



Recent Cases Related to Negligent Credentialing Claims

Expert Testimony Required to Prove Negligent Credentialing Claim

On February 7, 2006, the Connecticut Court of Appeals upheld judgment in favor of a hospital on the ground that the plaintiff failed to establish the standard of care applicable to his negligent credentialing claim. Neff v. Johnson Memorial Hosp., Docket No. AC 25231 (Feb. 7, 2006). In reaching its decision, the appellate court held that a hospital's decision whether to grant staff privileges to a physician is a "specialized activity" beyond the experience and understanding of a typical juror. Due to the complex nature of the credentialing process, the court held that a plaintiff asserting a negligent credentialing claim must introduce expert testimony to establish the standard of care by which the hospital must be held. The court rejected the plaintiff's argument that the applicable standard of care could be gleaned from the hospital's own by-laws, noting that hospital rules, regulations, and policies do not themselves establish the standard of care.

The decision in Neff is significant in two respects. First, plaintiffs asserting negligent credentialing cases against hospitals will now be required to submit expert evidence that the hospital deviated from the standard of care by credentialing the subject doctor. Requiring plaintiffs to introduce such expert testimony may result in fewer negligent credentialing claims being filed against hospitals in circumstances where the credentialing decision is arguably reasonable on its face. Second, a hospital's failure to comply with its by-laws or credentialing process is no longer dispositive in a negligent credentialing case. Although plaintiffs are allowed to submit evidence of non-compliance with hospital policy, such non-compliance does not - standing alone - establish that the hospital was negligent in deciding to grant privileges to the physician.

Results of Peer Review Proceedings Inadmissible in Negligent Credentialing Case

In Holley v. The Norwalk Hospital Association, the Connecticut Superior Court also addressed a negligent credentialing claim brought against a hospital. In that case, the plaintiffs' daughter suffered brain damage due to the alleged negligence of the defendant anesthesiologist. The plaintiffs alleged that the hospital knew or should have known that the anesthesiologist was unfit to treat their daughter because he was involved in a similar incident five years earlier which was

the subject of a peer review conducted by the defendant hospital.

At trial, the defendant hospital sought to introduce evidence that no adverse action was taken against the anesthesiologist following the previous peer review. Defendant intended to introduce this evidence in defense of plaintiff's assertion that the hospital knew or should have known that the anesthesiologist was unfit to practice. Plaintiff contended that such evidence was inadmissible under the Connecticut Peer Review Statute.

The court agreed with the plaintiff and held that the defendant hospital was prohibited from introducing evidence of the outcome of the earlier peer review process. The court reasoned that Connecticut law generally provides that peer review proceedings are not admissible in civil cases. The court noted that while the law does permit "disclosure of the fact that staff privileges were terminated or restricted," nothing in the statute permits a party to submit evidence that no action was taken as the result of the peer review.

Holley is a Superior Court decision and has limited precedential value. However, the ruling in Holley could have significant negative consequences for hospitals defending against negligent credentialing cases if it is adopted by other courts. That is because Holley permits a plaintiff to assert that a hospital should have known that a physician was unfit to be credentialed simply because the physician was subject to an earlier peer review. By restricting the hospital from introducing evidence that the peer review process resulted in no action against the physician, the hospital is severely limited in its ability to challenge the inference that it "should have known" that the physician was unqualified to practice despite the fact that the physician may have been completely cleared of any negligent conduct during the earlier peer review.

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