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TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF

A recently reported case caught our attention as it dealt with an issue which triggers almost monthly calls to our office. The issue revolves around the reporting of incidents to the National Practitioner Data Bank.

These are the facts about the case at hand: A Suffolk County hospital employed the physician/surgeon who eventually brought suit. Shortly after his employment commenced a fallopian tube was inadvertently removed from a patient who was undergoing an appendectomy. A meeting ensued between hospital and surgeon and the latter agreed to refrain from surgery pending an investigation. After a two day interval physician resigned his position and relinquished surgical privileges.

Under the provisions of the HCQIA the Hospital believed (correctly) that it had to file an AAR (Adverse Action Report) with the National Practitioner Data Bank as competency was being investigated when the resignation had occurred.

Suit was brought by our aggrieved physician claiming, among other matters, that he was entitled to be informed of any investigation under the hospital's bylaws. There were further allegations of breach of contract, fraud, interference with his business relations and about any other claim which could be conceived in the circumstances. Both sides moved for summary judgment- a determination based upon the pleadings which had been furnished to the court.

Rather predictably the court ruled in favor of the hospital. The judge reviewed the bylaws and stated that a notice of hearing was required- but only if the hospital was going to take corrective or adverse action. In these circumstances this type of action was not contemplated as a resignation had occurred. If physician had suffered a loss of income it did not flow from the alleged breach of the bylaws but rather from the consequences of being reported to the Databank.

Physician had also claimed a tortious interference with his practice, seemingly based upon the reporting to the Data Bank and here, too, the Court ruled in favor of the hospital as the hospital enjoyed immunity under the provisions of the Health Care Quality Improvement Act. Unless the report is knowingly false New York statutory law shields both hospitals and those performing peer review from suit. Further, were the hospital to respond to inquiries from future employers it would be protected from suit as information reported would not be found to be false.

Respectfully submitted,

Schaum Law Offices