



Client Alert

Contact Attorneys Regarding
This Matter:

William H. Kitchens
404.873.8644 - direct
404.873.8645 - fax
william.kitchens@agg.com

Robert T. Strang, III
404.873.8582 - direct
404.873.8583 - fax
robert.strang@agg.com

Arnall Golden Gregory LLP
Attorneys at Law
171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031
404.873.8500
www.agg.com

Georgia Supreme Court Narrows Application of Peer Review and Medical Review Board Privileges

A 5-2 decision of the Georgia Supreme Court recently clarified the application of the peer review and medical review board privileges in the context of civil litigation. *Hospital Authority of Valdosta and Lowndes County v. Meeks*, 2009 WL 1574472 (June 8, 2009). The facts of the case are fairly simple. A physician and the Hospital Authority of Valdosta d/b/a South Georgia Medical Center (the Hospital) were sued for medical malpractice following a cardiac catheterization and stent placement procedure. The case was based, in part, upon the hospital's alleged negligence in credentialing the doctor to perform the cardiac procedure that resulted in the death of the plaintiff's wife. The hospital filed a motion for a protective order, asserting that certain of the plaintiff's discovery requests sought information and documents that were absolutely privileged under Georgia's peer review and medical committee review statutes (O.C.G.A. §§ 31-7-133(a) and 31-7-143).

The trial court ruled that the contents of the Hospital's peer review and medical review files, including the Hospital's credentialing files regarding the physician, were not subject to discovery. On interlocutory appeal, the Georgia Court of Appeals reversed, holding that, although the medical review and peer review statutes protect "all proceedings and information of a review organization, not just what is included in the physical files," to the extent that the credentialing files contain information that does not involve a peer review committee's evaluations of the doctor's performance of medical procedures, such information is discoverable. 294 Ga. App. 629 (2008)

The Supreme Court granted certiorari to review this important issue. In affirming the judgment of the Court of Appeals, the Supreme Court ruled that the information in a physician's credentialing files is discoverable to the extent that it does not involve a peer review or medical review committee's evaluation of the actual medical services provided by the doctor.

The Supreme Court recognized that in O.C.G.A. §§ 31-7-133 and 31-7-143, with certain exceptions for information otherwise available from original sources and for testimony that is independent from the witness' appearance at committee hearings, "the General Assembly has placed an absolute embargo upon the discovery and use of all proceedings, records, findings and recommendations of peer review groups and medical review committees in civil litigation." *Emory Clinic v. Houston*, 258 Ga. 434 (1988). However, the court noted that these statutes cannot be expansively construed, for they are in derogation of the general policy in favor of the discovery and admissibility of probative evidence.

The court concluded that a careful reading of the definitions of a “medical review committee” (O.C.G.A. § 31-7-140), “peer review” (O.C.G.A. § 31-7-131(1)), and “review organization” (O.C.G.A. § 31-7-131(3)(B)) show that these terms address “the evaluation of the quality and efficiency of actual medical care services” and do not “encompass the credentialing process to the extent that every decision to extend or maintain staff privileges is a peer review or medical review function.”

Accordingly, the court held that “the proceedings and records” to which the peer review and medical committee review privileges attach include records relating to care of patients other than the plaintiff or the decedent whose estate or interests are represented by the plaintiff. The court reasoned that such a broad exclusion is “clearly authorized by the statutory language and promotes the underlying purpose of the privileges by preserving the candor necessary for the effective functioning of such committees.” However, the court concluded that application of the peer review and medical review board privileges to protect routine credentialing information would needlessly run the risk of barring a plaintiff’s tort action for negligent credentialing.

In so holding, the court rejected the Hospital’s reliance on O.C.G.A. § 31-7-15, which provides that a hospital’s review of professional practices may be performed by a peer review committee and includes the evaluation of medical and health care services or the qualifications and professional competence of persons performing or seeking to perform such services. The court explained that although the language in this statute may be broad enough to encompass the credentialing process, “this does not mean that process constitutes a peer review function” exempt from the discovery process under O.C.G.A. § 31-7-131.

Justice Melton filed a dissenting opinion, joined by Justice Hines, that criticizes the majority opinion as employing “unnecessary levels of construction and misconstruction” to diminish and limit the “*absolute embargo*” both the peer review and medical review committee privilege statutes impose. The dissent argues that this “*absolute embargo*” should apply to the discovery of “*all* proceeding, records, finding and recommendations [relating to credentialing of doctors performed by] peer review groups and medical review committees in civil litigation.”

In summary, as a result of the ruling in this case, unless credentialing information is part of the proceedings and records and involves the “quality and efficiency of actual medical services”, it will not be afforded the peer review and the medical review privileges, under Georgia law.

For a copy of the opinion, [click here](#).