

MEMO

To: MMA Policy Council
From: Teresa Knoedler, MMA Staff
Re: Legislative protection for medical staffs in non-accredited hospitals
Date: January 15, 2016

Background: The Legal Battle

For over 4 years, the medical staff of the Avera Marshall Regional Medical Center has been litigating a dispute with the Avera Marshall Regional Medical Center and its board. The dispute touches on core aspects of medical staff autonomy. After a prolonged disagreement between the medical staff and hospital board about medical staff self-governance, peer review, and the medical staff role in quality assurance, the hospital unilaterally amended the medical staff bylaws, in contravention of the procedures set forth in the bylaws. The medical staff was forced to file a lawsuit in civil court, seeking a declaration that the hospital had violated the terms of the bylaws by unilaterally amending, and seeking to revoke the amendment.

The case proceeded from district court, to the Minnesota Court of Appeals, and finally to the Minnesota Supreme Court, which held that medical staff bylaws are a contract between the medical staff and the hospital. This felt like a significant victory for Minnesota physicians and medical staffs. However, the Minnesota Supreme Court did not answer the more precise question of whether, if medical staff bylaws are contracts, a hospital may unilaterally amend them. Accordingly the case was sent back to the lower court to address that narrow question.

The lower court recently held that even though medical staff bylaws are a contract between the medical staff and hospital, a hospital may unilaterally amend the bylaws in order to fulfill its ultimate duty to provide quality patient care. This decision is once again being appealed to the Minnesota Court of Appeals. During the course of this litigation, physicians and organized medicine have spent well over one million dollars and expended countless hours advocating on behalf of medical staffs in Minnesota. The MMA has been an active supporter and served as a friend-of-the court during the litigation. Yet despite these efforts and favorable Minnesota Supreme Court opinion, the medical staff of Avera Marshall hospital continues to be disenfranchised by the hospital board due to the unilaterally-amended bylaws full of terms unfavorable to the medical staff.

Statutory and Regulatory Landscape

The rights and obligations of medical staffs are well-defined by several sources. The Joint Commission on the Accreditation of Hospitals (“Joint Commission”) is the national body that accredits hospitals, and which was established over 60 years ago by the American Medical Association in conjunction with the American Hospital Association.¹ A principal motivation behind the establishment of the Joint Commission was to formulate objective standards for patient care and to standardize certain governing and operational processes. Joint Commission standards have always endorsed a self-governing medical staff, which enables physicians to exercise independent professional judgment for their patients, while still allowing the hospital administration to run the hospital effectively.

The Joint Commission standards that apply to the medical staff issues that arose in Avera Marshall are:

- The medical staff should perform its duties under written bylaws, binding on the members of the medical staff and on the hospital.
- The members of the medical staff should designate their own leaders.
- Members of the medical staff should be allowed to retain their hospital privileges except when a peer review committee, acting under the authority of the medical-staff leadership and adhering to requirements of due process, determines otherwise, based on considerations of professional competence and abilities.
- The leaders of the medical staff are to represent the medical staff as a whole before the hospital administration.
- The medical staff bylaws can be amended only with the consent of both the medical staff and the hospital.

Similarly, the rights and obligations of medical staffs, as well as the relationship between medical staffs and hospital administration, are addressed by the Centers for Medicare and Medicaid Services (“CMS”). CMS promulgates Conditions of Participation for Hospitals (“COPs”), which are federal regulations delineating standards and requirements for hospitals that wish to participate in Medicare or Medicaid programs. The COPs require hospitals’ governing bodies to “[a]ssure that the medical staff has bylaws.”² The COPs also require that the “medical staff must adopt and enforce bylaws to carry out its responsibilities”,³ which bylaws must also be approved by the governing body.”⁴

¹ The Joint Commission is a not-for-profit corporation that accredits and certifies more than 19,000 health care organizations and programs in the United States. *See* http://www.jointcommission.org/about_us/about_the_joint_commission_main.aspx. Joint Commission accreditation standards are recognized by the Centers for Medicare and Medicaid Services, and institutions maintaining Joint Commission accreditation may be eligible to forego government inspections

² 42C.F.R. §482.12(a)(3).

³ 42 C.F.R. §482.22(c).

⁴ 42 C.F.R. §482.22(c)(1).

Neither Joint Commission nor CMS standards permit a hospital board to unilaterally amend medical staff bylaws and subsequently strip the medical staff of its self-governance and quality-assurance functions. However, these standards do not help the Avera Marshall medical staff, because the Avera Marshall Regional Medical Center is not Joint Commission accredited and is not subject to the full COPs from CMS, because it is a critical access hospital.

In Minnesota, hospital licensure is regulated by the Minnesota Department of Health, which is given statutory permission to defer to the standards and inspections of the Joint Commission.⁵ A hospital that is accredited by the Joint Commission may meet state licensure standards by submitting its joint accreditation certification and inspection record to the Department of Health. In contrast, a hospital that is not accredited by the Joint Commission must submit to state oversight and inspection. The Department of Health has broad authority in statute and rules to set standards for those hospitals that are not Joint Commission accredited. However, the Department of Health is directed that “[t]he medical staff shall be responsible to the governing body of the hospital for the clinical and scientific work of the hospital. It shall be called upon to advise regarding professional problems and policies.”⁶ Further, Minnesota rules articulate that “the medical staff shall be an organized group which shall formulate and, with the approval of the governing body, adopt bylaws, rules, regulations and policies for the proper conduct of its work.”⁷ Finally, Minnesota rules strongly recommend that the rules and standards of the Joint Commission be adopted by all Minnesota hospitals.⁸ Minnesota has expressed a clear favor for Joint Commission standards, although those standards are not explicit in statute or rule.

Legislative solution

Minnesota’s hospital licensure standards are not as comprehensive or explicit as the standards articulated by either the Joint Commission or CMS. Accordingly, a Minnesota hospital that is not Joint Commission accredited or a full CMS participant may choose to disenfranchise its medical staff as the Avera Marshall Regional Medical Center has done for years. It is not yet clear that such medical staffs will have meaningful protection from Minnesota courts.

This issue was discussed at the April 2015 Policy Conference, convened by the Policy Council. Attendees were polled on the question, “Should MMA work to pursue a change in Minnesota rules on hospital licensure to limit or preclude unilateral medical staff bylaws amendments by hospital boards of directors or medical staffs?” Results were 69% in support, 16% in opposition, and 16% uncertain.

⁵ Minn. Stat. § 144.55

⁶ Minn. R. 4640.0800, subp.1.

⁷ Minn. R. 4640.0800, subp.2.

⁸ Minn. R. 4640.0700, subp. 1 (2011).



Based on this input and gap in Minnesota law, the following proposed policy position is offered for MMA Policy Council consideration:

The MMA will work to pursue a change in Minnesota law on hospital licensure to limit or preclude unilateral medical staff bylaws amendments by hospital boards of directors or medical staffs, consistent with current Joint Commission and CMS requirements.

The purpose goal would be to permit the Department of Health to defer to Joint Commission accreditation for those hospitals that choose to be accredited, but also compel the Department to enforce higher standards as to those hospitals that choose not to be accredited.

A legislative solution along these lines would offer enduring protection to Minnesota medical staffs, without relying on the protection of the court system.