

Recent TN Supreme Court Opinion Significantly Impacts Peer Review Privilege

On May 24, 2010, the Tennessee Supreme Court issued an opinion that significantly narrows the scope of the peer review privilege. In *Lee Medical, Inc. v. Beecher*,^[1] the Court considered whether certain documents relating to a decision to terminate a contract for vascular services were protected from discovery under the Tennessee Peer Review Law, Tenn. Code Ann. § 63-6-219. The plaintiff argued that because some of the documents involved review of quality of care, the documents were privileged.

In a 3-2 decision, the Supreme Court rejected this argument and concluded that documents possessed by a peer review or medical review committee are privileged *only* if they pertain to the review of "a physician's professional conduct, competence or ability to practice medicine."^[2] Otherwise, the committee's records are not privileged and are subject to discovery in a civil lawsuit.

What Does This Mean for Health Care Providers?

Based on the *Lee Medical* decision, health care providers may no longer be able to claim that all records of their peer review or medical review committees are privileged. Instead, to avail itself of the privilege, a provider would be required to demonstrate that the documents in question were prepared at the direction of a peer review committee as part of a proceeding involving a physician's professional conduct, competence, or ability to practice medicine.

This decision is expected to have sweeping repercussions for health care entities throughout Tennessee. By way of example, a hospital may no longer be assured that its quality control committee's investigation of certain sentinel events would be privileged. Nor may a hospital be assured that its investigation of potential malpractice or credentialing review related to nurses or other non-physicians is privileged under the statute.

Summary

The *Lee Medical* decision significantly limits the protection of the peer review privilege and creates greater hurdles for health care providers to show that the privilege applies. It is important to consider these limitations, and their effect in potential future litigation, when utilizing peer review or medical review committees to perform any duties unrelated to assessing a physician's professional conduct, competence, or ability to practice medicine.

Should you have any questions about the impact of this decision or its effect on the organizational structure of your peer review committee, please feel free to contact [David Johnson](mailto:dljohnson@millermartin.com) at dljohnson@millermartin.com, [Alison Martin](mailto:amartin@millermartin.com) at amartin@millermartin.com, or any member of Miller & Martin's [Health Care Practice Group](#).

^[1] *Lee Med., Inc. v. Beecher*, No. M2008-024960SC-S09-CV, slip op. (Tenn. May 24, 2010).

^[2] *Id.* at 24.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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