

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 10, 2006 Session

**ALEXANDER A. STRATIENKO, M.D., v. CHATTANOOGA-HAMILTON
COUNTY HOSPITAL AUTHORITY, ET AL.**

**Appeal from the Circuit Court for Hamilton County
No. 04C1497 Samuel H. Payne, Judge**

No. E2005-01043-COA-R9-CV - FILED MARCH 8, 2006

This Tenn. R. App. P. 9 interlocutory appeal involves the interpretation of the Tennessee Peer Review Law of 1967, Tenn. Code Ann. § 63-6-219. After Alexander A. Stratienko, M.D. (“Plaintiff”) filed this lawsuit against the Chattanooga-Hamilton County Hospital Authority and its Chief of Staff, Plaintiff submitted a discovery request seeking credentialing information pertaining to another physician. The Peer Review Statute grants very broad confidentiality privileges to peer review committees and information provided to those committees. However, the statute exempts from that privilege “records made in the regular course of business by a hospital or other provider of health care and information, [and] documents or records otherwise available from original sources” The Trial Court determined that the requested documents were covered by this statute but were not covered by this exception and, therefore, were privileged, and denied Plaintiff’s motion to compel. We vacate the judgment of the Trial Court and remand for further proceedings.

**Interlocutory Appeal Pursuant to Rule 9, Tenn. R. App. P.
Judgment of the Circuit Court Vacated; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., and SHARON G. LEE, JJ., joined.

John P. Konvalinka and J. Scott McDearman, Chattanooga, Tennessee, for the Appellant Alexander A. Stratienko, M.D.

Fred H. Moore and Joseph R. White, Chattanooga, Tennessee, for the Appellees Chattanooga-Hamilton County Hospital Authority and Mel Twiest, M.D., in his official capacity as Chief of Staff of Chattanooga-Hamilton County Hospital Authority.

OPINION

Background

Plaintiff sued the Chattanooga-Hamilton County Hospital Authority and its Chief of Staff, Mel Twiest, M.D., in his official capacity, following the summary suspension of Plaintiff's hospital privileges. The primary issue in this Tenn. R. App. P. 9 interlocutory appeal involves whether certain documents sought by Plaintiff are protected from disclosure by the Hospital Authority pursuant to the Peer Review Statute, Tenn. Code Ann. § 63-6-219.

On September 16, 2004, Plaintiff was involved in a physical altercation with Van Stephen Monroe, M.D. ("Dr. Monroe"). The altercation took place in the cardiac catheterization lab lunchroom at Erlanger Hospital in Chattanooga. While each physician has his version of what happened immediately before and during their altercation, the underlying facts are not directly pertinent to this interlocutory appeal. After the altercation, there were numerous discussions between Dr. Twiest and various physicians and/or representatives of the Chattanooga-Hamilton County Hospital Authority (the "Hospital Authority"). While we need not discuss these conversations in detail, following these discussions the Hospital Authority informed Plaintiff that his clinical privileges were being summarily suspended pending Plaintiff's being evaluated by the Tennessee Medical Foundation.

A few days after being informed that his privileges were summarily suspended, Plaintiff filed this lawsuit and immediately obtained an *ex parte* temporary restraining order prohibiting the Hospital Authority from suspending his hospital privileges pending an evidentiary hearing. Two days later and as required by the Medical Staff Bylaws, the Hospital Authority's Credentials Committee met to consider the suspension of Plaintiff's privileges. The Credentials Committee issued a recommendation to suspend Plaintiff's hospital privileges, a decision which was later upheld by the Medical Executive Committee. According to a September 27, 2004 certified letter sent to Plaintiff:

In accordance with the Medical Staff Bylaws, ... the Credentials Committee met on Wednesday, September 22, 2004 and considered the summary suspension that was imposed on Thursday, September 16, 2004. The summary suspension was imposed as a result of an incident in the Cath Lab area in which it was alleged that you hit, pushed or shoved another physician and the incident was witnessed by a member of the Hospital Staff....

It was the recommendation of the Credentials Committee that the summary suspension be upheld. They also recommended that you be required to be evaluated by the Tennessee Medical Foundation's Physicians Health Program; that you abide by any recommendations and/or follow-up that they suggest and/or require; and that you be

required to apologize to Dr. Monroe for your actions and to all appropriate Hospital Staff. If these requirements are satisfactorily fulfilled, the summary suspension will be removed.

