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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY COURT OF COMMON PLEAS

The Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 2020-CP-04-00008

Appellate Case No. 2021-000834

Wanda Human, as Personal Representative of the Estate of Evelyn Marie Wood……*Respondent,*

v.

AnMed Health,..... *Appellant.*

FINAL REPLY BRIEF OF APPELLANT

ROE CASSIDY COATES & PRICE, P.A.

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Argument

I. S.C. Code Ann. §44-7-392 is not limited to confidential communications between medical professionals or to protect the medical review committees in their review process, and the Respondent's reliance on *McGee v. Bruce Hosp. Sys.* is misplaced.

In her initial brief, the Respondent raises, for the first time, the argument that the Risk Management Worksheet is not protected by S.C. Code Ann. §44-7-392 because the peer review statute is limited to confidential communications between medical professionals and to protect the medical review committees in their review process. While it may be true that the peer review statute was initially created to protect such communications, S.C. Code Ann. §44-7-392, a statute which was enacted to expand the peer review doctrine in 2012, is a broad statute that contemplates additional protections beyond simply communications between medical professionals. While the Respondent relies upon *McGee v. Bruce Hosp. Sys.*, 312 S.C. 58, 439 S.E.2d 257 (1993) for the proposition that the peer review doctrine should be narrowly construed as it applies to the Risk Management Worksheet, the Court should instead rely upon the language of S.C. Code Ann. §44-7-392 itself to evaluate whether the Risk Management Worksheet is protected by the statute.

The Respondent's reliance upon *McGee* is misplaced, as this 1993 case predated S.C. Code Ann. §44-7-392 by 19 years. The *McGee* court was not evaluating the statute at issue on appeal, but instead, was considering what protections were afforded by the original peer review statute, S.C. Code Ann. §§40-71-10 and -20 (hereinafter "the original peer review statute"). *McGee* at 60. Moreover, the *McGee* court was specifically interested in the credentialing process and staff privileges- not whether an incident or occurrence report is covered by S.C. Code Ann. §44-7-392, which is the actual issue. Accordingly, reference to language from the *McGee* opinion is not instructive or helpful to this Court's analysis.

As opposed to the original peer review statute, S.C. Code Ann. §44-7-392 is broad, as evidenced by the first words of the statute: "*All* . . . documents . . . prepared or acquired by a hospital . . . relating to the following are confidential." S.C. Code Ann. §44-7-392(1) (*emphasis ours).* The statute enumerates eight different types of documents or subjects which are protected from discovery, including, explicitly, "incident or occurrence reports and related investigations," without limitation. S.C. Code Ann. §44-7-392(1)(h). Accordingly, all incident or occurrence reports prepared by a hospital are protected. Period. The legislature did not include language pertaining to any exceptions or limitations, such as those proposed by the Respondent. Instead, if the Risk Management Worksheet constitutes an incident or occurrence report, a point which the Respondent appears to accept as she does not argue otherwise, the document is protected by S.C. Code Ann. §44-7-392.

II. S.C. Code Ann. §44-7-392 applies to all activities on hospital premises, as no language in the statute limits its application.

The Respondent submits to the Court, again, for the first time, that the peer review statute only applies to "normal duties of the hospital[1]," and not to incidents that occur in the parking lot "where the Appellant was not acting within their official capacity as a hospital."[2] In making this argument, the Respondent does not rely upon a single word from the statute itself, nor does she rely upon any cases interpreting S.C. Code Ann. §44-7-392; she simply argues in conclusive fashion- it must be so because she says so.

Instead, in analyzing the application of statutory language, the Court must ascertain and effectuate the legislature's intent. *Burns v. State Farm Mut. Auto. Ins. Co.,* 297 S.C. 520, 377 S.E.2d 569 (1989); *Sumter Police Department v. Blue Mazda Truck,* 330 S.C. 371, 498 S.E.2d

[1] This term is not defined by the Respondent or found in the language of the statute.
[2] *Initial Brief of Respondent, p. 8.*

894, 896 (Ct.App. 1998). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it reasonably can be discovered in the language used, and the language must be construed in the light of the intended purpose of the statute." *Sumter Police Department* at 896. S.C. Code Ann. §44-7-392 applies to any and all investigations undertaken to examine an event that occurred after the statute's effective date, irrespective of whether the incident occurs within the four walls of the hospital or pertains directly to medical care. §44-7-392 (A)(1) provides that "[a]ll proceedings of, and . . . information prepared . . . by a hospital licensed under this article . . . relating to the following are confidential: (h) incident or occurrence reports and related investigations, unless the report is part of the medical record." The statute goes on to prescribe in Section (A)(2) that "[t]hese proceedings and data, documents, and information in subsection (A)(1) *are not subject to discovery*, subpoena, or introduction into evidence in any civil action unless the hospital and any affected person who is a party to such action waives the confidentiality in writing." S.C. Code Ann. §44-7-392 (A)(2) (emphasis added).

Put simply, the legislature did not limit the protection of incident or occurrence reports to those pertaining to medical care within the four walls of the hospital. The statute does not limit the protections, nor does any applicable case law. Because there is no such limitation, the Risk Management Worksheet completed following Ms. Wood's fall is protected from discovery by §44-7-392 (A)(1).

Conclusion

Based upon the foregoing authorities and arguments, the Appellant respectfully submits that the trial court improperly granted the Plaintiff's motion to compel, which order should be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned herby certifies that Appellant's Final Reply Brief complies with Rule 211(b), SCACR and the Supreme Court's Order regarding personal identifiers and sensitive information.

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