

October 16, 2014

Colorado Supreme Court Protects Quality Management Privilege for CDPHE-Licensed Providers

Colorado hospitals and other licensed and certified health care facilities scored a significant victory on October 14, when the Colorado Supreme Court issued its *en banc* ruling in [Simpson v. Cedar Springs Hospital, Inc.](#) (2014 CO 73; Supreme Court Case No. 13SA124), and held that Cedar Springs Hospital, Inc., was not required to produce the minutes from two quality management committee meetings conducted at the hospital. The Supreme Court determined that the trial court had erred in ordering Cedar Springs Hospital to produce materials related to quality management in a medical malpractice suit brought by a former patient of the hospital.

At the trial court proceedings, Cedar Springs Hospital refused to produce these materials, asserting that they were protected by the quality management privilege set forth in section 25-3-109 of the Colorado Revised Statutes. This privilege covers “records, reports, or other information of a licensed or certified health care facility that are part of a quality management program.” The statute defines “quality management program” as a “program which includes quality assurance and risk management activities, the peer review of licensed health care professional not otherwise provided for [in another statutory provision], and other quality management functions which are described by a facility in a quality management program *approved by [CDPHE].*” (Emphasis added.) Cedar Springs Hospital argued that because it had maintained a Colorado Department of Public Health and Environment (“CDPHE”) license at all relevant times, its quality management program was necessarily approved by CDPHE.

At the trial court proceedings, the medical malpractice plaintiff argued that Cedar Springs Hospital failed to show that its quality management program was approved by CDPHE because it failed to show that its program was in compliance with all applicable CDPHE regulations. In support of this argument, the plaintiff cited a CDPHE letter to Cedar Springs Hospital regarding its quality management plan, which stated that the plan “ha[d] been approved”, but that Cedar Springs Hospital was required by applicable CDPHE regulations—and the CDPHE letter so instructed the hospital—to “submit a schedule for implementation of the plan within 90 days” of that letter. Therefore, the plaintiff argued—and the trial court agreed—that because Cedar Springs Hospital failed to produce evidence that it submitted an implementation schedule, the hospital’s quality management plan could not be deemed “approved” by CDPHE, and accordingly, the quality management privilege did not protect the quality management committee minutes from disclosure to the medical malpractice plaintiff.

The Colorado Supreme Court overturned the trial court’s ruling, stating that its reasoning “misperceives the purpose of the quality management privilege, which is to promote frank and honest discussion about quality management, not to act as a backstop for regulatory compliance.” Instead, the Supreme Court implied, addressing procedural compliance deficiencies is best left to the regulatory agency charged with such oversight, and should not impact a privilege determination. The court reflected on the legislative history of the privilege, noting the necessity that communication on quality issues be “reasonably unfettered so a complete and thorough evaluation and improvement of the quality of patient and resident care can be accomplished.” Ultimately, the court rejected the trial court’s logic, and ruled in favor of Cedar Springs Hospital in concluding that the quality management privilege did apply to the materials sought.

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This ruling represents a major victory for Colorado hospitals and other CDPHE-licensed facilities in protecting the integrity of their respective quality management programs and ensuring the continued open and honest discussion of quality concerns without worrying that such discussions could be subject to discovery in quality-related lawsuits down the road. Not surprisingly, the case drew several amicus briefs on behalf of both parties, demonstrating the large-scale impact of this decision for Colorado health care providers. Beyond Colorado, this decision will undoubtedly serve as persuasive authority to health care providers in other states bound by similar statutory privilege structures who face quality management privilege challenges.

If you have questions about your quality management program, the quality management privilege, or would like further information on what this decision means for you or your company, please contact any of the Brownstein health law attorneys listed below.

This document is intended to provide you with general information regarding quality management privilege for Colorado hospitals. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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