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Poliner v. Texas Health Systems: Confirming Peer Review Immunity

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In 1986, Congress, concerned about "[t]he increasing occurrence of medical malpractice and the need to improve the quality of medical care," sought to encourage good faith professional peer review activities and enacted the Health Care Quality Improvement Act ("HCQIA"), 42 U.S.C. 11101 *et seq.* Congress found, among other things, that "[t]here is an overriding national need to provide incentive and protection for physicians engaging in effective professional peer review" and granted limited immunity from suits for money damages to participants in professional peer review actions. Twenty years later, *Poliner v. Texas Health Systems*, 537 F.3d 368 (5th Cir. 2008) confirmed that immunity.

In August 2004, Lawrence Poliner, M.D., a board-certified physician in internal medicine and cardiovascular diseases, had certain hospital privileges suspended because of concerns over his care of several patients, including performing an angioplasty on the wrong artery. After a random review of 44 of Dr. Poliner's cases demonstrated substandard care, the peer review committee recommended summary suspension of his catheterization lab and echocardiography privileges.

Dr. Poliner objected to the suspension. After exhausting his procedural rights under the hospital's bylaws, he sued the hospital and several physicians involved in the peer review process, alleging defamation and other claims. The jury awarded Dr. Poliner $366 million in damages. The district court reduced the award to $33.5 million including pre-judgment interest. The defendants appealed, claiming immunity from monetary damages under HCQIA. The Fifth Circuit agreed and reversed the district court's judgment as noted below.

> Under HCQIA, a professional peer review action must be taken:
>
> (1) in the reasonable belief that the action was in the furtherance of quality health care,
>
> (2) after a reasonable effort to obtain the facts of the matter,
>
> (3) after adequate notice and hearing procedures are afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances, and
>
> (4) in the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts and after meeting the requirement of paragraph (3).
>
> A professional review action shall be presumed to have met the preceding standards necessary for [HCQIA immunity] unless the presumption is rebutted by a preponderance of evidence.

42 U.S.C. 11112(a).

The Fifth Circuit noted that "the HCQIA's 'reasonableness requirements were intended to create an objective standard of performance, rather than a subjective good faith standard.'" 537 F.3d at 377. The focus is not on whether the peer

review participants' beliefs as to the course of care were right, or even whether the participants had bad motives, but rather whether the peer review decision was objectively reasonable looking at the facts available to the participants at the time. 537 F.3d at 379-80. The peer review committee had found substandard care in more than half of the 44 of Dr. Poliner's cases it reviewed. Thus, the Fifth Circuit found it objectively reasonable for the peer review committee to conclude that restricting Dr. Poliner's privileges would further quality health care. Id. at 379.

Dr. Poliner argued that HCQIA immunity should not apply because the hospital failed to comply with its own bylaws. The court disagreed, holding that "HCQIA immunity is not coextensive with compliance with an individual hospital's bylaws. Rather, the statute imposes a uniform set of national standards." 537 F.3d at 380-81. So long as the peer review action meets HCQIA's requirements, failure to comply with bylaws would not defeat immunity. Id.

The court made clear, however, that the HCQIA immunity is limited to money damages. Doctors who are subjected to unjustified or malicious peer review still may seek appropriate injunctive and declaratory relief in the courts. 537 F.3d at 381.

The Poliner decision is the result of 10 years of expensive litigation and likely a great personal toll on all involved. The U.S. Supreme Court declined review of the case on January 21, 2009, and denied Dr. Poliner's request for reconsideration on March 23, 2009.

Poliner should provide some comfort to participants in hospitals' professional peer review processes. As the Fifth Circuit noted:

> To allow an attack years later upon the ultimate "truth" of judgments made by peer reviewers supported by objective evidence would drain all meaning from the statute. The congressional grant of immunity accepts that few physicians would be willing to serve on peer review committees under such a threat; as our sister circuit explains, "'the intent of [the HCQIA] was not to disturb, but to reinforce, the preexisting reluctance of courts to substitute their judgment on the merits for that of health care professionals and of the governing bodies of hospitals in an area within their expertise.'" At the least, it is not our role to re-weigh this

judgment and balancing of interests by Congress. [Citations omitted.]

537 F.3d at 384-85.

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Williams Kastner has been providing legal service to health care providers and other clients since 1929. It has offices in Seattle and Tacoma, Washington and Portland, Oregon.

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