

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

25-146 consolidated with 25-147

DONALD DUPRE

VERSUS

OUR LADY OF LOURDES

**REGIONAL MEDICAL CENTER, INC. D/B/A
OUR LADY OF LOURDES HEART HOSPITAL**

**APPEAL FROM THE
FIFTEENTH JUDICIAL DISTRICT COURT
PARISH OF LAFAYETTE, NO. 20214701 C/W 20236736
HONORABLE THOMAS J. FREDERICK, DISTRICT JUDGE**

**SHANNON J. GREMILLION
JUDGE**

Court composed of Shannon J. Gremillion, Guy E. Bradberry, and Wilbur L. Stiles,
Judges.

**AFFIRMED IN PART AS AMENDED;
REMANDED WITH INSTRUCTIONS.**

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GREMILLION, Judge.

Third-party subpoena recipient, Baton Rouge General Medical Center (BRGMC), appeals the trial court's judgment dismissing its motion to quash the subpoena propounded to it by Plaintiff-Appellee, Donald Dupre. For the following reasons, we affirm in part as amended and remand with instructions.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff sued a multitude of parties following a coronary artery bypass graft surgery performed in September 2020 by brothers, Drs. Azeem and Imtiaz Khan, at Our Lady of Lourdes Regional Medical Center d/b/a Our Lady of Lourdes Heart Hospital (Heart Hospital). Plaintiff's right lung was resected while on cardiopulmonary bypass and fully coagulated.¹ He lost large amounts of blood that eventually led to quadrilateral amputation of his limbs. BRGMC has never been named as a defendant in the action and had no connection to the surgery in question. One of Plaintiff's causes of action alleges negligent credentialing of the Khans by Heart Hospital. In pursuit of proving this claim, Plaintiff sought from BRGMC any records related to its credentialing of the Khans to establish what Heart Hospital knew or should have known when it hired and/or granted privileges to the doctors. Heart Hospital granted Azeem hospital privileges in 2017, while Imtiaz was granted privileges in 2019.

Extensive litigation has occurred over the years. In October 2023, Plaintiff filed two separate subpoenas duces tecum directed to BRGMC pertaining to each doctor. The subpoenas are identical and demand the production of:

¹ The medical malpractice action against the doctors, 25-147 (Docket number C-20236736), was consolidated with this one, 25-146 (Docket number C-20214701).

1. Any and all paper or electronic documents establishing your entire file concerning Dr. Azeem Rahman Kan (“Dr. Khan”);
2. Any and all paper or electronic documents establishing the contract between Baton Rouge General Medical Center and Dr. Khan;
3. Any and all paper or electronic documents establishing the personnel records, documents, and files concerning and/or relating to Dr. Khan;
4. Any and all paper or electronic documents establishing the employee records, documents, and files concerning and/or relating to Dr. Khan;
5. Any and all paper or electronic documents establishing the credentialing records, documents, and files concerning and/or relating to Dr. Kahn;
6. Any and all paper or electronic documents establishing the member records, documents, and files concerning and/or relating to Dr. Khan;
7. Any and all insurance contracts and/or agreements concerning, relating to, and/or providing coverage to Dr. Khan;
8. Any CMS/Medicare contracts, letters, agreements, and/or memoranda concerning, relating, and/or providing coverage to Dr. Khan;
9. Any and all incident reports, complaint reports, patient reviews and/or documents concerning the care and treatment provided by Dr. Khan at Baton Rouge General Medical Center;
10. Any and all communications or correspondence sent to and/or received from Our Lady of Lourdes Heart Hospital, including but not limited to, text messages, emails, memoranda, audio messages, voicemails, concerning and/or related to Dr. Khan’s qualifications, abilities, and/or history as a practitioner;
11. Any and all communications or correspondence sent to and/or received from CVT Surgical Center, including but not limited to, text messages, emails, memoranda, audio messages, voicemails, concerning and/or related to Dr. Khan’s qualifications, abilities, and/or history as a practitioner; and
12. Any and all documents referencing, concerning, and/or relating to the granting of privileges to Dr. Khan by Baton Rouge General Medical Center.

