Antitrust Immunity Granted In a Far-reaching Peer Review Case

BY MARK A. KADZIELSKI, JD

Healthcare facilities and physician peer reviewers are finding protection in the immunities provided by the Health Care Quality Improvement Act of 1986 (HCQIA). On November 6, 1992, in *Austin v. McNamara* the U.S. Court of Appeals for the Ninth Circuit upheld a lower court's summary judgment in favor of a California hospital and several physician peer reviewers. The two-to-one decision affirmed that the defendants did not violate antitrust laws. This case is the nation's first to apply the immunities provided in HCQIA. (For a discussion of the lower court's decision and these immunities, see my column, "Court Upholds Law's Immunities in Peer Review Cases," *Health Progress*, July-August 1990, pp. 21, 31.)

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THE FACTS

George Austin, MD, a neurosurgeon, moved to Santa Barbara after a career in academic medicine. He applied for and was granted medical staff privileges at Cottage Hospital and several other area hospitals. Early in 1986, before HCQIA'S effective date, the Cottage Hospital medical staff informed Austin that it was conducting an internal evaluation of his cases. Additional reviews by the medical staff in the spring and summer of 1986 led to further outside review by medical consultants and monitoring by medical staff of his surgical practice.

On November 17, 1986, three days after HCQIA went into effect, Cottage Hospital's chief of staff summarily suspended Austin based on concerns that he was providing substandard care. Subsequently, the medical executive committee recommended that his privileges be revoked. Austin's summary suspension lasted seven months, during which time he was granted a hearing (pursuant to the medical staff's bylaws) to challenge these decisions. After lengthy hearings, a judicial review committee (JRC) found that the decision to summarily suspend was "unreasonable" and recommended Austin's reinstatement to the medical staff. However, the JRC did find that Austin's treatment of one patient had been substandard and recommended that his neurosurgical privileges be subject to mandatory internal consultations, as well as periodic outside, independent neurosurgical review.

Austin did not appeal these findings. Instead, he filed an action in federal court, alleging antitrust violations under the Sherman Act, as well as other matters. After extensive proceedings, the Federal District Court for the Central District of California granted summary judgment in favor of all the defendants on the antitrust claims, and the court dismissed all other claims. The basis for the court's ruling was the HCQIA immunities.

THE APPELLATE DECISION

The U.S. Court of Appeals for the Ninth Circuit, in upholding the district court, found that the defendants had met all the requirements for immunity under the standards promulgated in HCQIA. Specifically, the appellate court found that the defendants had undertaken professional review action with the reasonable belief the action was in furtherance of high-quality healthcare. They had done this with the reasonable belief that the action was warranted by the facts known after they had made reasonable efforts to obtain those facts. The court reviewed HCQIA's legislative history, which indicated that these reasonableness requirements were intended to create an objective standard. The reviewers satisfied the standard because, with the information available to them at the time of the professional review action, they reasonably concluded their actions could restrict incompetent behavior or protect patients.

The court of appeals carefully distinguished between the reasonableness of Austin's suspension and the peer reviewers' "reasonable belief that it was warranted by the facts known after reasonable effort to obtain the facts." Noting that

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the JRC upheld several criticisms of Austin's performance, and that it recommended conditions be imposed on his practice, the court stated that "no reasonable jury could find that the JRC report is sufficient to establish the nonexistence of the defendants' 'reasonable belief' and 'reasonable effort.'" Accordingly, the court said that HCQIA's presumption of immunity (in favor of the defendants) was satisfied.

Austin also contended that many of the peer review activities occurred before HCQIA's effective date, and thus immunity should not apply, at least to those activities. The court concluded, however, that *all* the defendants' peer review activities and actions were entitled to immunity because the summary suspension of Austin, which constituted a "professional review action," included all the "professional review activities" that led to or related to the peer review decision, whenever those activities occurred.

Finally, the court of appeals considered Austin's additional claims that the defendant physicians refused to provide coverage for him and openly criticized him. Although these allegations do not fall within HCQIA's immunity, the court reviewed them and, in applying a rule of reason, held that Austin had not made a sufficient showing of antitrust violation. Accordingly, the court of appeals upheld the lower court's judgment on these nonimmune actions as well.

THE SIGNIFICANCE

The Ninth Circuit's decision is good news for participants in professional peer review activities and the organizations in which they are performed. In upholding the HCQIA immunities, the court made it clear that HCQIA's purpose (to encourage effective professional peer review) can be achieved. The decision may also have a far-reaching effect for healthcare facilities and professional peer reviewers throughout the United States as other federal courts review HCQIA immunity cases. □

PERSPECTIVE

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ed into the IDNs, which in turn would decide how to pay providers.

2. The Clinton plan permits fee-for-service medicine to continue, though it would provide strong incentives for employers and individuals to choose managed care delivery systems. The CHA plan would permit fee-for-service medicine to continue, whenever desirable, within an IDN or within a geographic location that cannot support one or more IDNs.

3. The Clinton plan allows for competition based on price. The CHA plan would anchor competition in quality and service only.

On balance, however, we believe the Clinton and CHA plans have more similarities than differences.

TIME FOR ACTION

The CHA Division of Government Services will be carefully considering how CHA might work with the new administration and the Congress in achieving reforms consistent with the principles that have guided the development of our working proposal (see **Box**, p. 18).

It is likely that the president will move expeditiously to further develop his plan, to seek input from a wide array of interests, and to fashion a political strategy to achieve the reforms he ultimately submits to Congress. CHA is prepared to participate actively in this process as the opportunities present themselves.

The coming year will be filled with opportunity and excitement. Both the president and Congress seem committed to reforming the nation's healthcare system so that affordable healthcare is available for all. Catholic healthcare providers will play a key role in achieving that objective. We can be leaders in the nation's hospital community; we can be leaders in our local communities. We must be sure to seize the opportunity and meet our responsibility to both. □

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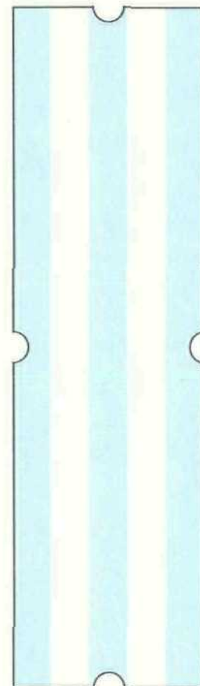

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