



Windt v. Exeter Hospital, 810 A.2d. 53 (N.H. S.Ct. 2002)

Topics Covered: Medical Staff, Hospitals

Outcome: Unfavorable

Issues

The issues in this case were whether a medical staff could sue a hospital as an unincorporated association and whether a physician serving as President of the medical staff and thus as an *ex officio* trustee of the hospital could exercise his right and obligation to discharge his professional duties in conformity with the *AMA Code of Medical Ethics*.

AMA Interest

The AMA supports the self-governance of the organized medical staff and physicians' right to discharge their professional duties and obligations in conformity with the *AMA Code of Medical Ethics*.

Case Summary

Dr. Mark Windt was the President of the Exeter Hospital medical staff. Pursuant to the hospital bylaws, the President of the Medical Staff served as *ex officio* trustee of the hospital. On assuming his duties as *ex officio* trustee, Dr. Windt agreed to a policy of the Board of Trustees, under which board members must maintain the confidentiality of matters considered at Board meetings.

Dr. Windt had a falling out with the hospital Board of Trustees. The Board removed him from his position as trustee and, citing to the confidentiality policy, forbade him from discussing the details of his disagreement with the hospital, the general public, or even other members of the medical staff. The Board also attempted to make it impossible for Dr. Windt to fulfill his duties as President of the Medical Staff, and they unsuccessfully lobbied the medical staff to recall Dr. Windt. In various ways, the hospital repeatedly attempted to persuade the rest of the medical staff to abandon Dr. Windt.

Ultimately, Dr. Windt and the medical staff sued Exeter Hospital and its parent corporation, Exeter Health Resources. The suit sought, primarily, a judicial declaration that the hospital's broad ban against disclosure of hospital issues was invalid. Subsequently, Dr. Windt filed a separate lawsuit seeking reinstatement as a trustee and an injunction restraining interference with his duties as President of the Medical Staff.

Pursuant to motion by the hospital, the court dismissed the medical staff as plaintiff, finding that it lacked the legal capacity to sue the hospital. Subsequently, the court dismissed Dr. Windt's

portion of the first case as moot. The second suit, which sought broader relief, was voluntarily dismissed with prejudice. Dr. Windt appealed the dismissal of his case to the New Hampshire Supreme Court, and the medical staff also appealed its dismissal.

On November 14, 2002, the New Hampshire Supreme Court ruled that hospital medical staffs are subordinate administrative units, dependent upon and accountable to the hospital and its trustees. Therefore, medical staffs are legally incapable of suing the hospital or its trustees. Thus, the Supreme Court affirmed dismissal of the medical staff.

The New Hampshire Supreme Court also ruled that Dr. Windt's personal request for relief from the hospital's disclosure ban had not been mooted. That portion of the case was remanded to the trial court for further adjudication.

On August 28, 2003, the trial court finally ruled on the merits of the case and held in Dr. Windt's favor. It allowed him to communicate his concerns about hospital policy to the other members of the medical staff, without fear of legal liability from the hospital.

Litigation Center Involvement

The Litigation Center submitted an amicus curiae brief in support of Dr. Windt and the medical staff. The brief argued that the medical staff should have the right to sue Exeter Hospital in its own name (and thus, by implication, possibly be subject to suit in its own name), notwithstanding that the medical staff is an unincorporated association. The Litigation Center also provided financial support to Dr. Windt.

New Hampshire Supreme Court brief