



Sanders v. Children’s Hospital of Philadelphia (Pa. Sup. Ct.)

Topics Covered: Peer Review

Issue

The issue in this case is whether the trial judge erred in ordering the disclosure of certain documents related to an infectious disease outbreak at a hospital, despite defendant’s claims of peer review privilege under Pennsylvania’s Peer Review Protection Act (PRPA) and Medical Care Availability and Reduction of Error Act (MCARE).

AMA Interest

The AMA believes that, for peer review to be effective, peer review data must be kept confidential. The AMA also supports the efforts of state medical societies in developing and implementing anti-lawsuit abuse campaigns.

Case Summary

This is a consolidated case made up of three wrongful death actions filed by families of three infants who passed away at the Children’s Hospital of Philadelphia (CHOP). While in CHOP’s neonatal intensive care unit, the three infants received several eye examinations, ventilator support, and treatment for a variety of conditions. The infants tested positive for adenovirus; however, CHOP denies that adenovirus was the cause of their deaths.

After CHOP’s Infection Prevention and Control Department learned that there was an adenovirus outbreak, CHOP performed an investigation under Pennsylvania’s PRPA and MCARE led by an infectious disease physician. During discovery, plaintiffs requested the production of the hospital documents and power point presentations that were created following the adenovirus outbreak. Defendant hospital claimed that these documents were privileged under the PRPA and MCARE.

The court found that the documents were not created for purposes of peer review but instead were the result of incident reports and hospital committee meetings held to address and stop the outbreak of the adenovirus. They were later sent to the peer review organization in an effort to assert privilege. The court also reasoned that some of the documents were shared with third parties, breaking any privilege claims. Because the requested materials were not created and maintained solely for the purpose of peer review, they were not subject to any privilege. It ordered their production.

The hospital has now appealed to the Pennsylvania Superior Court, arguing that the trial court erred in ordering disclosure of the documents.

Litigation Center Involvement

The Pennsylvania Medical Society and the Litigation Center joined an *amicus* brief to the Pennsylvania Superior Court, which argued that the trial judge erred in allowing the disclosure of the contested documents.

Pennsylvania Superior Court Brief