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MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

TARPON SPRINGS HOSPITAL
FOUNDATION INC., d/b/a FLORIDA
HOSPITAL NORTH PINELLAS,

Petitioner,

v.

DONNA L. WHITE, as Personal
Representative of the Estate of her
deceased husband, David L. White,

Respondent.

Case No. 2D19-603

Opinion filed December 11, 2019.

Petition for Writ of Certiorari to the Circuit
Court for Pinellas County; Keith Meyer,
Judge.

Thomas L. Schieffelin of Adams, Hall,
Schieffelin, & Smith, P.A., Winter Park, for
Petitioner.

Ralph L. Gonzalez and C. Steven Yerrid of
The Yerrid Law Firm, Tampa, for
Respondent.

KHOUZAM, Chief Judge.

Donna White filed suit against Tarpon Springs Hospital Foundation, Inc.
(Tarpon Springs), and Dr. Angelo Cappiello for medical malpractice that allegedly

resulted in the death of her husband. During discovery, she asked the hospital to produce every record that "identifies each and every time Dr. Cappiello became board eligible by the American Board of Internal Medicine" prior to October 15, 2015. After a hearing on a motion to compel this discovery, the trial judge ordered Tarpon Springs to provide the requested documents, but only as far back as three years. Tarpon Springs now petitions this court for a writ of certiorari, arguing that the discovery order is overbroad and will require production of documents privileged under section 395.0191, Florida Statutes (2018). We agree with Tarpon Springs and hereby grant the certiorari petition to quash the order.

An order requiring the production of documents privileged under section 395.0191 that do not relate to an adverse medical incident satisfies the "threshold showing of irreparable harm necessary to invoke this court's certiorari jurisdiction." Bartow HMA, LLC v. Kirkland, 126 So. 3d 1247, 1252 (Fla. 2d DCA 2013) (quoting Columbia Hosp. Corp. of S. Broward v. Fain, 16 So. 3d 236, 239 (Fla. 4th DCA 2009)).

Section 395.0191(8) prohibits the discovery of "investigations, proceedings, and records" of a hospital board "in any civil action against a provider of professional health services arising out of matters which are the subject of evaluation and review by such board." See also Baptist Hosp. of Miami, Inc. v. Garcia, 994 So. 2d 390, 393 (Fla. 3d DCA 2008) (holding that a court order requiring a hospital to list all documents in its physicians' credentialing files in contravention of section 395.0191(8) was a departure from the essential requirements of law). This privilege is intended "to provide that degree of confidentiality necessary for the full, frank medical peer evaluation which the legislature sought to encourage." Cruger v. Love, 599 So. 2d 111,

113-14 (Fla. 1992) (quoting Holly v. Auld, 450 So. 2d 217, 220 (1984)). This privilege extends not only to documents created by the board, but to "any document considered by the committee or board as part of its decision-making process." Id. at 114.

However, documents "otherwise available from original sources are not to be construed as immune from discovery . . . merely because they were presented during proceedings of such board." § 395.0191(8). In other words, a document that "a party secures from the original source is not privileged merely because it was presented during peer review committee or board proceedings." Cruger, 599 So. 2d at 114 (citing Feldman v. Glucroft, 522 So. 2d 798, 801 (Fla. 1988)); see also Columbia/JFK Med. Ctr. Ltd. P'ship v. Sanguonchitte, 920 So. 2d 711, 712 (Fla. 4th DCA 2006) (same).

Since the holding in Cruger, however, an exception to this statutory privilege has developed. The Florida Constitution was amended in 2004 to grant patients the right to access "any records made or received in the course of business by a health care facility or provider relating to any adverse medical incident." Art. X, § 25(a), Fla. Const. The section goes on to say:

The phrase "adverse medical incident" means medical negligence, intentional misconduct, and any other act, neglect, or default of a health care facility or health care provider that caused or could have caused injury to or death of a patient, including, but not limited to, those incidents that are required by state or federal law to be reported to any governmental agency or body, and incidents that are reported to or reviewed by any health care facility peer review, risk management, quality assurance, credentials, or similar committee, or any representative of any such committees.

