

WILLIAM KATES AND BEVERLY KATES, Appellees,

v.

DOYLESTOWN HOSPITAL, ET AL., Appellant.

No. 2718 EDA 2013.

Superior Court of Pennsylvania.

Filed August 22, 2014.

BEFORE: PANELLA, LAZARUS AND JENKINS, JJ.

NON-PRECEDENTIAL DECISION — SEE SUPERIOR COURT I.O.P. 65.37

MEMORANDUM BY JENKINS, J.

Doylestown Hospital ("the Hospital") has appealed from an order dated August 15, 2013 directing the Hospital to provide various records to appellees, William and Beverly Kates ("the Kates"). The Hospital alleges that the documents are privileged under the Peer Review Protection Act ("PRPA"), 63 P.S. § 425.1 et seq. We disagree with the Hospital, and we affirm.

The Kates allege in this action that various medical defendants, including the Hospital, failed to timely diagnose William Kates' stroke. During discovery, the Kates demanded that the Hospital produce documents that the Hospital's employee, Ms. Benner, reviewed in preparation for her deposition. Ms. Benner is a member of the Hospital's Stroke Committee, which establishes procedures for the operation of the Hospital's stroke program and reviews these procedures and the program's operation for compliance with accreditation by the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO").

On April 11, 2013, the Kates filed a motion to compel the Hospital to produce the documents in dispute. In response, the Hospital submitted the following documents under seal to the court for in camera review:

- Document 1 is an email regarding which hospital personnel had completed the American Stroke Association's NI1-1 Stroke Scale program.
- Document 2 is an email regarding enhancements the radiologists made to the night hawk program (which deals with off hours x-ray review).
- Document 3 is the Agenda of the Critical Care Quality Sub-Committee of the Patient Safety Committee.
- Documents 4 through 11, 19 and 20 are email chains regarding the Stroke Committee's Minutes, which deal with the procedures to be used for the operation of the stroke program.
- Documents 12, 13, 16 through 18 and 21 are e-mail chains between Stroke Committee members concerning practices and procedures the hospital will use in the operation of its stroke program.
- Documents 14 and 15 detail the security of Hospital as it deals with stroke and disabled patients at the hospital.
- Documents 22 and 23 are e-mail chains between Stroke Committee members and a Jefferson University administrator exchanging the transfer agreement (which cannot be seen) between the two hospitals.

- Documents 24-26 are email chains regarding the procedures used for 'consults' or orders for 'consults' for stroke patients (consults are requests by one doctor to another asking for their input on the treatment of a patient).
- Document 27 is an email setting forth the topics (procedures and practices) the Stroke Committee will need to be prepared to discuss in an upcoming phone call.

Trial Court Opinion, pp. 3-4^[1].

On August 8, 2013, the court held a hearing on the Kates' motion to compel. On August 15, 2013, the court ordered the Hospital to produce the above list of documents. The Hospital filed a timely appeal from the portions of the order granting the Kates' motion to compel. The Kates did not appeal the portions of the order that permitted the Hospital to withhold several documents from production.

The Hospital has the right to take an interlocutory appeal of this discovery order pursuant to the collateral order doctrine embodied in Pa.R.A.P. 313. Gillard v. AIG Ins. Co., 15 A.3d 44, 56 (Pa.2011) (collateral order doctrine permits appeal from discovery order requiring disclosure over assertion of privilege). Our standard of review over appeals from orders interpreting the PRPA is plenary. Dodson v. DeLeo, 872 A.2d 1237, 1241 (Pa.Super.2005).

The lone issue on appeal is whether PRPA shields from production the documents that the trial court ordered the Hospital to produce.

The trial court observed that the PRPA's purpose is to improve the quality of care, reduce mortality and keep healthcare costs within reasonable bounds. Trial Court Opinion, p. 6. To achieve these goals, there must be honest and sometimes critical internal review of medical providers by their peers. *Id.* The PRPA deems many internal review documents privileged to facilitate accurate and comprehensive internal evaluations of medical providers.

The trial court observed, however, that the PRPA has two important limitations. The first limitation is that only the "proceedings and records of a *review committee*" are exempt from discovery. 63 P.S. § 425.4 (emphasis in original). A review committee (also called a "review organization") is "any committee engaged in peer review, including . . . gather [ing] and review[ing] information relating to the care and treatment of patients." 63 P.S. § 425.2. It also means "any hospital board, committee or individual reviewing the professional qualifications or activities of its medical staff or applicants for admission thereto." *Id.* Peer review, in turn, is defined in pertinent part as

the procedure for evaluation by professional health care providers of the quality and efficiency of services ordered or performed by other professional health care providers, . . . and the compliance of a hospital, nursing home or convalescent home or other health care facility operated by a professional health care provider with the standards set by an association of health care providers and with applicable laws, rules and regulations.