In September 2024, BRGMC filed multiple objections and responses to Plaintiff’s subpoenas duces tecum, and alternatively, a motion to quash the

subpoenas duces tecum. On October 3, 2024, Plaintiff filed a motion to compel production of documents responsive to subpoenas and for a judgment of contempt. On October 25, 2024, BRGMC filed an opposition to this motion to compel, and alternatively a motion to continue the hearing. On November 8, 2024, Plaintiff filed a response to BRGMC's motion to quash the subpoenas duces tecum.

On November 18, 2024, the trial court heard oral argument on the motion. The trial court signed a judgment on December 2, 2024, denying BRGMC's motion to quash and granted Plaintiff's motion to compel. The judgment further noted that all responses would be subject to a protective order. BRGMC timely appealed.

ASSIGNMENTS OF ERROR

BRGMC assigns as error:

1. The trial court erred in denying Baton Rouge General's *Motion to Quash Subpoenas Duces Tecum* and granting Plaintiff's *Motion to Compel Production of Documents Responsive to Subpoena* as Plaintiff has never established the relevancy of the information in the Subpoena Duces Tecum, nor has plaintiff ever established good cause for the documents and information requested. Plaintiff is required to show relevancy and good cause for the requests as required by law as to non-party Baton Rouge General.
2. The trial court erred in denying Baton Rouge General's *Motion to Quash Subpoena Duces Tecum* and granting Plaintiff's *Motion to Compel Production of Documents Responsive to Subpoena* on the grounds that Plaintiff's Subpoenas to non-party, Baton Rouge General Medical Center, are overly broad, extremely burdensome, and are a fishing expedition. And that the Subpoenas seek privileged and confidential information from a non-party which is excluded from production under La.R.S. 13:3715.3

Standard of Review

Matters pertaining to pre-trial discovery are deferential to the trial court and will not be reversed in the absence of an abuse of discretion such as an erroneous application of the law. *In re Porche*, 24-795 (La.App. 4 Cir. 6/2/25), 414 So.3d 1218.

“An appellate court must balance the information sought in light of the factual issues involved and the hardships that would be caused by the court’s order when determining whether the trial court erred in ruling on a discovery order.” *Wollerson v. Wollerson*, 29,183, p. 3 (La.App. 2 Cir. 1/22/97), 687 So.2d 663, 665.

“When an appellate court finds the trial court made a reversible error of law, it is required, whenever the state of the record on appeal so allows, to redetermine the facts de novo from the entire record and render a judgment on the merits.” *Laboriel-Pitio v. Latiker*, 20-0669, p. 15 (La. App. 4 Cir. 6/16/21), 323 So.3d 929, 938 (quoting *Dileo v. Horn*, 15-0684, p. 25 (La. App. 5 Cir. 3/16/16), 189 So.3d 1189, 1207). Nevertheless, “ ‘[t]he authority for an appellate court to remand a case to the trial court for proper consideration, where it is necessary to reach a just decision and to prevent a miscarriage of justice, is conferred by La. C.C.P. art. 2164.’ ” *Laboriel-Pitio*, 20-0669, p. 15, 323 So.3d at 938-39 (quoting *Wegener v. Lafayette Ins. Co.*, 10-0810, p. 19-20 (La. 3/15/11), 60 So.3d 1220, 1233-34). “Whether a particular case should be remanded is a matter which is vested largely within the court’s discretion and depends upon the circumstances of the case.” *Id.*, 20-0669, p. 15, 323 So.3d at 939 (citation omitted).

Hendricks v. Wells Fargo Ins., 21-552, p. 4 (La.App. 4 Cir. 3/9/22), 336 So.3d 643 at 646–47 (footnote omitted)(alteration in original).

