

COURT WATCH

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Hamrick v. Charleston Area Medical Center, Appeal No. 33107

Appeal from the Circuit Court of Kanawha County

TOPIC: Whether the Open Hospital Proceedings Act applies to a hospital's Medical Staff Executive Committee?

In *Hamrick v. Charleston Area Medical Center*, the plaintiffs brought an action against the hospital alleging that the hospital's Medical Staff Executive Committee ("MEC") is a governing body of the hospital and, therefore, the meetings of the MEC must be open to the public. The plaintiffs seek to require the MEC to comply with the provisions of the Open Hospital Proceedings Act ("OHPA"). The OHPA provides in part, that:

[A]ll proceedings of the boards of directors or other governing bodies of such hospitals to be conducted in an open and public manner so that the people can remain informed of the decisions and decision making processes affecting the health services on which they so vitally depend and which they help support through tax exemptions, public funding, and other means.¹

If the MEC is a governing body, its meetings must be open to the public, except when in executive session for purposes of peer review and other protected matters.

The circuit court found that the OHPA contemplates only one "governing body" per non-profit hospital. Since the hospital's board of trustees fulfills the OHPA's definition for board of directors, the circuit court held that the MEC is not a governing body of the hospital. Therefore, the meetings of the MEC are not required to be open to the public. The plaintiffs appealed.

In briefs recently submitted to the West Virginia Supreme Court of Appeals, the plaintiffs argue that the MEC fits into the OHPA's definition of a "governing body." A "governing body" is defined as "the board of directors or any other group of persons having the authority to make decisions for or recommendations on policy or administration to a hospital owned or operated by a non-profit corporation."² The plaintiffs claimed that the MEC has the power to make decisions for the hospital.

The hospital argues that the OHPA states that the proceedings of the board of directors or a governing body must be open to the public. The hospital contends that the OHPA only requires one open meeting—either the board of directors meeting or another governing body meeting. In this case, the hospital's board of trustees meeting is open to the public; therefore, the MEC meetings do not have to be open to the public.

¹ W. Va. Code § 16-5G-1.

² W. Va. Code § 16-5G-2(3).

The hospital further argues that the MEC does not fit the definition of a “governing body” because the board of trustees, and not the MEC, makes policy decisions and recommendations on policy and administration to the hospital. Finally, the hospital argues that the language of the OHPA reads “governing body” and not “governing bodies,” and, thus, the hospital can only have one governing body. The plaintiffs argue that there is nothing in the OHPA that states that there can be only one governing body.

The Supreme Court is scheduled to hear oral arguments for each side on January 24, 2007. As the case continues, we will provide updates.