

Court case pits hospital against its doctors

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A long-simmering feud between a Columbia-HCA owned hospital in Port St. Lucie and its medical executive board will finally reach the state's highest court in a much anticipated showdown this month.

The case could decide how much control hospital administrators exercise over medical peer review and medical executive committee staffs. The heart of the dispute centers on the constitutionality of a five-year-old law that gives the for-profit hospital chain control over decisions regarding medical quality, staff privileges and hospital-based contracts when there's a conflict.

Both the trial court and the 1st District Court of Appeal have ruled that the law is unconstitutional, asserting it was a special law to benefit a corporation. HCA has appealed the decision to the Florida Supreme Court. The case—*Lawnwood Medical Center Inc v. Randall Seeger, MD*—was sched-

uled for oral arguments on June 9.

Although the law affects just one county and does not have state-wide application, the case is being watched nonetheless by the American Medical Association, the Florida Medical Association and the Association of American Physicians & Surgeons (AAPS), all of whom have filed amicus briefs in the case.

"AAPS is particularly concerned about the governance of physicians on staff at hospitals, and the growing misuse of peer review commonly known as "sham peer review," wrote Stuart attorney Glenn Webber, who was retained by the association.

Webber argues that "sham peer review consists of manipulation of peer review to eliminate physicians for economic or other disingenuous reasons. Medical staff bylaws are the last line of defense — indeed, the only real protection — against actions by hospital administrators that can be anticompet-

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itive or even harmful to patient care.”

But attorneys representing the hospital contend the law was needed because the facility as unable to take action against two “rogue” pathologists. In court documents the attorneys argue that the physicians were misdiagnosing patients at a rate of between 20 and 25 percent, and that “clashes” over “quality of care” were common.

The battle began after Columbia-HCA purchased Lawnwood Regional Medical Center and Heart Institute and moved to replace pathologists Drs. Leonard Walker and John Minarcik from staff and replace them.

Orlando health-care attorney Paul Mandelkern said that Florida hospital law allows the hospitals’ medical staff to make recommendations on who should have staff privileges at the facility. Mandelkern — a partner at the firm Lowndes, Drostick, Doster, Kantor, and Reed, P.A. — said the hospital administration generally confirms the physician/applicants credentials and other requisites that may be needed.

Hospital bylaws—which are binding contracts between the hospital and its medical staff—come into play when it comes to granting, terminating, or suspending privileges because they typically lay out specific procedures at the hospital. Bylaws, said Mandelkern, vary from facility to facility.

Court filings argued that the exclusive contracts used at the Port St. Lucie facility violated the hospital’s medical committee’s bylaws, which stated that all hospital-based physicians—pathologists, radiologists and anesthesiologists—remain “open.”

To remove the two physicians, the hospital governing board needed the hospital’s medical executive committee to conduct a peer review. The committee refused to do so. Citing patient safety concerns, the hospital board of directors suspended the medical staff only to have them reinstated after a court battle.

Then the hospital removed the members of the hospital’s medical executive committee, who also sued in court and won.

After a 2001 FBI raid, the two doctors were convicted of fraudulent billing and lost their licenses. Neither physician went to jail.

Power to the hospital

But despite this, the legislature in 2003 quietly passed the St Lucie County Hospital Governance bill that gave power to the hospital administration in disputes with its medical executive committee. It was filed by Rep. Stan Mayfield, a Republican from

Vero Beach.

After Gov. Jeb Bush signed the bill into law, Lawnwood moved to amend the hospital’s medical staff bylaws, a move that was rejected by the medical staff and its director, Seeger.



Mayfield

The hospital then filed suit in Leon County circuit court and lost, and has subsequently appealed the case all the way up to the state Supreme Court.

In a first-person piece published in the Winter 2004 edition of the *Journal of American Physicians*

and *Surgeons*, Minarcik said he pleaded guilty to billing fraud after “years of on agonizing effort to vindicate himself.” In doing so, he agreed to the “merciful punishment of three years probation.

“Additionally, I have lost my med-

ical license, my reputation, my civil rights, my home, my retirement account, and my life savings. I must earn my living by means other than the practice of medicine. I ask the per-

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mission of my probation officer to travel to a meeting, and wear an ankle bracelet so that my whereabouts can be tracked continuously.”

While the case is being heard this month, it could be months before a ruling on the case is made. The court's deci-



Justice Bell

Anstead and Charles Wells — will be forced to retire early next year due to age limits for justices. If a ruling is not made by the time Cantero and Bell step down, the two justices cannot participate in the case since they both plan to return to the private sector.

The court can still make a

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sion also could be complicated by the impending shake-up on the seven-member court.

Two justices appointed by former Gov. Jeb Bush — Kenneth Bell and Raoul Cantero — will step down this fall. And two additional justices — Harry Lee



Justice Cantero

ruling, however, as long as there is four out of the five remaining justices in agreement. Both Anstead and Wells, however, could participate in a decision even after they retire since the case was taken up before they were forced to leave. ♦