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Date: May 1, 2015

California Federal Court Upholds Suspension of Privileges for VA Emergency Room Physician

By Patricia Hofstra*

A recent federal court opinion¹ from the Eastern District of California held that a decision made by an Air Force hospital to restrict a physician's privileges was not "arbitrary and capricious," and therefore did not violate the Administrative Procedures Act.²

Dr. Robert Goh was an emergency room physician employed by the U.S. Department of Veterans Affairs (VA), who worked in an Air Force hospital. The Air Force restricted Goh's hospital privileges based on an allegation of conduct, condition, or performance requiring immediate action to protect the safety of patients. Goh was advised that the restriction of his privileges was in response to a concern over quality of care and patient safety, specifically the discharge of a patient with a myocardial infarction from the emergency department without diagnosing or addressing the patient's condition. As a result of the restriction, Goh's hospital privileges were held in abeyance pending an inquiry and review of his records. Believing that the Air Force unjustifiably restricted his privileges, Goh sought review of the decision.

The subsequent review of the plaintiff's medical records identified significant discrepancies ranging from lack of adequate documentation to failure to meet standard of care. Reviewers agreed that the allegations were substantiated, and concluded that Goh had a pattern of incomplete charting and lack of thorough work-up of potentially serious illnesses.

Goh's privileges were restricted until his deficiencies were corrected.

Because this was an "adverse action," it was reported to the National Practitioner Data Bank.

During the review and the hearing process, the plaintiff argued that none of his patients suffered adverse outcomes and that criticisms of his performance were "merely differences of opinion." He further argued that the Air Force's decision to restrict his hospital privileges was arbitrary or capricious because there was "no evidence of mismanagement or improper care." Goh proposed that the standard of care applicable to emergency medicine physicians was whether the patient re-presented with a worsened condition, or if the patient's recovery was impaired as a result of care rendered. However, Goh provided no evidence for this standard beyond his own opinion.

The plaintiff sought judicial review of a final action under the Administrative Procedures Act (APA). For purposes of the judicial review, the parties stipulated that there were no contested facts and that the administrative record "speaks for itself." The court treated the judicial review as "akin to a summary judgment motion."

During judicial review, Goh argued that previous reviewers and the Hearing Panel members lacked sufficient knowledge. However the court determined that it was disingenuous for the plaintiff to challenge their qualifications after, but not before, they ruled against him. The plaintiff argued that the decision makers erred by not articulating the reasons they favored the Air Force's expert witness over Goh's expert witness. Interestingly, even Goh's expert found some fault with his quality of care.

The plaintiff also argued that the decision to restrict his privileges was arbitrary and capricious and unreasonably harsh. However, the court found that fact finders involved in the process had a significant amount of discretion in evaluating whether a provider's conduct warrants a restriction, reduction, or removal of privileges and wide latitude to restrict a provider's privileges. The court expressed an unwillingness to override the clinical judgment of prior reviewers.

Ultimately, the court found that the plaintiff failed to show that the Air Force's decision to restrict Goh's clinical privileges violated the APA,³ and denied the plaintiff's motion for "Judicial Review of Defendants' Administrative Action," upholding the Air Force's decision.

This case is interesting because VA and military hospital medical staff proceedings are not often publicized. The court's memorandum decision and order sets forth a detailed description of the procedure followed in military hospital medical staff proceedings. While the process is somewhat different than in a non-military proceeding, the analysis used would have most likely been similar in any medical staff proceeding.

**We would like to thank Patricia S. Hofstra (Duane Morris LLP, Chicago,*

IL) for authoring, and David L. Haron and Mercedes Varasteh Dordeski (Foley & Mansfield PLLP, Detroit, MI) for reviewing this email alert.

¹ *Goh v. Department of the Air Force*, E.D. CA April 8, 2015 (Dkt. No. 1:14-cv-00315).

² 5 U.S.C. § 706(2)(A).

³ 5 U.S.C. § 706(2)(A).

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