63 P.S. § 425.2. The second limitation is the "original source exception" under 63 P.S. § 425.4, which provides:

Provided, however, that information, documents or records otherwise available from original sources *are not to be construed as immune from discovery or use in any such civil action merely because they were presented during proceedings of such committee*, nor should any person who testifies before such committee or who is a member of such committee be prevented from testifying as to matters within his knowledge, but the said witness cannot be asked about his testimony before such a committee or opinions formed by him as a result of said committee hearings.

Id. (emphasis added). Under this limitation, a hospital may not shield a document from production merely by giving it to a peer review committee. A document not derived from nor part of an evaluation or review by a peer review committee is not privileged. Dodson, supra, 872 A.2d at 1244.

Read together, the trial court reasoned, the two limitations provide that "only documents both generated and used exclusively by a peer review committee during a peer review process are deemed confidential." Trial Court Opinion, p. 8.

The trial court held that the documents that it ordered the Hospital to produce do not relate to peer review. Instead, the court said, the Hospital simply labeled them privileged without good reason:

Peer review necessarily involves evaluating the quality of care provided by medical professionals or evaluating the qualifications of medical care providers. Except for those portions that we held could be redacted, the documents/communications at issue were not used or made for the determination of staff privileges or for credentialing purposes. These documents/communications were not used exclusively for quality assurance purposes by the Stroke Committee and are not incorporated exclusively within a physician's credentialing file. See *Dodson, supra*. Furthermore, Doylestown Hospital cannot point to a definitive action initiating the peer review process prior to the time these documents were created. See *Mazzucca [v. Methodist Hospital]*, 47 D. & C. 3d [55.] 60 [(Phila. Cty. 1985)]. Quite simply, the emails, agenda and minutes we ordered discoverable are non-peer review business records and communications that are neither used, nor generated by the Stroke Committee for peer review purposes.

Id., pp. 8-9. The court held that "setting up the hospital's policies and procedures for the operations of its stroke program or monitoring changes with the Joint Commission's standards [does not] constitute[] a peer review process. . . especially if those procedures relate to discussing the Joint Commission's publically published standards of accreditation." *Id.*, pp. 9, 11.

The court continued:

[T]he Kates' Motion for Production of Documents does not request any reports, documents or recommendations produced by the Joint Commission or exchanged between the Joint Commission and Doylestown Hospital: (1) The Motion requests minutes of the Stroke Committee in 2009 (2) The motion requests documents reviewed by Benner prior to the deposition, and (3) The Motion requests emails between Benner and the Stroke Committee. Furthermore, our Order explicitly exempts any documents, communications or evaluations produced by the Joint Commission or exchanged between the Joint Commission and Doylestown Hospital.

Id., p. 10.

The court concluded:

We certainly are aware that the Joint Commission's peer review procedures may overlap with the Stroke Committee's separate or related peer review procedures. For instance, our in camera review of the disputed documents helped us identify and protect from discovery certain portions of the Stroke Committee minutes that involved actual peer review. Document 8, item 2.a, and Document 10, item 2, both are minutes that detail the Stroke Committee's report and discussions on problems regarding the efficiency and quality of care provided by medical personnel. We allowed those portions to be redacted. We are reluctant, however, to extend this same exemption to other information relating to the Stroke Committee's function of setting up the Stroke Program's policies and procedures[,] especially if those procedures relate to discussing the Joint Commission's publically published standards of accreditation.

[The] Hospital would like the PRPA's confidentiality provision to extend to all communications of the Stroke Committee as well as every document derived by the Stroke Committee. Permitting such a broad request would be a clear misuse of the PRPA's confidentiality provision because it would allow hospitals to insulate their policy making decisions under the guise of peer review. It is beyond the PRPA's plain meaning.

Therefore, [the] Hospital did not meet its burden of establishing that the scope of the PRPA's confidentiality provision extends to the documents and communications our order requires it to disclose.

Id., p. 11.

We have carefully reviewed the record, the briefs of both parties, and the documents that are the subject of this appeal. We agree with Judge McMaster's interpretation of the PRPA and his application of the PRPA to this case. Therefore, we affirm the trial court's order.

Order affirmed.

[1] To eliminate confusion, we do not list the documents that the court found were not subject to production.

Save trees - read court opinions online on Google Scholar.