

# Client Briefing

Urgent

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## Court Holds Medical Staff Bylaws are Binding Contract Between Physician and Hospital and Upholds Finding of Interference with Patient Relationships

by Michael J. Jordan

*Michael Jordan and Susan Zidek, of our Health Care and Litigation Practice Groups, recently represented physicians in two separate actions that resulted in significant decisions issued by the Ohio Court of Appeals.*

In *Ahmed v. University Hospital Health Systems, et al.*, 8<sup>th</sup> District Court of Appeals No. 79016, the Court addressed the standard of protection accorded physicians in peer review proceedings and also evaluated the claim that a defendant hospital improperly interfered with physician-patient relationships. Dr. Ahmed had exercised privileges at Geauga Regional Hospital since 1984. In 1995, Geauga Regional Hospital merged with the University Hospitals Health Care System ("UHHS"), and the Geauga Regional Hospital Board thereafter included several directors who were UHHS officers, directors, or administrators.

Dr. Ahmed had been involved in two separate incidents in 1997 and 1998, both relating to an alleged failure to provide adequate coverage. The Medical Executive Committee considered the matter and, following arrangements for appropriate coverage, Dr. Ahmed's privileges were reinstated. Subsequently, the Board of Directors rejected this Medical Executive Committee action and revoked Dr. Ahmed's privileges. He was advised of his right to request a hearing. Although the hearing was favorable to Dr. Ahmed, the Board rejected the Hearing Officer's recommendation and directed the revocation of Dr. Ahmed's privileges.

Dr. Ahmed commenced litigation asserting claims of breach of contract, tortious interference with business relationships, and violation of due process. At trial, the evidence established that UHHS Geauga sought an economic advantage from having three physicians who work exclusively for UHHS's professional corporation provide obstetrical and gynecological services. A letter from one of the employed physicians promised that the new physicians could "reach" Dr. Ahmed's patients. Documents and testimony from The Board of Directors established that, while discussing the potential revocation of Dr. Ahmed's privileges, the Board had considered the fact that Dr. Ahmed exercised privileges at competing hospitals.

The Court of Appeals found that more than "substantial compliance" with the Bylaws was necessary. The Court stated as follows:

*A physician has only limited procedural due process rights in revocation proceedings. This does not mean, however, that a hospital and medical staff cannot agree to bylaws that go beyond the bare requirements of procedural due process, or that a hospital is only required to comply with such bylaws to the extent due process requires. The parties are bound by the terms of their agreement, and the existence of material breach is considered in relation to those terms. Procedural due process requirements are a floor, not a ceiling, and we have no reason to believe that all hospitals intend their bylaws to provide only the minimum process due, or that the agreement should be so interpreted. (Footnote omitted.)*

The Court also sustained the award of damages for tortious interference with business relationships, stating as follows:


*Construed in the light most favorable to Dr. Ahmed, the evidence showed that the Hospital sought to end its relationship with him in order to open OB/GYN opportunities for UPCP [UHHS's professional corporation] employees affiliated with UH Geauga and the UHHS system. After finding that UH Geauga breached its bylaws in order to conduct revocation proceedings after the MEC restored Dr. Ahmed's privileges, the jury reasonably could have concluded that the breach was more than coincident with the arrival of the UPCP physicians. The jury could find that the Hospital committed the breach with the intention of removing him not only from the hospital, but to effectively deny him the ability to treat patients in the area, thereby allowing the UPCP physicians a greater share of the local OB/GYN patients.*

With respect to the Hospital's claim that it was entitled to immunity under state law and the Health Care Quality Improvement Act, the Court found that the presumption of immunity was rebuttable, and rejected the claim.

## HMO Must Develop Practice Improvement Plan

In *Sinoff v. Ohio Permanente Medical Group (OPMG)*, 8th District Court of Appeals No. 79649, the Court found that OPMG served as a Peer Review Committee for the Kaiser Foundation Health Plan, an HMO. Accordingly, OPMG would be treated as an HMO subject to O.R.C. §2305.25(f), which specifies that, before a provider can be terminated, the HMO must develop and afford a provider an opportunity to comply with a practice improvement plan. The decision was particularly significant because the Court agreed that OPMG is not a hospital, and therefore not subject to O.R.C. §3701.351, which requires a hospital to have standards and procedures in place with respect to medical staff privileging issues.

The case has been remanded to the trial court for further proceedings.

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## NEED FURTHER INFORMATION?

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