DISCUSSION

Louisiana Code of Civil Procedure Article 1422 allows for:

discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Louisiana Code of Civil Procedure Article 1354(A) further provides in part:

A subpoena may order a person to appear and produce at the trial, deposition, or hearing, books, papers, documents, any other tangible things, or electronically stored information, in his possession or under his control, if a reasonably accurate description thereof is given. A

subpoena may specify the form or forms in which electronically stored information is to be produced. A party or an attorney requesting the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or cost on a person subject to that subpoena. The court in which the action is pending in its discretion may vacate or modify the subpoena if it is unreasonable or oppressive. Except when otherwise required by order of the court, certified copies, extracts, or copies of books, papers, and documents may be produced in obedience to the subpoena duces tecum instead of the originals thereof. If the party or attorney requesting the subpoena does not specify that the named person shall be ordered to appear, the person may designate another person having knowledge of the contents of the books, papers, documents, other things, or electronically stored information, to appear as his representative.

The courts have uniformly held that the scope of discovery is broad and that privileges, which are in derogation of such broad exchange of facts, are to be strictly interpreted. *Gauthreaux v. Frank*, 95-1033 (La. 6/16/95), 656 So.2d 634; *Smith v. Lincoln Gen'l Hosp.*, 605 So.2d 1347 (La.1992).

The documents that are the subject of the subpoena sent to BRGMC relate to BRGMC's credentialing files that fall under the legislative mandate found in La.R.S. 13:3715.3 which states in part:

A. Notwithstanding the provisions of R.S. 44:7(D) or any other law to the contrary, all records, notes, data, studies, analyses, exhibits, and proceedings of:

....

(2) Any hospital committee, the peer review committees of any medical organization, dental association, professional nursing association, nursing home association, social workers association, group medical practice of twenty or more physicians, nursing home, ambulatory surgical center licensed pursuant to R.S. 40:2131 et seq., ambulance service company, health maintenance organization, any nationally recognized improvement agency or commission, including but not limited to the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or any committee or agency thereof, or any healthcare licensure agency of the Louisiana Department of Health, or healthcare provider as defined in R.S. 40:1299.41(A), or extended care facility committee, including but not limited to the credentials committee, the medical staff executive committee, the risk management committee, or the quality assurance committee, any committee

determining a root cause analysis of a sentinel event, established by the peer review committees of a medical organization, dental organization, group medical practice of twenty or more physicians, social workers association, ambulatory surgical center licensed pursuant to R.S. 40:2131 et seq., ambulance service company, health maintenance organization, or healthcare provider as defined in R.S. 40:1299.41(A), or private hospital licensed under the provisions of R.S. 40:2100 et seq., shall be confidential wherever located 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 available for discovery or court subpoena regardless of where located, except in any proceedings affecting the hospital staff privileges of a physician, dentist, psychologist, or podiatrist, the records forming the basis of any decision adverse to the physician, dentist, psychologist, or podiatrist may be obtained by the physician, dentist, psychologist, or podiatrist only. However, no original record or document, which is otherwise discoverable, prepared by any person, other than a member of the peer review committee or the staff of the peer review committee, may be held confidential solely because it is the only copy and is in the possession of a peer review committee.

ASSIGNMENTS OF ERROR ONE AND TWO²

Non-Party Discovery/Subpoena

BRGMC emphasizes that it is not a party to the litigation. Non-parties are subject to discovery requests/subpoena duces tecum when certain circumstances are met. In addition to relevance, a plaintiff must have good cause to request the production of documents by a non-party. *Stolzle v. Safety & Systems Assur. Cons's, Inc.*, 02-1197 (La. 5/24/02), 819 So.2d 287; *LaBarre v. Texas Brine Co., LLC*, 17-309 (La.App. 1 Cir. 2/7/18), 347 So.3d 949; *See also* La.Code Civ.P. art. 1426. Good cause exists when a plaintiff shows the court's intervention is justified and that an undue burden will not fall on the party who must produce the documents. *Id.* “[T]he

² Despite the wording of BRGMC's second assignment of error, it addresses the issue of whether a privilege applies. We will address the issues of whether the subpoena is overly broad or extremely burdensome before we address the privilege issue. Thus, we are merging the two assignments of error rather than addressing them individually.

relevancy and good cause test applies the same to subpoenas and subpoenas duces tecum.” *Hendricks*, 336 So.3d at 649.

