case Summary**

Eleanor Reginelli presented to the emergency department at Monongahela Valley Hospital (MVH), complaining of chest and back pains. The emergency room physician, Marcellus Boggs, MD, a member of the MVH medical staff, ordered and interpreted the results of an electrocardiogram and blood work. He diagnosed Reginelli with gastro-esophageal reflux disease and discharged her that day.

Five days later, Reginelli again experienced chest and back pains. An ambulance transported her to the emergency department at a different hospital, where she was told she was experiencing a heart attack. She subsequently suffered permanent heart damage.

Boggs was an employee of UPMC Emergency Medicine, Inc., d/b/a Emergency Resource Management, Inc. (ERMI). MVH had hired ERMI, an independent contractor, to staff its emergency department.

Reginelli and her husband sued Boggs, MVH, and ERMI for medical negligence. As part of discovery, the plaintiffs deposed Brenda Walther, MD, the medical director of the MVH emergency department and also an ERMI employee. Walther disclosed that she maintained a "performance file" on Boggs, which included her evaluations. She said that ERMI required her to perform and retain these evaluations and she considered her evaluations to be peer review protected. She also testified that, in addition to the ERMI peer review evaluations, MVH has a formal peer review committee, which meets on a monthly basis.

The plaintiffs asked MVH to produce the Walther performance file on Boggs. Based on a claimed peer review privilege, the defendants objected to its production. MVH produced the performance file to the judge for review in camera.

Following its review, the trial court observed that MCH had possession of the performance file (as it had produced the same in camera), but Walther was an agent of ERMI, an agency distinct

from MVH. It commented: “it is untenable that [MVH] could claim a privilege for documents that it neither generated nor maintained.” The trial court ordered the performance file to be produced to the plaintiffs’ counsel, who was then to keep the file confidential. The defendants appealed.

On appeal, the Pennsylvania Superior Court adopted the trial court’s rationale for finding MVH had no right to claim privilege in documents generated and maintained by ERMI. It further held that neither ERMI nor Boggs was entitled to assert a peer review privilege. Because ERMI was an independent contractor of MVH, it was “not an entity enumerated in [the PRPA] as being protected by peer review privilege. Moreover, it held, by sharing the file with MVH Boggs and ERMI had “destroyed” any privilege they might otherwise have claimed.

The Superior Court affirmed the order of production, and the defendants appealed to the Pennsylvania Supreme Court.

On March 27, 2018, the Supreme Court, by a split decision, held that a physician organization comprised of hundreds of individual emergency physicians was not a professional health care provider under the PRPA. It further held that a member of that physician organization (herself a physician) who evaluated the professional competence of physicians within the organization could not be deemed a peer review committee, as she was an individual. It affirmed the lower courts’ order of production.

### **Litigation Center Involvement**

The Litigation Center, along with the Pennsylvania Medical Society, filed an amicus brief in the Pennsylvania Supreme Court. The brief, which supported the defendants, argued that the PRPA privilege against legal discovery should apply in this case.

Pennsylvania Supreme Court brief