The Medical Executive Committee voted to uphold both recommendations made by the Credentials Committee....

The letter then explained Plaintiff's appeal rights, his right to a hearing, and his right to be represented by counsel, etc. The letter also noted that because Plaintiff had obtained a temporary restraining order, implementation of the Medical Executive Committee's decision would be held in abeyance pending resolution of the restraining order.

The Hospital Authority filed a motion to dissolve the temporary restraining order and to assess monetary damages against Plaintiff. The Trial Court refused to rule on the motion until Plaintiff had an opportunity to conduct discovery. As part of this discovery process, Plaintiff requested the Hospital Authority produce copies of Dr. Monroe's credentials. After the Hospital Authority refused to provide these documents on the basis that they were confidential and protected from disclosure by the Peer Review Statute, Plaintiff filed a motion to compel production of these documents. The Trial Court entered an order denying the motion to compel and, at the same time, granting Plaintiff permission to take an interlocutory appeal pursuant to Tenn. R. App. P. 9. According to the Trial Court:

[T]he Court suggested that Tennessee law concerning whether the application of Dr. Monroe, together with any supporting documentation furnished in connection with such application, all of which were submitted to defendant Chattanooga-Hamilton County Hospital Authority to obtain privileges to conduct certain procedures, including, but not limited to, the right to conduct peripheral vascular procedures, is protected by the "peer review" privilege pursuant to Tennessee's Peer Review Statute, Tennessee Code Annotated Section 63-6-219 is not settled. Accordingly, the Court suggested that an interlocutory appeal may be appropriate....

We then granted Plaintiff's request for a Tenn. R. App. P. 9 interlocutory appeal on the issue of whether the requested documents are privileged or whether they come within the exception contained in the statute.

Discussion

The issues in this appeal involve whether the Trial Court correctly interpreted the provisions of Tenn. Code Ann. § 36-6-219(e). Issues of statutory construction are purely questions of law. *See Lipscomb v. Doe*, 32 S.W.3d 840, 843-44 (Tenn. 2000) (citing *Wakefield v. Crawley*, 6 S.W.3d 442, 445 (Tenn. 1999)). We review legal issues "under a pure *de novo* standard of review,

according no deference to the conclusions of law made by the lower courts.” *Southern Constructors, Inc. v. Loudon County Bd. Of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

The Tennessee Peer Review Statute was passed with the stated intent of encouraging “committees made up of Tennessee’s licensed physicians to candidly, conscientiously, and objectively evaluate and review their peers’ professional conduct, competence, and ability to practice medicine.” The statute further “recognizes that confidentiality is essential both to effective functioning of these peer review committees and to continued improvement in the care and treatment of patients.” Tenn. Code Ann. § 63-6-219(b)(1). To this end, the statute creates a privilege for certain documents, etc., which are generated or provided during the peer review process. Specifically, the statute provides as follows:

All information, interviews, incident or other reports, statements, memoranda or other data furnished to any committee¹ as defined in this section, and any findings, conclusions or recommendations resulting from the proceedings of such committee are declared to be privileged. All such information, in any form whatsoever, so furnished to, or generated by, a medical peer review committee, shall be privileged. The records and proceedings of any such committees are confidential and shall be used by such committee, and the members thereof only in the exercise of the proper functions of the committee, and shall not be public records nor be available for court subpoena or for discovery proceedings. One (1) proper function of such committees shall include advocacy for physicians before other medical peer review committees, peer review organizations, health care entities, private and governmental insurance carriers, national or local accreditation bodies, and the state board of medical examiners of this or any other state. The disclosure of confidential, privileged peer review committee information to such entities during advocacy, or as a report to the board of medical

