

Credentialing & Peer Review Legal Insider

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- P6 **Looking at the impact of OPPE on team-based care**
Win Whitcomb, cofounder and past president of the Society of Hospital Medicine, raises some concerns about OPPE and how it is used to dictate care.
- P8 **Illinois court allows hospital to keep credentialing information confidential**
After a hospital withdrew its employment offer to a physician, an appellate court overturns a trial court's decision, ruling that two Illinois state laws do not require hospitals to disclose credentialing information.

Malpractice lawsuits against Baylor neurosurgeon implicate hospital

As more patients file claims against Texas neurosurgeon Christopher Duntsch, Baylor prepares to use stringent state laws to fight off liability

Anyone who has worked in the medical field or spent time credentialing physicians has read or heard—or even seen—stories of incompetent doctors that risk the health and often the lives of patients. But the case of Christopher Duntsch may take the cake.

In what many physicians and lawyers are calling one of the most egregious cases of medical malpractice they have ever seen, the aftermath of the Texas neurosurgeon's long and startling saga has brought forth multiple lawsuits against the surgeon and the hospitals that employed him, and shed a light on the medical malpractice and negligent credentialing laws that govern Texas hospitals. So far, five malpractice lawsuits have been filed in federal court against Duntsch and Baylor Regional Medical Center at Plano, where Duntsch held surgical privileges.

The horrifying story begins in 2010 when Duntsch

moved to Dallas after completing a residency program at the University of Tennessee Health Science Center's Department of Neurosurgery in Memphis. By 2011 he had established his own neurosurgery practice and was granted surgical privileges at Baylor Plano. From there, Duntsch made egregious surgical errors, according to sworn testimony later submitted to the Texas Medical Board by Dallas neurosurgeon Randall Kirby, MD, FACS, who had observed some of Duntsch's surgeries at Baylor.

"Let me be blunt: Dr. Christopher Duntsch (TMB license N8183) is an impaired physician, a sociopath, and must be stopped from practicing medicine by the Texas Medical Board immediately," Kirby wrote in a letter to the investigations department at the Texas Medical Board dated June 23, 2013.

Most of Duntsch's malpractice issues have been



Case summary

Illinois Appellate Court dismisses a suit demanding a hospital reveal credentialing information

The Appellate Court of Illinois Second District (the "Court") affirmed a trial court's decision to dismiss a suit brought by a physician against a hospital to force the hospital to produce information related to its credentialing process after the hospital withdrew an offer of employment to the physician. The Court ruled that the confidentiality exceptions in the Illinois Medical Studies Act (MSA) and the Health Care Professionals Credentials Data Collection Act (Credentials Act) did not require the hospital to disclose its credentialing information, noting that the physician had no private right of action under either law.

Dr. Albert R. Davis, a licensed surgeon and anesthesiologist, applied for a full-time anesthesiologist position at Kewanee Hospital in August 2008. In November 2008, the Hospital extended an offer of employment to Davis contingent upon the completion of the Hospital's credentialing process. Throughout January 2009, Davis corresponded with the Hospital's CEO and Mary Schlindwein, a medical staff assistant, regarding the ongoing credentialing process. On January 29, 2009, the Hospital withdrew its employment offer.

On February 11, 2012, Davis requested copies of all data from all sources used by the Hospital to reach that decision. The Hospital responded, stating that no decisions had been reached on Davis' application and that his file had been closed before completion of the credentialing process.

In October 2012, Davis filed a complaint against the Hospital, alleging the decision to rescind the employment offer was based on defamatory remarks by previous coworkers. He alleged the Hospital's failure to disclose the credentialing information violated the MSA and Credentials Act. The Hospital filed a motion to dismiss, including an affidavit by Schlindwein stating that the Hospital's medical executive committee

had not met on, reviewed, or considered Davis' credentialing information prior to withdrawing the offer of employment, and that Schlindwein was the only one who had access to the credentialing file.

The MSA and Credentials Act each contain a provision rendering credentialing documentation confidential. The MSA contains an exception to the general rule of confidentiality in proceedings to decide upon a physician's staff privileges. The Credentials Act similarly contains an exception that applies when a physician challenges a credentialing decision.

The trial court granted the motion to dismiss, ruling that there was a distinction between employment decisions and credentialing decisions, and that because the credentialing process was still ongoing at the time the employment offer was rescinded, the exceptions in the MSA and Credentials Act did not apply. Davis appealed.

Citing past case law, the Court ruled that Davis did not have a private right of action under the MSA. In so ruling, the Court held that Davis was not in the class of people that the MSA intended to protect (i.e., the general public). The Court also held that the purpose of the MSA was to ensure that medical professionals engaged in honest peer review. Therefore, the Court reasoned that Davis' goal of identifying individuals that may have wrongly disparaged him would deter the intent of the law.

The Court also ruled that Davis had no private right of action under the Credentials Act, as Davis was not in the class of people that the statute meant to benefit. Providing Davis with confidential information would deter honest peer review evaluation and the ability to accurately assess a physician's qualifications. ■

Source

Davis v. Kewanee Hosp., 2014 IL App.2d 130304 (Ill. App. Ct. 2nd Dist. Feb. 25, 2014).

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