

PA Supreme Court to Revisit Peer Review Protections for Credentialing

Healthcare Alert | October 1, 2020

By: Edward F. Beitz and Russell P. Lieberman

In September, the Pennsylvania Supreme Court agreed with the urging of the Superior Court to hear an appeal on whether the Pennsylvania Peer Review Protection Act (PRPA or the Act) shields from discovery the evaluations of medical providers contained in credentialing files.

The peer review issue arose, as previously reported, in the case of *Leadbitter v. Keystone Anesthesia Consultants, Ltd.*, wherein the Superior Court affirmed a discovery order compelling the production of the complete, un-redacted credentialing file of a hospital's orthopedic surgeon in a medical malpractice action. Prior to this decision, hospitals routinely shielded evaluations in credentialing files from discovery as privileged materials pursuant to the PRPA.

Credentialing is the process by which hospitals and other healthcare organizations, obtain and evaluate a medical provider's background before allowing a provider to treat its patients. A key component of the credentialing file is assessment by former peers and supervisors who understand the process to be confidential. The privileged nature of the process fosters candid feedback and helps to ensure patient safety by weeding out unqualified providers.

In general, the PRPA protects from disclosure of any peer review activity. The Act defines what constitutes peer review simply as "any evaluation of the quality and efficiency of services ordered or performed by one health care provider by another provider." The overarching goal of the PRPA is to improve future patient care by encouraging free and frank evaluations.

In *Leadbitter*, the Superior Court agreed that the evaluations in the surgeon's credentialing file met the statutory definition of a peer review document. Nevertheless, it was compelled to affirm the order requiring the evaluations to be turned over in discovery, citing *Reginelli v. Boggs*, 181 A.3d 293 (Pa. 2018).

In *Reginelli*, the Pennsylvania Supreme Court reasoned that the PRPA created a distinction between a "review committee" versus a "review organization," protecting only the activities of a peer review committee. In *Leadbitter*, the hospital's credentialing committee was a review organization and, as such, the peer review privilege did not apply.

Although the Superior Court agreed that *Reginelli* controlled the discovery dispute, it urged the Pennsylvania Supreme Court to grant an allocatur to revisit the issue, emphasizing that credentialing committees need to obtain candid evaluations, which is the express purpose of the PRPA as it will improve future patient care.

The court accepted the invitation. It will now consider whether peer review-protected physician evaluations lose their privileged status solely because they are maintained in a credentialing file. A favorable ruling will preserve the confidential nature of the credentialing process, enabling full and frank evaluation of medical providers, which is

precisely the type of activity that the PRPA was designed to protect.

If you have questions or would like additional information, contact Ed Beitz (beitze@whiteandwilliams.com; 215.864.6277), Russell Lieberman (liebermanr@whiteandwilliams.com; 215.864.6285) or another member of the Healthcare Group.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult a lawyer concerning your own situation and legal questions.