

HEALTH LAW

Update

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

Court Interprets Scope of Tennessee Peer Review Statute

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The Tennessee Court of Appeals, in an appeal in the case of Stratienko v. Chattanooga-Hamilton County Hospital Authority¹, recently interpreted the scope of Tennessee's Peer Review Statute.² In this case, Dr. Alexander A. Stratienko, whose privileges at Erlanger Hospital were suspended after an altercation with another physician on the medical staff of Erlanger Hospital, requested the hospital to produce the other physician's credentialing application, along with certain supporting documentation. Dr. Stratienko's argument was that a hospital's credentialing process is part of a hospital's "regular course of business" and is therefore outside the protection of the Tennessee Peer Review Statute.

The court disagreed, ruling that a hospital's credentials committee is a "medical review committee" within the meaning of the Tennessee Peer Statute³ and that a hospital's credentialing process is not part of its "regular course of business," but rather is part of the peer review process, which is protected from disclosure by the Tennessee Peer Review Statute. However, the court also ruled that, to the extent that the credentialing information sought by Dr. Stratienko included information "otherwise available from original sources," the credentialing information was not absolutely privileged simply because it had been provided to Erlanger's credentials committee.

The hospital had argued that, under the "otherwise available from original sources" exception to the privilege provided by the Tennessee Peer Review Statute,⁴ if the requested credentialing information could be obtained from the original source, the hospital did not also have to provide it. However, the court refused to read the exception that narrowly, and remanded to the trial court the task of determining which part, if any, of the credentialing information sought by Dr. Stratienko was "otherwise available from original sources." The court ruled that, after such determination by the trial court, Erlanger Hospital should be ordered to produce that portion of the information.

¹ Appeal from the Circuit Court of Hamilton County; Case No. 04C1497, No. E2005-01043-COA-R9-CV (March 8, 2006).

² T.C.A. § 63-6-219.

³ See also Logan v. Everett, No. M2005-00012-COA-R3-CV, 2006 WL 223708 (January 27, 2006), in which the same court determined that Skyline Medical Center's Credentials Committee and Medical Executive Committee were "medical review committees" for purposes of the Tennessee Peer Review Statute.

⁴ T.C.A. § 63-6-219(e).

This opinion is the latest case from Tennessee courts recognizing the broad confidentiality privileges given to medical review committees and information generated by those committees. It also offers additional assurances that Tennessee courts continue to uphold the intent of Tennessee's Peer Review Statute and give medical review committees this broad protection, including protection to the actual credentialing process itself. Medical review committees should be aware, however that Tennessee's Peer Review Statute does not provide blanket protection to all documents found in a peer review file. Health care entities still may be required to produce information in a peer review file in civil proceedings if one of the exceptions to the statute is met.

Please feel free to call any of the attorneys in our Healthcare Practice Area if you have any questions regarding the Stratienko decision or any other matter.

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