[T]he Code of Civil Procedure establishes that the rules of discovery apply the same to subpoenas and subpoenas duces tecum. *See* La. C.C.P. art. 1356. Louisiana jurisprudence, moreover, demonstrates that the standard the trial court is to apply when considering a motion to quash a discovery subpoena is whether the issuing party has demonstrated relevancy and good cause. *See Channelside [Servs., LLC v. Chrysochoos Grp., Inc.]*, 15-0064, p. 11 [La.App. 4 Cir. 5/13/16], 194 So.3d [751] at 758 [writ denied, 16-1079 (La. 10/12/16), 208 So.3d 373]”; *St. Bernard Port[, Harbor & Terminal Dist. v. Violet Dock Port, Inc., L.L.C.]*, 14-0286, p. 5, [(La.App. 4 Cir. 8/27/14)], 147 So.3d [1266] at 1268 [writ denied, 14-2019 (La. 10/31/14), 152 So.3d 160]. Our jurisprudence further indicates that the relevancy and good cause test applies the same to subpoenas and subpoenas duces tecum. *See generally Channelside*, 15-0064, p. 1, 194 So.3d 751; *St. Bernard Port*, 14-0286, p. 1, 147 So.3d 1266; *Menendez-Ramos v. Garcia Roofing*, unpub., 2019 WL 1233425, 18-713 (La. App. 5 Cir. 3/15/19) (reversing the trial court’s granting of a motion to quash the deposition testimony of a non-party physician who examined injured plaintiff in connection to his workers’ compensation claim, finding physician’s testimony relevant to the issue of the nature and extent of the plaintiff’s injuries).

Id.

In *Hendricks*, the appellate court remanded the case to the trial court because it was “unclear from the record before us what test the trial court applied to deny the motion to quash.” *Id.* The appellate court stated that the “circumstances presented in the instant case warrant remand.” *Id.* at 650. We find that a remand is not warranted for this reason because based on the trial court’s denial of BRGMC’s motion to quash and counsel’s arguments relating to relevancy and good cause at the hearing, the trial court clearly found the information sought by Plaintiff relevant and that Plaintiff showed good cause for the information. The appellate court in *St. Bernard Port, Harbor & Terminal Dist. v. Violet Dock Port, Inc., L.L.C.*, 14-286, pp. 8–9 (La.App. 4 Cir. 8/27/14), 147 So.3d 1266, 1270, writ denied, 14-2019 (La. 10/31/14), 152 So.3d 160, made a similar finding:

Although the trial court did not issue reasons for judgment, the judgment denying the motions to quash indicates that the trial court found that St. Bernard Port made showings of relevancy and good cause to justify its request for the production of records from the non-parties and for compelling the testimony of a representative of Chaffe & Associates regarding these records.

Accordingly, we will review the trial court's grant of the motion to quash under the abuse of discretion standard.

Relevance/Good Cause

Louisiana Code of Evidence Article 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." As in any other tort claim, a plaintiff must prove defendant acted unreasonably by breaching its duty to conform to follow certain standards, in this case, the standards applicable to the credentialing of physicians. Louisiana Revised Statutes 40:2114 sets forth a hospital's duties in deciding to grant privileges to a physician:

A. Each hospital shall have a single, organized medical and dental staff. Medical and dental staff membership shall include doctors of medicine or osteopathy who are currently licensed to practice medicine or osteopathy by the Louisiana State Board of Medical Examiners and dentists licensed to practice dentistry by the Louisiana State Board of Dentistry.

....

C. No individual shall be automatically entitled to membership on the medical and dental staff or to the exercise of any clinical privilege solely on the basis of his license to practice in any state, his membership in any professional organization, his certification by any clinical examining board, or his clinical privileges or staff membership at another hospital without meeting the reasonable criteria for membership established by the governing body of the respective hospital.

D. The provisions of this Section shall in no way affect the provisions of R.S. 37:1301.

E. A hospital shall establish rules, regulations, and procedures setting forth the nature, extent, and type of staff membership and clinical privileges, as well as the limitations placed by the hospital on said staff membership and clinical privileges for all health care providers practicing therein.

