FBT-CV23-6120645-S : CONNECTICUT SUPERIOR COURT

BRENDA PENN-WILLIAMS, ADMIN. : JUDICIAL DISTRICT OF BRIDGEPORT

VS. : AT BRIDGEPORT

THE NORWALK HOSPITAL ASSN. : November 17, 2025

MEMORANDUM OF DECISION re: MOTION FOR PROTECTIVE ORDER (#211.00)

This is a medical malpractice action in which there have been numerous disputes relating to the scope of discovery. The current – and limited – dispute relates to the plaintiffs' efforts to obtain access the so-called credentialling file of one of the defendants, Dr. Brady. As submitted to the court for in-camera review, The defendants contend that the documents sought to be protected come within the scope of the so-called peer review privilege established by General Statutes § 19a-17b. The parties are in agreement that the decision of the Supreme Court in *Babcock v. Bridgeport Hospital*, 251 Conn. 790, 742 A.2d 322 (1999) sets forth the framework for the application of the privilege.

The documents, maintained by the hospital as part of a credentialing file for Dr. Brady, consist of applications for privileges at the hospital, and forms identified as Ongoing Practitioner Performance Evaluation Forms. As to each type of form, there are forms submitted somewhat periodically, i.e., multiple versions over a period of time. (The applications for privileges are not simply forms as may have been submitted by Dr. Brady; they contain handwritten notations indicative of review or other action.)

The court has reviewed the submissions of the parties (docket entries #219.00, #223.00, #224.00 and #226.00) and the documents submitted for in camera review. The court also has reviewed the authorities cited by the parties.

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The court will use the plaintiffs' reply as something of a framework. At the outset of that reply, the plaintiffs acknowledge that "[t]here is a split in Connecticut Superior Courts over whether the requested documents are privileged." Although relying on a Supreme Court decision to support their position (*Babcock v. Bridgeport Hospital*, supra, the Superior Court cases cited all appear to have been decided after *Babcock* was released, and therefore presumably build upon its holdings.

The plaintiffs' reliance on *Doe v. Cochran*, 332 Conn. 325, 210 A.3d 469 (2019) is of limited assistance. In a narrow sense, *Doe* related to the duty of a medical practitioner to a non-patient, and how that should be characterized – clearly not an issue here. In a broader sense relating to the preferred practice of having different theories of liability asserted in separate counts, that is a procedural not substantive concern, and routinely is handled by the non-substantive tool of a request to revise (see, *Practice Book* § 10-35(3). The court understands that the plaintiffs are attempting to assert both vicarious liability of the hospital and a separate claim of negligent hiring. (To be clear, the court rejects the defendants' arguments to the extent that they address the "proper" way to plead a claim of negligence in the process of appointing or re-appointing or approving or re-approving Dr. Brady as an aspect of corporate negligence (distinct from claims of vicarious negligence).)

The plaintiffs' reliance on *Whittington v. Altmann*, 2012 WL 3104607, at *1 (Conn. Super. Ct. June 27, 2012), is generally in support of the argument based on *Doe*. What is perhaps ironic is that after addressing the preliminary procedural issue relating to the proper interpretation of the complaint and its scope, the court then proceeded to evaluate the claim of peer review privilege associated with documents submitted/used for purposes of credentialing, including a discussion of *Babcock*, resulting in a determination that all of the disputed credentialing documents properly were subject to assertion of the peer review privilege.

The plaintiffs next discuss *Dunn v. Chen*, 2011 WL 726112 (Conn. Super. Ct. Jan. 28, 2011). Part of the problem with applying *Dunn* to any other case is the shotgun approach taken by the parties seeking to invoke privileged status. The court was required to establish an appendix – several pages long – reciting its conclusions as to the 13 Exhibits (each with multiple components). The large block quote from the decision on page 6 of the submission includes references to items claimed to be privileged having nothing to do with the narrow scope of this dispute. The specifics recited in that paragraph are examples of the extreme stretch being made to assert privilege:

> "For instance, the licenses or insurances that were submitted as Exhibit 2 contain information that is not a real part of the discussion for the quality of health care. They are documents which in some instances are readily available from other sources such as licensing departments within the state. Additionally, the insurance coverage while a concern to the hospital as a means of protection, is not a document serving the purpose of determining the ability of Dr. Zacharakos to provide medical services or his quality of care. These documents are clearly included in the file or records as a depository and not for use in evaluating the defendant for peer review or for purpose of improving the quality of health care."

This case is far more focused, without the challenge of having to put a large number of documents into a range of categories.

The plaintiffs then refer to a reference in *Dunn* to another case, also apparently including a laundry list of items claimed to be entitled to protection via a protective order:

> "In *Ghent v. Glassman*, Superior Court, judicial district of Danbury at Danbury, Docket Number CV 0303458848, (January 6, 2005, Downey, J.)(2005 Ct. Supr. 196), the court found that documents that contain

> professional schooling and licensure data and professional degrees, privileges authorizations, **reappointment forms**, continuing education, insurance coverage documents, curriculum vitae with a listing of publications and correspondence regarding medical record suspensions (temporary and internal to hospital), fines and a resignation letter were releasable and not subject to a peer review privilege." (Emphasis as added by plaintiffs.)

