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SC Court of Appeals

**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

Appeal No. 2021-000834

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

v.

AnMed Health.....Appellant.

FINAL REPLY BRIEF OF RESPONDENT

s/Lane D. Jefferies

Lane D. Jefferies (SC #101764)

Anastopoulo Law Firm, LLC

32 Ann Street

Charleston, South Carolina 29403

Phone (843) 614-8888

CLD@AkimLawFirm.com

Attorney for the Respondent

April 15, 2022

Conway, South Carolina

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....3

ARGUMENT.....4

- I. The Risk Management Worksheet is not protected from discovery because the purpose of the peer reviewed statute is to promote confidentiality among medical professionals.....4
- II. The peer reviewed statute, S.C. Code Ann. §44-7-392 does not protect a hospital from incidents that occur on their premises when the hospital is not acting within their scope as a hospital.....5

CONCLUSION.....7

TABLE OF AUTHORITIES

CASES

Cook v. Wake County Hospital System,
618, 482 S.E.2d 546 (NC Ct. App. 1997)..... 5

Integramed America, Inc. v. Patton,
298 F.R.D. 326 (D.S.C. 2014).....4

McGhee v. Bruce Hospital System,
439 S.E.2d 257, 259 (1993).....4

Saunders v. Hull Prop. Grp., LLC.,
495, 847 S.E.2d 83 (NC Ct. App. 2020).....6

STATUTES

S.C. Code Ann. §44-7-392.....4

S.C. Code §40-71-20(A).....2

ARGUMENT

I. The Risk Management Worksheet is not protected from discovery because the purpose of the peer reviewed statute is to promote confidentiality among medical professionals.

The Appellant raises the issue that the peer review statute is not limited to confidential communications between medical professionals or to protect the medical review committees in their review process. When looking at the peer review statute at issue in our case, S.C. Code §44-7-392, it is important to look at the public policy of why this peer review statute was created in the first place. “The overriding public policy of the confidentiality statute is to encourage health care professionals to monitor the competency and professional conduct of their peers to safeguard and improve the quality of patient care.” *McGee v. Bruce Hosp. Sys.*, 439 S.E.2d 257, 259 (1993). The peer review statute, S.C. Code §44-7-392 came after the original peer review statutes like, S.C. Code § 40-71-20(A) (hereinafter “the original peer review statute”) were implemented.

The public policy intention of the peer reviewed statutes like the ones mentioned previously were never meant to protect the hospital with incidents that occur on their premises that have nothing to do with the hospital’s operations. Instead, these statutes including the one at issue here, were meant to bring objectivity and candor amongst professionals in the medical field. The peer review statute was not put into place so that a hospital could use it as a blanket protection from anything that occurs on their premises.

Respondent reiterates that we must have some sort of balancing between not hindering the discovery process while protecting the hospital to an extent. A hospital should only be able to claim privileges such as the peer review statute when it relates to the care or operations of the hospital, not incidents that occur in their parking lot. Our case is different from other cases

because usually both parties have their own observations of that day. However, the Respondent does not have that luxury because Ms. Wood is deceased and no longer able to provide information from the day of the incident. Obtaining the Risk Management Worksheet is critical to the discovery process since the information within the Risk Management Worksheet is a witness' fact statement, just like the Appellant agreed on the record (R. p. 67 lines 20-22). The Risk Management Worksheet should be produced as it is critical to the discovery process and is not a protected document under S.C. Code §44-7-392.

II. The peer reviewed statute, S.C. Code Ann. §44-7-392 does not protect a hospital from incidents that occur on their premises when the hospital is not acting within their scope as a hospital.

The Risk Management Worksheet is not protected by S.C. Code Ann. §44-7-392 because the hospital cannot claim a blanket protection for incidents that occur on their premises when the hospital is not acting within their official capacity as a hospital. The Appellant is incorrect in their interpretation of the statute and is suggesting then that anything that occurs at a hospital would be protected under this peer review statute. The court made the following statement to the Appellant on record, "I think -- the hospital may be having its own expanding reading of it" (R. p. 67 lines 5-6). The Appellant's interpretation is too broad. If an incident in the parking lot of a hospital is protected, than that would mean the hospital is immune from any incident even if that means it has nothing to do with the hospital in their capacity as a hospital. A hospital's parking lot should not be treated differently than a grocery store's parking lot because there is no difference between the two parking lots and therefore, the hospital should not be allowed to claim a protection that nobody else is allowed to claim.

Other states have similarly worded peer review statutes just like S.C. Code Ann. §44-7-392. In *Cook v. Wake County Hospital Sys.*, 618, 482 S.E.2d 546 (NC Ct. App. 1997), after a

slip and fall in the hallway of the hospital, the Court of Appeals in North Carolina ordered the hospital to produce the accident report because the Court held that it was not protected. In that case, the hospital tried to rely on a similarly worded peer reviewed statute like S.C. Code Ann. §44-7-392 and was not allowed even though the incident occurred inside of the hospital building. If the accident report from a slip and fall that occurred inside of a hospital is discoverable, then so should the Risk Management Worksheet from an incident that occurred in the hospital's parking lot.

A parking lot is a parking lot, and nothing makes one more protected than another. If a mall isn't allowed to claim a protection in their parking lot as it relates to producing incident reports, then a hospital should not be allowed to claim a protection either because there is no difference in parking lots. An incident report from a slip and fall in the Blue Ridge Mall's parking lot was discoverable because it was prepared due to a policy of reporting incidents on the property and not in anticipation of litigation, *Saunders v. Hull Prop. Grp., LLC*, 495, 847 S.E.2d 83 (NC Ct. App. 2020). The mall did not receive any protections in their parking lot and therefore, neither should the Appellants in this case.

Appellant contends that the Respondent does not rely upon any case law interpreting S.C. Code Ann. §44-7-392 to make such an argument, however, the peer-review statute in other states and the original peer reviewed statute in South Carolina are all worded similarly and can be looked to when deciding whether or not the Risk Management Worksheet could be protected. The hospital cannot assert a protection that occurred in the parking lot since it has nothing to do with the purpose of the peer-reviewed statute since the hospital was not acting within their official capacity as a hospital.

CONCLUSION

Wherefore, based on the aforementioned the Trial Court's decision should be affirmed because: the Risk Management Worksheet is not protected by the peer review statute for the foregoing reasons mentioned above. Therefore, the Respondent respectfully requests that this Court affirm the Trial Court's ruling ordering the production of the Risk Management Worksheet.

Respectfully submitted,

s/Lane D. Jefferies
Lane D. Jefferies (SC #101764)
Anastopoulo Law Firm, LLC
32 Ann Street
Charleston, South Carolina 29403
Phone (843) 614-8888
CLD@AkimLawFirm.com
Attorney for the Respondent

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