In a negligent credentialing case, some relevant factors include “a hospital’s alleged failures to follow its own bylaws, follow up on references, or review the applicant’s compliance with professional education requirements before granting initial privileges.” *Thomas v. Reg’l Health Sys. of Acadiana, LLC*, 19-507, 19-524, p.10 (La. 1/29/20), 347 So.3d 595, 602.

Plaintiff’s petition states that “the information contained in BRGMC’s personnel files and credentialing records for the defendant-surgeons will show the information that Heart Hospital could or should have known had it exercised its proper due diligence.” The doctors listed BRGMC on their credentialing application to Heart Hospital. BRGMC’s records are relevant to determine what information was available to Heart Hospital and what Heart Hospital knew or should have known at the time it credentialled the doctors.

BRGMC argues that the production of “voluminous documentation” is unduly burdensome and again refers to the extensive time period of records requested. Production of records from hospitals is a routine operation in the normal course of business. We do not find the production of employment records of two physicians to be overly burdensome to the hospital. Thus, we find good cause exists because any burden to the hospital is outweighed by the severe damages suffered by the Plaintiff.

Plaintiff’s thirteen requests to BRGMC for records essentially encompasses any and every document or electronic message ever created related to the doctors.

We do find this time period excessively broad. The only documents relevant to the credentialing claim are the ones in existence prior to Heart Hospital's initial credentialing decisions in 2017 of Azeem Khan and 2019 of Imtiaz Khan. Thus, any documents created by BRGMC subsequent to that date are not relevant and are not subject to production.

BRGMC's reliance on *St. Bernard Port*, 147 So.3d 1266, is misplaced. There, the appellate court found the trial court abused its discretion in finding that relevancy and good cause were proven. *St. Bernard Port* involved an expropriation proceeding. Plaintiff sought from a third party a property valuation issued nineteen months before the expropriation proceeding was filed. The appellate court thus found plaintiff failed to make a showing of relevancy and good cause.

BRGMC's credentialing file is relevant to what Heart Hospital knew or should have known at the time it credentialed the doctors and whether it failed to abide by its own bylaws relating to the verification of the doctors' work history and qualifications. The trial court was justified in finding good cause to request the records of a non-party in a negligent credentialing case involving a patient who lost all of his limbs following a surgery. This assignment of error is without merit.

Privilege/In Camera Inspection

In this assignment of error, BRGMC argues that the information sought by Plaintiff is protected, privileged information not subject to disclosure pursuant to La.R.S. 13:3715.3. Alternatively, BRGMC argues that the documents are subject to an *in camera* inspection by the trial court. "The Louisiana Supreme Court has recognized that [La.] R.S. 13:3715.3 does not provide a blanket privilege to all peer review committee documents, explaining we must balance the protection under the statute with the broad scope of discovery under La. C.C.P. art. 1422." *Frederick v.*

St. Charles Surgical Hosp. LLC, 24-526, 24-528, p. 3 (La.App. 5 Cir. 12/23/24), 410 So.3d 905, 908, *writ denied*, 25-189 (La. 4/29/25), 407 So.3d 623.

Although we have found the trial court did not abuse its discretion in finding relevance and good cause, the trial court must now determine whether the documents in question are subject to the privilege found in La.R.S. 13:3715.3. The trial court's denial of the motion to quash does not deem every document in BRGMC's file free from privilege. An *in camera* inspection of the documents must be made by the trial court to determine which, if any, are privileged and not subject to discovery.

The supreme court has made clear that an *in camera* inspection is necessary. The seminal case related to peer review documents is *Smith v. Lincoln General Hospital*, 605 So.2d 1347 (La.1992). In *Smith*, the plaintiff sought the hospital's records relating to a study it conducted regarding the percentage of nosocomial infections per admission. The supreme court stated:

The reliance of the court of appeal upon La.R.S. 13:3715.3(A) and 44:7(D) is partially misplaced. These provisions are intended to provide confidentiality to the records and proceedings of hospital committees, not to insulate from discovery certain facts merely because they have come under the review of any particular committee. Such an interpretation could cause any fact which a hospital chooses to unilaterally characterize as involving information relied upon by one of the sundry committees formed to regulate and operate the hospital to be barred from an opposing litigant's discovery regardless of the nature of that information. Such could not have been the intent of the legislature, especially in light of broad scope given to discovery in general. La.C.C.P. art. 1422. Further, privileges, which are in derogation of such broad exchange of facts, are to be strictly interpreted.