Ghent contains little in the way of detailed analysis. It recites a list of documents described to be the contents of a "credentialing file" containing "information regarding his schooling, professional degrees, privileges authorizations, reappointment forms, continuing education, insurance coverage documents, curriculum vitae, with a listing of publications and correspondence regarding medical record suspensions and fines, and Dr. Glassman's resignation letter." This listing is followed by the conclusion that "[t]hese documents are not privileged." (*Ghent v. Glassman*, Docket No. CV030348848S, 2005 Conn. Super. LEXIS 19, at *4 (Super. Jan. 6, 2005).) However, the very next paragraph/sentence identifies a "performance evaluation" as a peer review document.

The plaintiffs also rely on *Neumann v. Johnson*, 2001 WL 1159565, at *1 (Conn. Super. Ct. Aug. 29, 2001). Again, this was an instance of overreach. The materials sought to be protected were variously described in terms of "nothing but an acquisition of data by the Credentials Committee together with correspondence between the hospital and the defendant Dr. Johnson concerning his application for privileges." Later in the quoted passage, the materials sought to be protected were described in the broadest of terms:

> "[T]he credentialing file is nothing more than a catchall for whatever the hospital kept after Dr. Johnson got temporary, and then 'active' privileges at the hospital. While there are documents that plaintiff will certainly find interesting, included among the items for which privilege is

claimed are copies of the doctor's medical license, prescription drug authorizations, and numerous other obviously unprivileged items."

The plaintiffs then proceed to a discussion of the scope of the concept of a "proceeding" for purposes of the peer review privilege, which they argue is a somewhat constrained term, emphasizing the procedural aspects of peer review "such as dialogues, debates and discussions that transpire at a peer review meeting, as well as opinions and conclusions reached by committee members." This seems to overlook an aspect of *Babcock* that was mentioned but not emphasized, perhaps because it was not perceived to be necessary to belabor the point.

In describing the starting principle that not everything done by a committee capable of performing a function described as peer review is automatically a peer review activity ("proceeding"), the *Babcock* court set forth the following starting point:

> "Simply because a hospital committee is a medical review committee does not suggest that all of its activities are considered peer review proceedings. The scope of § 19a-17b is specifically defined, not by the nature of the committee, but by whether the committee was engaged in 'peer review.' See General Statutes § 19a-17b (d). That qualifier has been defined separately and, we presume, intentionally. See *Hall* v. *Gilbert & Bennett Mfg. Co.*, 241 Conn. 282, 303, 695 A.2d 1051 (1997). Furthermore, the privilege applies only to those documents that reflect the 'proceedings' of a peer review, or that were created primarily for the purpose of being utilized during the course of peer review. In addition, the privilege does not apply to those documents that were independently 'recorded' or 'acquired.' See General Statutes § 19a-17b (d) (1) and (2)." 251 Conn. 822."

As set forth in this paragraph, the privilege applies not only to "to those documents that reflect the 'proceedings' of a peer review," but also to documents "that were created primarily for the purpose of being utilized during the course of peer review." The decision explicitly excludes "those documents that were independently

'recorded' or 'acquired.'" The documents in question appear to fall into the former and not latter category.

As argued by the defendants, an application for renewal of privileges is created and intended for submission to a committee (formal or informal) for purposes of evaluation of an applicant, including notations apparently reflecting the review process – the procedure for obtaining approval of privileges. The other set of documents clearly has an evaluative quality, as indicated by the title – "Ongoing Practitioner Performance Evaluation."

The court will now focus on the authorities cited by the defendants. As a preliminary matter, and perhaps telegraphed by earlier comments, the court gives no weight to the procedural claim that the claim of improperly certifying (giving operating privileges to) Dr. Brady should have been in a separate count and required compliance with General Statutes § 52-190a. Separate counts as an "issue" typically is raised by way of request to revise. Even if it were a matter that could/should have been addressed by motion to strike, as long as there is some level of notice and no palpable prejudice from poor drafting, the ability to prove a viable cause of action ultimately is the measure. The original complaint contained allegations relating to provision of inadequately trained/qualified physicians (see, ¶ 11(l) of first count and ¶ 7(l) of the second count)), at a minimum should have put the defendants on notice of this type of claim.

Further, to the extent that the defendants claim non-compliance with General Statutes § 52-190a, the time to have raised such a deficiency has long since expired. This is not a situation where an amendment has added new claims potentially invoking applicability of the statute; the above-identified allegations were in the original complaint. A discovery dispute is not the context in which the court should

rule, in anything approaching a definitive sense, as to the scope of the complaint with specific concern as to the applicability of § 52-190a.

