

## Form Over Substance: The Rhode Island Superior Court Further Refines The Peer Review Privilege

By:



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The Superior Court recently issued a decision in the case of *Pauline R. Hall vs. Rita Schiff, PAC, Brown University, in Providence in the State of Rhode Island and Providence Plantations and Quest Diagnostics LLC*, (Case No. PC 2008-2420, May 23, 2013; Gibney, P.J.), in which the Court discussed and narrowed the application of the peer review privilege under Rhode Island General Laws Section 5-37-1(12) and Section 5-37.3-7(c).

The Plaintiff in this case, Pauline Hall, presented at Brown University Health Services (“Health Center”) when she felt ill in May of 2006. A co-defendant employee of the Health Center ordered a Rapid Strep Test to be performed by co-defendant, Quest Diagnostics, LLC (“Quest”). The test was not performed and the patient was later diagnosed with toxic shock syndrome and suffered a long illness. Plaintiff then sued defendants for negligence.

During the course of litigation the Health Center filed a cross-claim against Quest alleging that Quest negligently failed to perform the Rapid Stress Test. Quest then propounded interrogatories and requests for document production to the Health Center. Quest’s discovery requests focused on the identification and production of a three-page document entitled “Case Review May 2006”, which included a review of the treatment rendered to Plaintiff. In addition, Quest attempted to depose three individual employees of the Health Center. These three individuals were members of the Health Center’s Quality Improvement Committee (“QIC”). These three individuals had also reviewed the case related to the plaintiff and created the Case Review of May 2006.

The Health Center objected to the production of the Case Review and to the questioning of its employees concerning the nature and results of the Case

Review citing the peer review privilege. After reviewing the relevant statutes (cited above) regarding the peer review privilege, the Court determined that the Health Center’s QIC was duly established as mandated by the Joint Committee on Accreditation of Hospitals. The Court also determined that the policies and procedures governing the QIC were established by the Health Center in a Quality Improvement Plan. The Quality Improvement Plan indicated that QIC would meet monthly during the school year and as needed during the summer for planning and review purposes. The Quality Improvement Plan also listed one subcommittee of the QIC entitled “Continuous Quality Improvement Steering Committee.”

The Court found that the Case Review in question was not prepared for the QIC or for the officially listed subcommittee of the QIC nor were the facts of the underlying event ever considered by the QIC. The Court further found that the individuals who participated in the Case Review constituted an informal “executive committee” of the QIC. The Court went on to stress that the Quality Improvement Plan did not include an official delineation of an executive committee of the QIC.

Based upon its determination that the executive committee was an unofficial group without formal procedures that reviewed the events in question on an *ad hoc* basis, the Court decided that a true peer review never occurred and that the Case Review was not privileged. The Court went on to state that despite the intentions of the executive committee to improve patient health care quality, which comported with the purpose of a genuine peer review committee, the Quality Improvement Plan did not confer peer review authority on the executive committee or on any individual members of the QIC.

Of note, the Court cited an out-of-state case (*Roach v. Springfield Clinic*,

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623 N.E.2d 246 (Ill. 1993)) for the proposition that actions of individual members of a peer review committee are not the same as actions of the committee itself. The Court stressed that, as stated in various Rhode Island Supreme Court decisions (*Pastore v. Sampson*, 900 A.2d 1067 (R.I. 2006) and *Moretti v. Lowe*, 592 A.2d 855 (R.I. 1991)), privileges in general are not favored in the law and that any grant of immunity from discovery must be narrowly construed.

In sum, the Court explained that a narrow construction of the peer review privilege mandated that the Case Review in question was not entitled to protection from discovery because it was generated outside a duly-formed peer review committee. The lesson to be learned from this case is that the peer review privilege will not extend to informal, ad hoc committees which are not structured in accordance with governing documents such as policies and procedures on bylaws.

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