

## COURT WATCH

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

March 22, 2007

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

Appeal from the Circuit Court of Kanawha County to the West Virginia Supreme Court of Appeals

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

On March 1, 2007, the West Virginia Supreme Court of Appeals rendered a decision in *Hamrick v. Charleston Area Medical Center*.<sup>1</sup> The Court held that the hospital's medical staff executive committee meetings as currently functioning must be open to the public, pursuant to the Open Hospital Proceedings Act ("OHPA"). Defendant hospital argued that the OHPA contemplates only one "governing body" per non-profit hospital. Defendant hospital further argued that since the hospital's board of trustees fulfills the OHPA's definition for "governing body," the MEC is not a governing body of the hospital.

The West Virginia Supreme Court of Appeals disagreed and found that a hospital can have more than one "governing body." The Court stated that the OHPA's definition of "governing body" includes any "group of persons having the authority to make decisions for or recommendations on policy or administration."<sup>2</sup> Thus, the Court held that a "governing body" is not limited to a single decision-making body in a hospital's governance structure.

Based on the facts before the Court, the Court noted that the MEC makes decisions for the defendant hospital, in that the hospital's board of trustees frequently "rubber stamps" the MEC's decisions. Therefore, the Court found that the MEC is a "governing body" within the meaning of the OHPA. Because the MEC is a "governing body" of the defendant hospital, the Court found that its meetings must be open to the public, in accordance with the OHPA.

Practically, the *Hamrick* decision creates a number of procedural problems, one of which is the conflict between confidential peer review and the OHPA. The peer review process is protected by its own law, the Peer Review Protection Act. While, the OHPA contains several exceptions to the open meetings requirement, and permits closed meetings that will include discussion of a medical practitioner's privileges, employment or discipline of an employee, or matters where a practitioner has failed to comply with regulations to be closed, the OHPA does not allow for any "official action" to be taken at the closed meeting. The Peer Review process contemplates that votes on recommendations for adverse action are protected and not available to the public, unless or until the affected party or hospital specifically waives the privilege. The resolution of this conflict remains for another day. **PHYSICIANS: PLEASE WORK WITH HOSPITAL COUNSEL OR OTHERS TO LEARN HOW TO FOLLOW OHPA RULES FOR CLOSED MEETINGS.**

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<sup>1</sup> *Hamrick v. CAMC* was originally summarized for the January 15, 2007 Court Watch.

<sup>2</sup> W. Va. Code § 16-5G-2(3) (1999) (emphasis added).

