Medical Staff vs. Hospital Board: The Fight to Control Medical Staff Bylaws

By Carmel Cosgrave and Eric Fogel

As the delivery of medical care in the United States continues to evolve rapidly toward a more corporate model, physicians and their representative organizations bemoan the loss of staff independence. While the interests of an independent and highly motivated medical staff typically align with the hospital’s interests in patient safety and delivering quality health care, too often an active and vocal medical staff can be at odds with the hospital’s interests. The Minnesota Supreme Court recently resolved such a dispute between a hospital and its medical staff in favor of the medical staff, in a case that focused on medical staff bylaws.

The Minnesota Supreme Court’s recent decision in Medical Staff of Avera Marshall Regional Medical Center v. Avera Marshall Regional Medical Center, 857 N.W.2d 695 (December 31, 2014), is being widely hailed as a reaffirmation of the autonomy of a hospital’s medical staff. The governing board of the Medical Center repealed the Medical Staff’s bylaws and replaced them with revised bylaws. The Medical Staff objected to the revised bylaws and eventually brought suit in its name against the Medical Center. The trial court dismissed the lawsuit on the basis that the Medical Staff lacked capacity to bring suit and that the Medical Staff bylaws do not constitute an enforceable contract between the Medical Staff and the Medical Center. The appellate court affirmed the trial court ruling and the Medical Staff appealed to the Supreme Court.

The Minnesota Supreme Court ruled in favor of the Medical Staff on both issues, and remanded the case back to the trial court for further proceedings. The Court noted that although under common law an unincorporated association lacked the capacity to sue or be sued, under Minn. Stat. § 540.151 an association may sue or be sued in its common name. The Court rejected the Medical Center’s argument that since the Medical Staff is subject to the authority and approval of the Medical Center’s Board, it is not a voluntary association existing separately from the hospital. As the Court noted, § 540.151 provides that “when two or more persons associate and act...under the common name..., they may sue in or be sued by such common name.” Id., at 700.

The Court also ruled that the Medical Staff bylaws constitute an enforceable contract between the individual members of the Medical Staff and the Medical Center, contrary to well-recognized principles of contract and corporate law that do not recognize bylaws as creating contractual rights in third parties. The Court rejected the Medical Center’s argument that the bylaws lacked consideration, because they simply fulfilled the Medical Center’s duty under Minnesota law to adopt medical staff bylaws. The Court did agree that fulfilling a pre-existing legal obligation is generally insufficient consideration for a contract. However, this fact was not dispositive, because the Court considered as more important the fact that a doctor must agree to abide by a hospital’s medical staff bylaws in order to be granted privileges at the hospital. A physician could choose not to seek privileges at the hospital because of its bylaws, and the medical center could choose to grant or not grant privileges to a physician who applies. Because both parties had a choice, and thus were not merely complying with a pre-existing legal duty, the Court held that there was sufficient consideration to support the bylaws as an enforceable contract.

The Medical Staff won this round of litigation, but it is not clear whether it will ultimately prevail when the case is remanded. The dissent pointed out that the tension between the Medical Staff and Medical Center occurred shortly after new ownership took over the Medical Center. Many members of the Medical Staff were employed by a professional corporation and had privileges at other hospitals. The Medical Center’s Board of Directors grew concerned over, and upset with, the conduct of the Medical Executive Committee (“MEC”) and the Chief of Staff, whom the Board described as exploitative and harmful to the Medical Center. According to the Board, the Medical Staff failed to carry out its responsibilities for credentialing, peer review, and promoting quality control and patient safety.

As the dissent noted, the majority opinion did not decide the third issue raised on the appeal: whether the Medical Center could unilaterally change the Medical Staff bylaws when they state that changes to them must be approved by two-thirds of the Medical Staff. Importantly, the dissent found that under the Medical Center’s corporate bylaws, articles of incorporation, and the Medical Staff bylaws, the authority to unilaterally amend the medical staff bylaws was reserved by the Board. The dissent also noted that while the Joint Commission standards preclude a hospital from unilaterally amending medical staff bylaws, the Medical Center in this case withdrew from Joint
Commission accreditation three months before the amended bylaws went into effect.