The defendant asserts that these studies are part of the proceedings of the defendant hospital's Infection Control Committee. He asserts by affidavit that the Infection Control Committee is a policy making body. This court has already questioned to what extent hospital committee records are protected by the pertinent statutes and considered that policy making and personnel areas are within the protected scope. *Smith v. Louisiana Health and Human Resources Admin.*, 477 So.2d 1118 (La.1985). Nevertheless, when a plaintiff seeks information relevant to his case that is not information regarding the

action taken by a committee or its exchange of honest self-critical study but merely factual accountings of otherwise discoverable facts, such information is not protected by any privilege as it does not come within the scope of information entitled to that privilege.

This does not mean that the plaintiff is entitled to the entire study, as such study may contain evidence of policy making, remedial action, proposed courses of conduct, and self-critical analysis which the privilege seeks to protect in order to foster the ability of hospitals to regulate themselves unhindered by outside scrutiny and unconcerned about the possible liability ramifications their discussions might bring about. As such, the trial court must make an *in camera* inspection of such records and determine to what extent they may be discoverable.

Id. at 1348; see also *Bridges v. Baton Rouge Gen. Med. Ctr.*, 20-270 (La.App. 1 Cir. 12/30/20), 317 So.3d 662, *writ denied*, 21-144 (La. 4/7/21), 313 So.3d 985.

A few years later, in *Gauthreaux*, 656 So.2d at 634, a writ opinion, the supreme court stated:

In the present case, the trial court interpreted La.R.S. 13:3715.3 as protecting from discovery any information passing before a hospital committee or otherwise discussed in a committee meeting. Such a reading of the peer review committee privilege is clearly too expansive in light of our decision in *Smith, supra*. Therefore, the trial court is ordered to re-examine, *in camera* if necessary, the discovery requests made by plaintiff to determine whether or not each item of information sought from St. Jude Medical Center is protected by the privilege created in La.R.S. 13:3715.3.

In *Sepulvado v. Bauman*, 99-3326, p.1 (La. 12/17/99), 753 So.2d 207, another writ opinion, the supreme court again reiterated the need for an *in camera* inspection noting, “The case is remanded to the trial court to conduct an *in camera* inspection, if it has not already done so, of all materials requested by plaintiffs in their Third and Fourth requests for Production on which relator asserts a peer-review privilege.”

In *Danos v. Minnard*, 19-268 (La.App. 5 Cir. 8/28/19), 279 So.3d 486, the appellate court noted that an *in camera* inspection was necessary to determine privilege:

In the present case, the writ application and the oppositions thereto do not reflect that the trial court conducted an *in camera* review of the discovery documentation at issue before denying relators' motion to compel. Because the trial court did not conduct an *in camera* review of the discovery documentation at issue, we find that it did not have sufficient information before it to determine the applicability, if any, of La. R.S. 13:3715.3 to the discovery documentation at issue. Accordingly, in light of the applicable statutes and jurisprudence noted above, we find that in the present case, an *in camera* review by the trial court of the discovery documentation at issue is required for a proper determination to be made by the trial court as to whether the privilege provided in La. R.S. 13:3715.3 is applicable to the discovery documentation at issue.

Id. at 491–92.

In the very recent case of *In re Porche*, 24-792 (La.App. 4 Cir. 6/2/25), 414 So.3d 1210, the appellate court was tasked with reviewing the documents that the trial court deemed discoverable after conducting an *in camera* review. The appellate court found the trial court erroneously classified some “purely personnel documents” as privileged and ordered the production of the “enumerated personnel documents.” *Id.* at 1218. It affirmed the trial court’s *in camera* inspection of other documents as subject to the peer-review privilege.

