Important Decisions in Ohio on Hospital Negligent Credentialing Claims

In the context of medical malpractice actions, it is often the case that a plaintiff will allege negligence against a “private” physician and then also assert a separate negligence claim, known as a negligent credentialing claim, against the hospital for granting the physician “medical privileges” to use the hospital’s facilities. This separate claim has been established in Ohio for years. A negligent credentialing claim requires the plaintiff to prove the following elements to prevail: (1) the plaintiff was injured by the negligence of a staff physician; (2) negligence on the part of the hospital in selecting or retaining the physician; (3) the physician would not have been granted staff privileges absent the hospital’s negligence; and, (4) the plaintiff would not have been injured absent the hospital's negligence in selecting or retaining the physician.

While claims of physician negligence and negligent credentialing claims are typically brought in the same case, the Ohio Supreme Court recently made clear that a negligent credentialing claim does not become ripe until such time as the defendant physician is found liable for medical negligence. See, Schelling v. Humphrey (2009), 123 Ohio St.3d 387. In Schelling, the Ohio Supreme Court expressly stated that a plaintiff cannot proceed with a negligent credentialing claim absent an express finding, admission or stipulation that the injury sustained by the plaintiff was caused by the medical negligence of the subject physician. Thus, a pursuant to Schelling, a plaintiff must either: (1) obtain a prior finding that the negligence of the physician caused injury to a patient and then institute a separate action for negligent credentialing or (2) make the allegedly negligent doctor a party to the action. If a plaintiff chooses the latter method, the Court indicated that bifurcation of the negligence claim is appropriate to allow the fact finder to determine whether the doctor was liable before the hospital was forced to defend the negligent credentialing claim at trial. If the plaintiff is successful in obtaining a finding of negligence, only then may the negligent credentialing action proceed.

While the specific facts of Schelling were unusual, thereby causing the court to carve out a very narrow exception to the general rule of law it established, the overall impact of Schelling has proven to be positive for Hospitals as seen in the recent Sixth Appellate District in Boggia v. Wood County Hospital, 2010-Ohio-4932. In Boggia, the Sixth District Court of Appeals was asked to apply the principals established in Schelling to a context where plaintiffs sued a treating physician and the hospital (where she had surgery) under a negligent credentialing theory. The plaintiffs settled with the subject physician prior to trial, thereby releasing her of all liability, without first obtaining an admission, stipulation, or finding against her. Rather, the release contained standard “denial of liability” language. Following the dismissal of the subject physician, the hospital moved for a dismissal of the negligent credentialing claim pursuant to Schelling.

The Sixth District Court of Appeals agreed with the hospital's position, and concluded that the plaintiffs were prevented from pursuing their negligent credentialing claim by their settlement with the subject physician without first obtaining an admission, stipulation, or finding against her. Rather, the release contained standard “denial of liability” language. Following the dismissal of the subject physician, the hospital moved for a dismissal of the negligent credentialing claim pursuant to Schelling.

The Sixth District Court of Appeals agreed with the hospital’s position, and concluded that the plaintiffs were prevented from pursuing their negligent credentialing claim by their settlement with the subject physician without first obtaining an admission, stipulation, or other finding that the physician negligently caused the plaintiffs’ injuries. Both the Schelling and Boggia cases have brought further clarity to how negligent credentialing actions can proceed and have also limited the value of these independent torts.

Should you desire a full text of either opinion, or if you have any questions regarding any other health care issues, please contact one of our Health Care or Medical Malpractice Group members.