¹ The statute defines a "medical review committee" or "peer review committee" as “any committee of a state or local professional association or society, including impaired physician peer review committees, programs, malpractice support groups and their staff personnel, or a committee of any licensed health care institution, or the medical staff thereof, or any committee of a medical care foundation or health maintenance organization, preferred provider organization, individual practice association or similar entity, the function of which, or one (1) of the functions of which, is to evaluate and improve the quality of health care rendered by providers of health care service to provide intervention, support, or rehabilitative referrals or services, or to determine that health care services rendered were professionally indicated, or were performed in compliance with the applicable standard of care, or that the cost of health care rendered was considered reasonable by the providers of professional health care services in the area and includes a committee functioning as a utilization review committee under the provisions of Public Law 89-97 (42 U.S.C. §§ 1395-1395pp) (Medicare Law), or as a utilization and quality control peer review organization under the provisions of the Peer Review Improvement Act of 1982, Public Law 97-248, §§ 141-150, or a similar committee or a committee of similar purpose, to evaluate or review the diagnosis or treatment or the performance or rendition of medical or hospital services that are performed under public medical programs of either state or federal design.” Tenn. Code Ann. § 63-6-219(c).

examiners under § 63-6-214(d), or to the affected physician under review, does not constitute either a waiver of confidentiality or privilege. Nothing contained in this subsection (e) applies to records made in the regular course of business by a hospital or other provider of health care and information, documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil proceedings merely because they were presented during proceedings of such committee.

Tenn. Code Ann. § 63-6-219(e).

In support of his argument that information pertaining to Dr. Monroe's credentials are not privileged, Plaintiff cites several cases from other jurisdictions which hold that the credentialing process is outside the scope of that particular jurisdiction's peer review statute. *See, e.g., Willing v. St. Joseph Hospital*, 531 N.E.2d 824, 828 (Ill. App. 1988)(holding that educational transcripts and applications for appointment to staff or for specific privileges "are obviously not a part of the peer-review process. These documents are voluntarily submitted in order to be granted privileges and to be considered for a staff position."); *State of Wisconsin ex rel. Good Samaritan Medical Center v. Maroney*, 365 N.W.2d 887, 892 (Wis. App. 1985)(holding that applications for appointment or reappointment to the hospital staff do not involve criticism or evaluation of the physician's practice by other physicians and, therefore, are one step removed from the peer review process and the applications are not privileged.). Of course, cases such as *Willing* and *Maroney* were decided based on the particular language of the peer review statute of those courts' respective states. Very recently, this Court in *Logan v. Everett*, No. M2005-00012-COA-R3-CV, 2006 WL 223708 (Tenn. Ct. App. Jan. 27, 2006)² determined that the Skyline Medical Center's Credentials Committee and Medical Executive Committee were "medical review committees" for purposes of Tenn. Code Ann. § 63-6-219. *Id.*, at * 7. We reached this result based on the broad definition of medical review committee set forth in Tenn. Code Ann. § 63-6-219(c), *supra* at n.1. We think the same result should be reached here, and we conclude that Dr. Monroe's credentialing process is within the very broad scope of Tennessee's Peer Review Statute.

Plaintiff also argues that the requested information was made "in the regular course of business" by the Hospital Authority and is therefore not privileged because it fits the statutory exception. Plaintiff argues that it is always a part of a hospital's regular course of business whenever a physician seeks to be credentialed or otherwise applies for hospital privileges. As we have concluded that the credentialing process is part of the peer review process, our accepting Plaintiff's argument would essentially destroy the stated intent of the statute. Nothing would be privileged under this statute if we held that the peer review process itself was part of a hospital's regular course of business under that exception. When creating the exception to the confidentiality privilege for documents made "in the regular course of business", the legislature unquestionably was referring to

² The time in which to file a Rule 11 appeal to the Tennessee Supreme Court in *Logan* had not yet expired when the present Opinion was released.

the regular course of business completely separate and apart from the peer review process. Accordingly, we hold that the peer review process, which includes the credentialing process, is not a part of a hospital's regular course of business for purposes of the exception contained in Tenn. Code Ann. § 63-6-219(e).

Plaintiff next argues that the exception contained in Tenn. Code Ann. § 63-6-219(e) completely exempts from protection information that is otherwise available from an original source. Plaintiff again cites cases from other jurisdictions which hold that documents that are otherwise available from outside sources are not protected by those states' peer review statutes. *See, e.g., Shelton v. Morehead Memorial Hospital*, 347 S.E.2d 824 (N.C. 1986). However, these cases are not all that helpful because the Hospital Authority in the present case does not argue that information otherwise available from an outside source is altogether privileged. Rather, the Hospital Authority argues that the "'otherwise available' language in the Tennessee Peer Review Statute relied upon by the Plaintiff ... should be interpreted as prohibiting discovery of information and documents from the committee, but authorizing discovery of such information and documents directly from the original source if not otherwise privileged." Thus, assuming that certain information provided during Dr. Monroe's credentialing process is otherwise available from an outside source, the parties actually are in agreement that this information can be obtained from that outside source. The disagreement is over whether that same information also can be obtained from the Hospital Authority.

