

COURT WATCH

FROM THE OFFICES OF FLAHERTY, SENSABAUGH & BONASSO, PLLC.

January 31, 2007

*Hamrick v. Charleston Area Medical Center, et al.*¹ No. 062794.
Petition for Appeal to the West Virginia Supreme Court of Appeals

TOPIC: Does physician's self-insurance plan meet the requirements of a self-funding program under the Medical Professional Liability Act and conform to the hospital's governing documents?

In *Hamrick v. Charleston Area Medical Center, et al.*, the defendant hospital suspended the plaintiff physician's privileges because the physician's liability insurance was through a self-insurance plan and not through a traditional insurance carrier. Prior to the suspension of the physician's privileges, the physician had established a trust fund containing \$1 million dollars for the purpose of providing himself with medical liability insurance coverage.

After his privileges were suspended, the physician brought suit against the hospital and two hospital administrators. The physician alleged that the hospital and its administrators suspended his privileges without providing the physician with a hearing, and thus, denied him due process.² The physician claimed that his self-insurance plan met the hospital and MPLA requirements for a self-insurance plan. The physician also asserted breach of contract claims, tortious interference with the physician's ability to care for patients, and breach of the implied covenant of good faith and fair dealing.

The hospital and its administrators alleged that the physician's self-insurance plan did not meet the requirements for a self-insurance plan as recognized in the Medical Professional Liability Act ("MPLA").³ The defendants also alleged that the physician's self-insurance plan did not comport with the hospitals' professional liability insurance requirement.

¹ This is Hamrick "2," an action brought in addition to the challenge brought against CAMC 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.

² "Due process" means "[t]he conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights." *Black's Law Dictionary* 516 (7th ed. 1999).

³ The MPLA, § 55-7B-12(a) (2006), states, "[a]n irrevocable trust may be established by or for the benefit of the physician and funded by conveyance to the trustee of the sum of not less than one million dollars, in cash or cash equivalents, subject to disbursement and replenishment from time to time, as described in this section, and exclusive of funds needed for maintenance, administration, legal defense and all other costs."

The circuit court found that the physician's self-insurance plan met the requirements of a self-funding program under the MPLA and conformed to the hospital's governing documents. Therefore, the circuit court granted the physician summary judgment.⁴

On January 11, 2007, the defendants' petitioned the West Virginia Supreme Court to appeal the circuit court's ruling. The West Virginia Supreme Court accepted the defendant's petition. Additional Court Watch updates will be provided as this case develops.

⁴ "Summary judgment" means "[a] judgment granted on a claim about which there is no genuine issue of material fact and upon which the movant is entitled to prevail as a matter of law." *Black's Law Dictionary* 1449 (7th ed. 1999).