

COURT WATCH

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

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Poliner v. Texas Health Systems

No. 06-11235

Appeal from the United States District Court for the Northern District of Texas

United States Court of Appeals for the Fifth Circuit

ISSUE: Whether the Health Care Quality Improvement Act (HCQIA) can be read to provide immunity from monetary damages to several Defendants whose peer review led to the temporary restriction of a physician's hospital privileges.

The United States Court of Appeals for the Fifth Circuit recently considered the above question in Poliner v. Texas Health Systems and held that the Defendants were immune under the HCQIA from a judgment against them totaling nearly \$33 million. The physician, Lawrence R. Poliner, M.D., was an interventional cardiologist at Presbyterian Hospital in Texas when his treatment of several patients was called into question by the hospital's Clinical Risk Review Committee (CRRC) and Internal Medicine Advisory Committee (IMAC). Though each of the cases involved different issues of varying degrees of concern, Dr. Poliner's medical judgment regarding each patient was questioned and criticized.

It was against this backdrop that Dr. James Knochel, chairman of the hospital's Internal Medicine Department (IMD), asked Dr. Poliner to agree to a temporary restriction of his catheterization lab privileges pending a peer review. Dr. Poliner consented to the restriction and Dr. Knochel immediately appointed six cardiologists to an ad hoc peer review panel. The panel examined a sample containing 44 of Dr. Poliner's cases and concluded that he had provided substandard care to more than half of his patients.

Upon learning the results of the review, the IMAC recommended additional reviews of Dr. Poliner's echocardiograms, an outside review, and an extension of the catheterization lab restriction. Dr. Poliner was given the opportunity to review the case files and comments of the peer review panel for several days in preparation of a meeting with the IMAC. At the meeting, the IMAC expressed concern about Dr. Poliner's poor clinical judgment, inadequate skills, unsatisfactory documentation of medical records, and substandard patient care. In a vote taken the following day, the IMAC unanimously agreed to suspend Dr. Poliner's catheterization lab and echocardiography privileges. A subsequent hearing later upheld the suspension as appropriate and proper under the hospital bylaws.

In response to the final hearing, Dr. Poliner sued Dr. Knochel, the hospital, and several other doctors who had been involved in the peer review process. The Defendants moved for summary judgment in the United States District Court for the Northern District of Texas and argued for immunity under the HCQIA. The District Court concluded that there were actually two peer review actions with regard to Dr. Poliner, and that HCQIA immunity only applied to the second, suspension-invoking review. The initial review was found to involve several factual questions to be decided by a jury.

At trial, Dr. Poliner alleged that his solo practice was a competitive threat to the dominant cardiology groups at the hospital, and that Dr. Knochel had it out for him. The evidence focused largely on the treatment of several patients and whether the mistakes by Dr. Poliner made him a danger to patients. The jury found for Dr. Poliner on all of his claims, and awarded in aggregate more than \$360 million, \$90 million of which was awarded for defamation. The District Court remitted the damages to \$33.5 million and the Defendants appealed.

The Court of Appeals considered the history and statutory requirements of the HCQIA before holding that both of the reviews recognized by the District Court were professional review actions and therefore both were entitled to immunity. The Court of Appeals also found that the hospital's actions were taken in furtherance of quality health care, one of the recognized goals of the HCQIA. In defense of its decision to reverse the District Court decision, the Court of Appeals stated that “[t]he immunity from money damages may work harsh outcomes in certain circumstances, but that results from Congress’ decisions that the system-wide benefit of robust peer review in rooting out incompetent physicians, protecting patients, and preventing malpractice outweighs those occasional harsh results.”¹ The Court also noted the following in its decision:

This case demonstrates how the process provisions of the HCQIA work in tandem: legitimate concerns lead to temporary restrictions and an investigation; an investigation reveals that a doctor may in fact be a danger; and in response, the hospital continues to limit the physician's privileges. The hearing process is allowed to play out unencumbered by the fears and urgency that would necessarily obtain if the physician were midstream returned to full privileges during the few days necessary for a fully informed and considered decision resting on all the facts and a process in which the physician has had an opportunity to confront the facts and give his explanations.

Because the peer review actions met the statutory standards, the Defendants were found to be immune under the HCQIA and the judgment of the District Court was reversed.

¹ Poliner v. Texas Health Systems, No. 06-11235, 21 (2008)