Art. X, § 25(c)(3), Fla. Const. Known as Amendment 7, this amendment partially "trumps the application of the statutory discovery protections set forth in section[]

395.0191." Bartow HMA, LLC v. Kirkland, 171 So. 3d 783, 785 (Fla. 2d DCA 2015) (quoting Kirkland, 126 So. 3d at 1253). More specifically, Amendment 7 creates a constitutional right to access records considered by a hospital board that would otherwise be protected from discovery by section 395.0191, provided that those records concern adverse medical incidents. However, the amendment does not extend entitlement to documents that contain "general credentialing information unrelated to an adverse medical incident." Id.; see also Morton Plant Hosp. Ass'n, Inc. v. Shahbas ex rel. Shahbas, 960 So. 2d 820, 827 (Fla. 2d DCA 2007) (holding that a discovery request to a hospital under Amendment 7 for all documents relating to the credentialing of one of its physicians was overbroad because the request included documents unrelated to "particular adverse medical incidents"); W. Florida Reg'l Med. Ctr., Inc. v. See, 18 So. 3d 676, 690 (Fla. 1st DCA 2009) (holding that the trial court departed from the essential requirements of law by ordering a hospital to produce documents relating to two physicians' training, where such documents did not relate to an adverse medical incident within the meaning of Amendment 7).

In this case, Tarpon Springs properly invokes our certiorari jurisdiction by alleging that the trial court ordered disclosure of documents privileged under section 395.0191(8), an order that constitutes irreparable harm. See Kirkland, 126 So. 3d at 1252. It is also clear that the trial court departed from the essential requirements of law. Its order requiring Tarpon Springs to produce "each and every record that identifies each and every time Dr. Cappiello became Board Eligible" is overbroad because it requires disclosure of privileged documents considered by the hospital board in its hiring and credentialing of Dr. Cappiello.

Mrs. White argues that the request is permissible because it falls within the constitutional exception of Amendment 7 for documents relating to medical incidents. She claims that negligence by Tarpon Springs in its credentialing process led to Dr. Cappiello being allowed to treat Mr. White, resulting in the "medical incident" that lead to his death. But this argument was rejected in See, 18 So. 3d at 690. In that case, a woman suffered liver damage stemming from a surgical procedure at a hospital. Id. at 681. She sued the hospital for, among other things, negligently credentialing the doctors who operated on her. Id. During discovery, she requested hospital files relating to the doctors' surgical training, and the trial court denied the hospital's motion for protective order as to those documents. Id. at 681-82. However, the First District granted the hospital's certiorari petition on this issue, holding that the doctors' training records did not relate to an adverse medical incident within the meaning of Amendment 7. Id. at 690. Rather, a document relates to an "adverse medical incident" when it relates to a "specific incident involving a specific patient that caused or could have caused injury to or the death of that patient." Id. Similarly, because "there is no established adverse medical incident to which the documents of [Dr. Cappiello's] training relate, the trial court departed from the essential requirements of the law in ordering the production of those documents." Id. See also Shahbas ex rel. Shahbas, 960 So. 2d at 827 ("Because [appellees] are entitled under Amendment 7 only to those documents which contain information about an adverse medical incident, the trial court departed from the essential requirements of law in ordering a blanket disclosure of privileged documents on the basis of Amendment 7.").

Mrs. White also argues that the documents she seeks are not privileged because they originated from sources outside the hospital board. She argues that she can acquire these documents from those sources, and that no irreparable harm has occurred that would warrant a writ of certiorari. We disagree. This argument is a derivative of the position rejected in Cruger. Since "[v]irtually all of the information considered during the peer review process originates from outside sources," Mrs. White's interpretation "would effectively eliminate the protections granted by the statute." Cruger, 599 So. 2d at 114. She must therefore acquire the desired documents from sources other than the hospital board.

We therefore grant the petition and quash the trial court's discovery order insofar as it improperly requires the Tarpon Springs hospital board to disclose the contents of its credentialing records for Dr. Cappiello.

Petition granted, order quashed.

ROTHSTEIN-YOUAKIM and SMITH, JJ., Concur.