The Hospital Authority relies heavily on *McGee v. Bruce Hospital System*, 439 S.E.2d 257 (S.C. 1993) and cases cited therein. The *McGee* Court determined that information in the hands of a peer review committee was privileged and protected from disclosure even if that same information was otherwise available and obtainable from outside sources. The *McGee* Court reached this conclusion based on the strong policy considerations behind the confidentiality provisions of the South Carolina peer review statute, concluding that "the public interest in candid professional peer review proceedings should prevail over the litigant's need for information from the most convenient source." *Id.* at 260.

The stated intent of Tennessee's Peer Review Statute is much the same as South Carolina's in that confidentiality of the peer review proceedings is paramount to reaching the intended result of the statute. However, we fail to see how deeming certain documents as privileged only in the hands of a peer review committee while, at the same time, deeming those same documents as not privileged in any one else's hands does anything toward realistically implementing the statute's stated intent.

Relying on the specific language in Tennessee's statute, the Hospital Authority argues that any documents "furnished to, or generated by, a medical peer review committee, shall be privileged." Tenn. Code Ann. § 63-6-219(e). Because Dr. Monroe's credentialing information was provided to such a committee, the Hospital Authority argues it is absolutely privileged in the hands of that committee. We disagree. The subsection (e) exception specifically states that:

Nothing contained in this subsection (e) applies to records made in the regular course of business by a hospital or other provider of health care and information, documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil proceedings merely because they were presented during proceedings of such committee. (emphasis added)

If we were to accept the Hospital Authority's argument, then the "Nothing contained in subsection (e)" language would be totally negated.³ The statute states that documents otherwise available from an original source "are not to be construed as immune from discovery..." If we accepted the Hospital Authority's argument, we would have to go against the very language of the statute and hold that the documents are to be construed as immune, even if only to the extent they are in the possession of and requested from a peer review committee. We have neither the power nor the inclination to rewrite this statute as that power rests with the Tennessee Legislature.

One of our goals in statutory construction is to "give effect to every word, phrase, clause and sentence of the act in order to carry out the legislative intent." *Tidwell v. Collins*, 522 S.W.2d 674, 676-77 (Tenn. 1975). We should construe a statute "so that no part will be inoperative, superfluous, void or insignificant, and the one section will not destroy another" *Id.* We must also presume that the legislature selected the words deliberately and the use of those words was intended to convey some meaning and purpose. *Clark v. Crow*, 37 S.W.3d 919, 922 (Tenn. Ct. App. 2000). In order to accomplish these goals, we conclude that based on the specific language of the Peer Review Statute: (1) the credentialing process is part of the peer review process; (2) documents generated as part of the peer review process are not to be considered as being made "in the regular course of business" of a hospital for purposes of the exception contained in Tenn. Code Ann. § 63-3-219(e); and (3) documents or records "otherwise available from original sources" are not immune from disclosure from either the original source or a peer review committee.

On remand, the Trial Court is instructed to determine which, if any, of the documents sought by Plaintiff were generated in the Hospital Authority's "regular course of business," keeping in mind that phrase does *not* include the peer review process itself. The Trial Court also shall determine which part, if any, of Dr. Monroe's credentialing information sought by Plaintiff is "otherwise available from original sources" and order the Hospital Authority to divulge that information.

³ We note that the "Nothing contained in" language found in Tennessee's Peer Review Statute is not present in the South Carolina statute at issue in *McGee*, *supra*.

Conclusion

The judgment of the Trial Court is vacated and this case is remanded to the Trial Court for further proceedings consistent with this Opinion and for the collection of the costs below. Costs on this interlocutory appeal are taxed one-half to the Appellant, Alexander A. Stratienco, and his surety, and one-half to the Appellees Chattanooga-Hamilton County Hospital Authority and Mel Twiest, M.D., in his official capacity as Chief of Staff of Chattanooga-Hamilton County Hospital Authority.

D. MICHAEL SWINEY, JUDGE