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Florida Supreme Court Issues Opinion Broadly Interpreting Scope of Amendment 7

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The Florida Supreme Court issued its opinion in West Florida Regional Medical Center, Inc. v. See. Of greatest importance is the broad reading the Court gives to Amendment 7 in finding that:

1. a blank application for medical staff privileges is a record of an adverse medical incident and therefore not protected from discovery under sections 766.101(5) and 395.0191(8) and is discoverable under Amendment 7,

2. section 381.028(7)(b)1, Florida Statutes, is invalid because the Amendment 7 disclosure requirements are not limited to only incident reports such as Code 15 reports and AHCA annual reports listed in sections 395.0197(5) and (7) (the hospital risk management statute), and

3. the federal Health Care Quality Improvement Act ("HCQIA") does not preempt Amendment 7 because HCQIA and Amendment 7 each address different concerns and do not conflict with each other.

As a result of this opinion, the range of documents and types of "adverse incidents" subject to disclosure under Amendment 7 is broader than the Code 15 reports and annual reports and "severe injuries" described in sections 395.0197(5) and (7) and includes documents such as blank applications for medical staff privileges.

West Florida Hospital was sued for the negligent grant of medical staff privileges to two physicians. The plaintiff sought discovery of the blank application for privileges. The Court said that only a completed application which contains information necessary to the credentialing process is a document considered by a hospital in its decision-making process and therefore protected by sections 766.101(5) and 395.1091(8). While the protections of sections 766.101(5) and 395.1091(8), which govern hospital peer review and credentialing processes respectively, apply to any document considered by the committee or board as part of its decision-making process, a blank application contains no information and therefore is not a document considered by a hospital committee or board in its decision-making process and therefore is not privileged under the credentialing statutes.

In its broadening interpretation of Amendment 7, the Court said that even if a blank application falls within the parameters of sections 766.101(5) and 395.1091(8), Amendment 7 requires its disclosure because in See's action for negligent credentialing, the blank application is a record of an adverse medical incident. The Court said that Amendment 7's definition of "adverse medical incidents" includes "medical negligence, intentional misconduct, and any other act, neglect, or default of a health care facility or health care provider that caused or could have caused injury or death of a patient. (Emphasis added.)" The Court said that part of the conduct or act by the hospital that led to the alleged negligent grant of medical staff privileges to the physicians are the questions that the hospital posed on its application for medical staff privileges. If the questions asked by the hospital on its application for staff privileges failed to lead to a proper inquiry into the qualifications of the physicians, which in turn led to the grant of privileges to the

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possibly unqualified physicians, that blank application is evidence pertaining to potential negligent conduct by the hospital, i.e., granting privileges to unqualified physicians.

The Court continued its evisceration of the Florida Legislature's effort to limit Amendment 7 by finding that section 381.028(7)(b)1 impermissibly attempts to limit disclosure of matters pursuant to Amendment 7 to those incident reports defined in sections 395.0197(5) and (7), i.e., Code 15 reports and annual reports to AHCA. The definition of "adverse medical incident" in Amendment 7 does not place a such a boundary on matters to be disclosed to patients. The Court previously invalidated subsections (3)(j) and (5)-(7) because they violated the broad right of access to adverse medical reports granted by Amendment 7. See Florida Hospital Waterman v. Buster, 984 So.2d 478 (Fla.2008).

Finally, the Court held that the Health Care Quality Improvement Act of 1986 ("HCQIA") does not preempt Amendment 7 because the purposes of HCQIA and Amendment 7 are achieved without conflict and because Congress, through the express language of HCQIA "clearly demonstrated an intent that state law is not preempted by the HCQIA." The goal of Amendment 7 is to require disclosure of reports containing adverse medical incidents involving a physician. The goal of HCQIA is to provide for effective peer review by immunizing peer review bodies and those providing information to such bodies from civil damages. HCQIA does not make peer review materials confidential and privileged from discovery and Amendment 7 does not deprive physicians of immunity in the peer review process so there is no conflict between the federal law and the Florida constitutional amendment.

Hospitals currently involved in discovery disputes related to Amendment 7 requests should revisit their strategy in light of this new guidance from the Florida Supreme Court.

The Florida Supreme Court previously determined that Amendment 7 does not apply to nursing homes. Nothing in the See opinion changes that.
