Michigan Supreme Court empowers physicians to challenge private hospital staffing decisions

On June 34, 2006, the Michigan Supreme Court issued its opinion in Paye v. Mercy Memorial Hospital et al., 473 Mich. 450 (2008), repudiating more than 24 years of prior case law that had barred patients from challenging hospital staffing decisions in court.

The court, in publishing this judicially created doctrine of non-intervention, the Michigan Supreme Court explicitly overturned a 1980 decision of the Court of Appeals in Paye, a private hospital is subject only to the legal obligations of a private entity, to the greater threat of a public institution. As such, like any other legal entity, hospitals are capable of breaching contractual, committing torts, or violating others’ constitutional or statutory rights against them, they are less subject to the courts’ jurisdiction than anyone else.”

Moreover, the Supreme Court held that the judicially created non-intervention doctrine is “inconsistent with the statutory regime governing the peer review process enacted by the Legislature.”

Analysis
In its careful analysis of the case, the Michigan Supreme Court first reviewed the legislative intent behind Michigan’s Peer Review Immunity Statute. The Michigan Supreme Court found that:

The purpose of statutory peer review immunity is to provide protection to insurers in situations of hospital practices and practitioners, and thereby reduce patient mortality and improve patient care within hospitals. In order to effectuate this purpose, an environment in which medical professionals, in good faith, can perform their duties without the fear of malpractice litigation was created. This Court has repeatedly recognized the need for a peer review process free from the threat of liability in order to protect hospitals and their doctors.

Judicial non-intervention doctrine

The judicial non-intervention or non-reviewability doctrine is a judicially created common-law doctrine providing that courts will not interfere with hospitals’ internal peer review decision making processes, either by reviewing the decisions themselves or reviewing the determination of the decision’s effects.

The doctrine was first enunciated in Michigan in 1985 in the Michigan Court of Appeals decision in Ypsilanti City Hospital v. Detroit Medical Center, 116 Mich. App. 11 (1981), which held, in pertinent part, that hospital’s board of review is authorized to appoint its own members to act as its own “peer review board.”

The effect of these decisions over the years is to provide private hospitals with a strong sense of security that their staffing decisions were immune from judicial intervention.

However, more recently, cases have recognized

Malice exception to peer review immunity

Under Michigan’s Peer Review Immunity Statute, MCL 331.511, et seq., the peer review process is protected from liability “in investigations of hospital practices and practitioners” and to promote honest communication.

In his decision, the Supreme Court sought to reconcile the different definitions of “malice” in light of the Legislature’s “intent to foster the free exchange of ideas in investigations of hospital practices and practitioners” and to promote honest communication.

Impact for physicians

The decision in Paye has empowered physicians who have been the victims of adverse actions against them to seek redress and to pursue actions against the hospital that has adversely affected them.

Medical Staffing

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Three of the seven justices opined that a more liberal definition of “malice” was appropriate

Hospital immunity for staffing decisions

In its decision, the Supreme Court sought to clarify confusion amongst the lower courts that had followed the judicial non-intervention doctrine with regard to the scope of the Peer Review Immunity Statute. The lower courts had not only confused the justices but they also appeared to be focusing on the relationship between the common-law immunity that had been extended to private hospitals under the judicial non-intervention doctrine and the limits of peer review participation under the Peer Review Immunity Statute.

In order to clarify such confusion, the court concluded that hospitals are not one of the specific enumerated “review entities” protected under the statute and emphasized that the peer review immunity statute extends only to the parties who actually participate in the review process, not to the hospital itself, which makes the ultimate decision about who gets staffed or unstaffed.

Impact for physicians

The decision in Paye has empowered physicians who have been the victims of adverse actions against them to seek redress and to pursue actions against the hospital that has adversely affected them.

Such decisions, which have a direct impact on the patient’s ability to access care in a timely manner, because of a broken contract, tortious interference with business relations, tortious interference with contracts, interference with the value of real and personal property, and civil rights violations in challenging such adverse actions.

While the Paye court stopped short of finding that a hospital’s breach of the medical staff privileges was actionable under a breach of contract claim under Michigan law, it did add that the “issue that was not technically before it.” This issue is likely to be addressed in the near future as a growing number of patients are adversely affected by private hospital staffing decisions when filing the suit.

Prior to this decision, private hospitals observed near total immunity for moral decisions. The Paye decision in this regard has altered that impact in unfaulted and unrepresented actions which had tremendous negative actions on physicians’ livelihoods.

However, now private hospitals no longer have the advantage of immunity regarding the legal rights of physicians who are not members of their staff and are exposed themselves to liability. Hospital administrators and other personnel have a duty to the public to act in the best interest of the patient in the case and to properly investigate the performance of the physician with respect to the individual facts and circumstances with the drain that the information will be held responsible.

Moreover, the final decision on medical staffing issues will be held accountable. This decision is truly a victory for physicians across the State of Michigan.