The defendants' reliance on *Kenneson v. Johnson & Johnson, Inc.*, Superior Court, judicial district of Waterbury, Docket No. UWYCV146024601S, 2016 Conn. Super. LEXIS 1785, at (June 16, 2016, Shapiro, J.), is somewhat misplaced. First, there was no issue of timeliness or the issue being raised. Second, the issue in *Kenneson* seems to have been based on allegations closer to those set forth in subparagraph (P) of each of the above identified paragraphs, relating to the actual furnishing of care to be provided, equipment to be used, and promulgation of standards, all more plausibly identified as implicating medical malpractice which would trigger applicability of § 52-190a.

The court rejects the defendants' procedural claims.

Focusing on the actual substantive issue before the court, the court finds the discussion in *DeFrancesco v. Stamford Health System*, Docket No. FSTCV126012421S, 2013 Conn. Super. LEXIS 237 (Super. Jan. 28, 2013) to be especially helpful to the extent that it identifies, with some specificity, the documents in the subject doctor's credentialing file that were determined not to be subject to the peer review privilege. The items deemed protected by the privilege are not described in any useful manner (just via exhibit designations), but in the nature of application of a variation of ejusdem generis, the description of documents not subject to the peer review privilege is suggestive of inclusion of documents such as the ones in issue here, as within the scope of the privilege. The itemized description (2013 Conn. Super. LEXIS 237 at *17-22) of matters outside the scope of the privilege generally were prepared for purposes other than a peer review process. In identifying why certain correspondence was not subject to the privilege, there is a reference to "reappointment forms" as not being privileged – but that explicitly was in the context

of why correspondence reporting to the physician the favorable outcome of the review process would not be subject to any privilege.

The defendants also cite and rely upon *Glover v. Griffin Health Services*, Docket No. X06CV055001692S, 2007 Conn. Super. LEXIS 2676 (Super. Oct. 11, 2007). The case emphasizes the practical quality of a determination of whether a committee or other subsidiary of a hospital is performing an activity coming within the scope of peer review,

The defendants rely on *Whittington v. Altmann*, supra; as discussed above in connection with the plaintiffs' reliance on that decision for the purpose of analysis of the pleadings, the court agrees with the pleadings aspect of that decision as well as the conclusion that the materials in question were subject to the peer review privilege. There is a passage quoted by the defendants, but a more expansive quote is warranted:

> 'That 'peer review' is performed by a credentialing committee finds support not only in decisions of our Superior Court; *Brackett v. St. Mary's Hospital*, 2002 Conn.Super Lexis 338 (physician's application for privileges recognized as peer review); *UConn Health Care v. Freedom of Information Commission*, 2008 Conn.Super 422, rev'd on other grounds; but also in our sister state of California. See *Mileikowsky v. West Hills Hospital Medical Center*, 45 Cal. 4th 1259, 91 Cal. Rptr. 3d 516, 203 P.3d 1113 (2009).
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> "Further analysis of subsection (a)(4) leads to the conclusion that there is another reason why the work of a credentialing committee is the work of a 'medical review committee.' The last sentence of this subsection provides as follows: 'It shall also mean any hospital board or committee reviewing the professional qualifications or activities of its medical staff *or applicants for admission thereto*.' (Emphasis added.)" 2012 Conn. Super. LEXIS 1708, *11-12.

While the emphasized language in this last paragraph from *Whittington* may not be directly applicable, it emphasizes that the privilege presumptively is generally applicable to the credentialing process – new or renewal.

The court finds the statutory language and the cases cited by the defendants to be more convincing/compelling, in terms of justifying treatment of the submitted records as subject to the statutory peer-review statute.

Conclusion

The plaintiffs appear to be aware, at least to some extent, of certain historical events giving rise to their claim that the defendant hospital was negligent in renewing the privileges of Dr. Brady with respect to services that could be rendered within the hospital. The plaintiffs also know that the hospital did renew his privileges on multiple occasions prior to the events giving rise to this action. The plaintiffs are only limited to the extent of access to certain records pertaining to internal review by committees performing peer-review-type functions of a limited set of records.

All privileges adversely affect the search for truth, but reflect a balancing based on policy considerations in favor of non-disclosure. As stated in connection with the attorney-client privilege but explicitly noted to be a general characteristic of all privileges:

> "The court in *[Admiral Ins. Co. v. United States District Court*, 881 F.2d 1486 (9th Cir. 1989)] stated that the attorney-client privilege, like all other evidentiary privileges, may obstruct a party's access to the truth. Although it may be inequitable that information contained in privileged materials is available to only one side in a dispute, a determination that communications or materials are privileged is simply a choice to protect the communication and relationship against claims of competing

interests. Any inequity in terms of access to information is the price the system pays to maintain the integrity of the privilege. *An unavailability exception is, therefore, inconsistent with the nature and purpose of the privilege.*" (Internal quotation marks, omitted; emphasis as in cited case.) *Hutchinson v. Farm Family Casualty Ins. Co.*, 273 Conn. 33, 40, 867 A.2d 1 (2005).

For the foregoing reasons, the court is satisfied that the documents submitted for in camera inspection come within the scope of the statutory peer-review privilege. Therefore, the motion is granted.

POVODATOR, JTR.