

Health Law Update

April 26, 2017

Hospital's Suspension of Physician's Privileges Was Improper Due to Its Failure to Follow Procedure Contained in Its Medical Staff Bylaws

In *Murphy v. Advocate Health and Hospitals Corp.*, 2017 IL App (4th) 160513, a cardiologist was summarily suspended by the executive committee of a hospital stemming from what the hospital considered to be the substandard care provided to one of the cardiologist's patients. In its decision, the hospital's executive committee noted four peer review incidents and 10 MIDAS reports (a form of incident report used by hospitals) involving "inadequate documentation and/or management" as support for the suspension.

The hospital's medical staff bylaws stated that upon the imposition of a summary suspension by its Emergency Action Sub-committee of the Executive Committee, a physician is entitled to request an intraprofessional conference that is required to occur within a defined period of time after the request. The bylaws also provided that the affected physician would have the right "to inspect all pertinent and non-privileged information in the hospital's possession prior to the intraprofessional conference." Upon receiving written notice of the suspension, the cardiologist properly requested an intraprofessional conference and documentation related to the incidents at issue.

In response to the cardiologist's request, the hospital held an intraprofessional conference consisting of a hearing officer and a panel of five medical professionals. However, the hospital did not provide the cardiologist with complete access to the records he requested. After the conclusion of the intraprofessional conference, the panel recommended that the hospital's governing

council maintain the suspension of the cardiologist's privileges, which the council accepted. The cardiologist then filed a lawsuit seeking injunctive and declaratory relief against the hospital.

In its analysis, the Fourth District Appellate Court noted that the Hospital Licensing Act requires hospitals to include certain minimum procedures in its bylaws related to the clinical privilege decisions of its medical staff, including the right to a fair hearing for administrative summary suspensions. 210 ILCS 85/10.4(b)(2)(C)(ii). Following the Illinois Supreme Court's holding in *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill.2d 497,544 N.E.2d 733 (1989), the Court stated that a suspension of hospital privileges is not subject to due process requirements, but is instead only subject to the narrow determination of whether the suspension violated the hospital's bylaws.

Applying the Adkins analysis, the Court determined that the hospital's bylaws provided the cardiologist with the right to fully inspect all records applicable to the intraprofessional conference. In this situation, the hospital only provided the cardiologist with four peer review summaries and eight Midas Reports. Since the physician panel at least partially relied on those reports in making its recommendation to continue the cardiologist's suspension, the failure to provide the complete reports regarding those incidents was not harmless error and was instead violative of the disclosure obligations of the hospital's bylaws. The Court then reversed the

trial court and remanded the case with directions for a fair intraprofessional conference to be conducted.

Comment

The Court noted in its analysis that it is not the Court's duty to substantively evaluate a hospital's decision to suspend a physician's privileges. Instead, the Court will only focus on the procedure the hospital used to make its decision, specifically whether the hospital followed the procedure set forth in its bylaws in reaching its decision. A key takeaway from this decision is that while hospitals are given great deference in making medical staffing decisions, as is necessary to ensure patient safety, a hospital must ensure that it follows the

procedures set forth in its bylaws otherwise it opens itself to judicial inquiry and possibly liability.

If you have any questions about this Update, please contact the authors listed below or the Aronberg Goldgehn attorney with whom you normally consult:

Kari E. Hoelting Kaplan
kkaplan@agdglaw.com
312.755.3186

David A. Johnson, Jr.
djohnson@agdglaw.com
312.755.3142