In deciding that the bylaws created an enforceable contract between the Medical Staff and the Medical Center, the majority in Avera cited the Illinois case of Lo v. Provena Covenant Med. Ctr., 826 N.E.2d 592, 598-599 (4 Dist. 2005), among others, as persuasive authority for its ruling. In Lo, a physician sued a medical center for breach of contract, seeking both injunctive relief and damages, alleging that the medical center had violated the medical staff bylaws by restricting his clinical privileges. The appellate court in Lo held that the bylaws created a contract between the physician and the medical center. The Court noted that, “Like a trade union, a medical staff is a voluntary association, ‘[a]n unincorporated business organization that is not a legal entity separate from the persons who compose it.’” Id., at 598. While medical staff bylaws are generally a contract between the voluntary association (i.e., the medical staff) and its individual members, when the medical center’s board approves the staff bylaws, the medical center becomes a party to the contract, according to the Court in Lo.

Illinois, like Minnesota, also has a statute that gives professional associations legal status to conduct business. 805 ILCS 305/0.01 et seq. (2013). However, the Illinois statute does not specifically address an association’s capacity to sue or be sued. Moreover, the Illinois Hospital Licensing Act, 210 ILCS 85 et seq., generally makes the board of directors responsible for governance and makes the medical staff accountable to the Board. 210 ILCS 85/4.5 (2013). So, it is unclear whether a medical staff, as representative body, could sue in its own name in Illinois.

Finally, in an unpublished opinion, the Illinois appellate court reversed a trial court’s entry of summary judgment in favor of a group of physicians who sued their medical center for breach of contract when the board unilaterally changed the insurance coverage minimum required of its doctors. Fabrizio v. Provena United Samaritans Medical Center, No. 4-05-0685 (4 Dist. May 24, 2006). The court noted that while there was ample precedent concerning a hospital’s compliance with its bylaws in the context of staff privileges, “no court has considered any issue of a hospital’s compliance with the procedures in its bylaws when amending its bylaws.” Id. at *5. Historically, Illinois courts have been reluctant to review the actions of private hospitals concerning the granting and revocation of privileges of physicians on their medical staff, often invoking the “limited review doctrine.” Over the years, courts have carved out an exception to the principle of limited review of staff decisions when the decision involves revocation, reduction or suspension of privileges. Id. at *3.

The appellate court in Fabrizio noted that the bylaws allowed the board and the MEC to change the limits of liability insurance periodically by resolution, without amending the actual bylaws or rules and regulations. Here, there was evidence that the MEC agreed to the board’s increase in insurance coverage minimums, even though the staff failed to approve the proposal to increase liability limits for insurance coverage. The MEC proposed a compromise position, but the compromise was never brought to the staff to vote on. The appellate court noted that the MEC compromise proposal did not negate its prior agreement to the increase in liability limits. Ultimately, the Court ruled that the board did not need the MEC concurrence. Since the case did not involve an issue of compliance with medical staff bylaws in the context of a revocation, reduction or suspension of staff privileges, the Court was precluded from reviewing the hospital’s actions under the doctrine of limited review.

The Avera decision teaches that when hospitals and medical centers are before the courts, normal principles of contract and corporate law may not apply because of public policy reasons and the primacy of patient care. In Avera, the Medical Staff bylaws, which were promulgated pursuant to the authority of the Medical Center’s Board of Directors, were found to create a contract between the Medical Staff and the Medical Center. Hospitals and medical centers would be prudent to examine their medical staff bylaws to determine whether these bylaws, if they were deemed to be contractual, would unintentionally create actionable rights and obligations on the part of medical staff and physicians on the one hand, and hospitals and medical centers on the other.

While physician groups may cheer the Avera decision holding for allowing the Medical Staff the right to sue the hospital, in medical negligence actions the hospital, not the medical staff, is liable for failures in patient care. But when patients start suing medical staffs as associations for violations of their bylaws resulting in patient injuries, physicians may well reconsider the benefits of their independence from the hospital board. Indeed, if medical staffs are deemed to have the right to sue, then they can also be sued, even if an individual physician has no dispute with the hospital or medical center, or with an aggrieved patient. Physicians may learn the hard way that contractually binding medical staff bylaws are a double-edged sword that cuts both ways.

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