A factually identical case is the recently decided *Frederick v. St. Charles Surgical Hospital, LLC*, 410 So.3d 905, in which the plaintiff sought via subpoena duces tecum, the credentialing records of a non-party, the American Board of Orthopaedic Surgery (ABOS), an organization that credentials orthopedic surgeons through a peer-review process. ABOS filed a protective order. The trial court conducted an *in camera* inspection and ordered the production of ABOS’s file except for one document it deemed subject to the privilege of La.R.S. 13:3715.3. ABOS and the surgeon filed for supervisory writs. The appellate court noted that the review of the trial court’s decision was *de novo* and held:

ABOS filed the documents at issue in this Court under seal along with their writ application. Our review of these documents indicates that some of these documents are protected by La. R.S. 13:3715.3 because they are internal documents produced and maintained by ABOS in connection with its peer review process regarding Dr. Waguespack's board certification and recertification process. These documents, page numbers 8-21, 29-35, 42, 50-58, are protected because they consist of “. . . records, notes, data, studies, analyses, exhibits, and proceedings” of the peer review process under the language of R.S. 13:3715.3. These records regarding Dr. Waguespack relate to the ABOS peer review committee’s analysis and conclusions regarding her certification. Because these requested documents are privileged, they are protected from disclosure and are not discoverable by the plaintiffs in this litigation.

However, certain documents in the sealed documents are not privileged because they merely contain factual information that is discoverable. These include Dr. Waguespack’s applications for board certification, numbered pages 1-7, 38-41, and 46-49.² In addition, the letters sent to Dr. Waguespack from ABOS, pages 22, 28, 36, 37, 43-45, and 59-62, are not privileged because ABOS waived any privilege that protected these letters from discovery when mailing the letters to Dr. Waguespack; under her agreement with ABOS and Louisiana R.S. 13:3715.3, Dr. Waguespack is not entitled to any information or data obtained by ABOS. As such, these letters merely contain factual information which is discoverable.

Id. at 909.

We note the specificity with which the court in *Frederick* determined page-by-page whether the privilege applied. This is the process the trial court must undertake on remand. Accordingly, the trial court is ordered to conduct an *in camera* inspection of the requested documents dated prior to the credentialing dates of Dr. Azeem Khan in 2017 and Dr. Imtiaz Khan in 2019.

CONCLUSION

The trial court’s denial of the motion to quash is affirmed; however, the time period is limited to records pre-dating the credentialing of the doctors at Heart Hospital. Third-party subpoena recipient, Baton Rouge General Medical Center, is ordered to produce the records requested for an *in camera* inspection. The trial court

must determine if a privilege applies pursuant to La.R.S. 13:3715.3. Costs of this appeal are assessed to Baton Rouge General Medical Center.

**AFFIRMED IN PART AS AMENDED;
REMANDED WITH INSTRUCTIONS.**

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

25-147 consolidated with 25-146

DONALD DUPRE

VERSUS

AZEEM KHAN, M.D., ET AL.

**APPEAL FROM THE
FIFTEENTH JUDICIAL DISTRICT COURT
PARISH OF LAFAYETTE, NO. 20236736 C/W NO. 20214701
HONORABLE THOMAS J. FREDERICK, DISTRICT JUDGE**

**SHANNON J. GREMILLION
JUDGE**

Court composed of Shannon J. Gremillion, Guy E. Bradberry, and Wilbur L. Stiles,
Judges.

**AFFIRMED IN PART AS AMENDED;
REMANDED WITH INSTRUCTIONS.**

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GREMILLION, Judge.

Plaintiff filed a petition for damages on November 30, 2023, alleging medical malpractice and seeking damages under the Louisiana Medical Malpractice Act. On April 9, 2024, Plaintiff filed a motion to transfer and consolidate this matter with docket number 25-146, Plaintiff's negligent credentialing case arising out of the same facts. For the reasons set forth in docket number 25-146, the trial court's judgment is affirmed as amended and the matter is remanded with instructions.

**AFFIRMED AS AMENDED;
REMANDED WITH INSTRUCTIONS.**