

Corrective Action and Second Chance Immunity

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The Health Care Quality Improvement Act of 1986 (“HCQIA”) can provide a hospital with immunity from certain monetary damages if it restricts the privileges of a medical staff member. But a hospital qualifies for HCQIA immunity only if statutory requirements are met.

These requirements include (1) having a reasonable belief that the action was in the furtherance of quality health, (2) conducting a reasonable effort to obtain the facts of the matter, (3) providing adequate notice and hearing procedures to the physician, and (4) after the reasonable effort to obtain the facts and conducting the proper hear-

ing, having a reasonable belief that the action was warranted. Without meeting these requirements, a hospital may be vulnerable to certain monetary damage claims brought by the physician whose privileges were restricted.

Fortunately, even if a hospital does not immediately satisfy the immunity elements before restricting a physician’s privileges, it can limit its possible liability if it eventually meets the HCQIA requirements. This concept is illustrated in two recent pretrial decisions from a Michigan federal district court.

A Tale of Many Suspensions

In *Ritten v. Lapeer Regional Medical Center*,¹ Barton Bruxton, the President and CEO of Lapeer Regional Medical Center, summarily suspended the medical staff privileges of Gary Ritten, M.D., on September 2, 2005. After the Medical Executive Committee rescinded the suspension on September 6, 2005, Bruxton took the case to the hospital’s board of trustees, who voted in a special meeting on September 9, 2005, to reinstate the summary suspension. The Board gave Dr. Ritten 30 days to request an appeal to the Hearing Committee. After considering the appeal, which consisted of 11 four-hour sessions from November 2005 to

June 2006, the Hearing Committee determined on July 18, 2006, that the suspension should continue.

Dr. Ritten then filed a lawsuit against the hospital and multiple hospital personnel, seeking monetary damages suffered by his suspension and equitable remedies, including reinstatement of his privileges or “front pay” for the wages he would have earned if he had not been improperly suspended.

In an attempt to dismiss the claims, the hospital filed a summary judgment motion in which it claimed that its actions were entitled to HCQIA immunity. In analyzing the motion, the court broke the Ritten case into three separate events: (1) the Bruxton suspension on September 2, 2005, (2) the Board of Trustees suspension on September 9, 2005, and (3) the Hearing Committee July 18, 2006, suspension continuation.

Third Time’s the Charm

The court found that the Bruxton and Board suspensions did not meet the HCQIA elements for immunity. Among other deficiencies, these rushed actions did not give Dr. Ritten a proper fair hearing. As a result, the court held that the hospital did not have immunity for monetary damages caused by these suspensions.

The court did find, however, that the Hearing Committee's continuation of the Board suspension satisfied the HCQIA requirements. The court was persuaded that the Hearing Committee's careful efforts to obtain the facts of the matter, as well as its in-depth hearing procedures that included over 40 hours of deliberation, satisfied the elements for immunity.

Therefore, while Dr. Ritten could pursue his damage claim for losses suffered as a result of the Bruxton and Board suspensions, the court cut off any monetary damages that arose after the Hearing Committee's action.

Relying on After-Acquired Evidence

With Dr. Ritten's monetary damages now limited, the defendants sought a separate pretrial order to exclude evidence supporting Dr.

Ritten's equitable claims for reinstatement of his privileges, or in the alternative, payment for the wages he would have earned if he had not been improperly suspended.

In deciding the defendants' motion, the court relied on the "after-acquired" evidence of wrongdoing concept applied in employment cases. The court concluded that the evidence that was developed during the Hearing Committee deliberations served as after-acquired evidence that justified Bruxton's and the Board's suspensions. Therefore, reinstatement of Dr. Ritten's privileges was not appropriate.

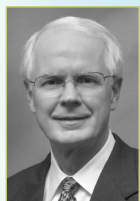
Dr. Ritten tried to claim that the Bruxton and Board suspensions had so severely and permanently damaged his reputation that he was entitled to losses that arose after the Hearing Committee's suspen-

sion. The court, however, was intent on giving full effect to HCQIA's grant of immunity, and barred all evidence of economic damage that Dr. Ritten had suffered after the Hearing Committee reached its decision.

There may well be situations in which a hospital must take action adverse to a physician's privileges under circumstances that do not conform to the requirements of the HCQIA immunity. The district court decisions in Ritten suggest that the hospital, as well as the physician, may benefit from getting the final decision-making process on an HCQIA-compliant track as quickly as possible.

¹*Ritten v. Lapeer Regional Med. Ctr.*, 611 F. Supp. 2d 696 (E.D. Mich. 2009) (order regarding motion for summary judgment); *Ritten v. Lapeer Regional*

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Med. Ctr., No. 07-10265, 2010 WL 374163 (E.D. Mich. Jan. 25, 2010) (order regarding pretrial motions).

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