

STATE OF MICHIGAN
COURT OF APPEALS

YOLANDA JOHNSON, Successor Personal
Representative of the Estate of VERA JACKSON,

Plaintiff-Appellee,

v

DETROIT MEDICAL CENTER, HARPER-
HUTZEL HOSPITAL, ANDRE R. NUNN, M.D.,
and DETROIT SURGICAL SPECIALISTS, P.C.
d/b/a DETROIT BARIATRICS,

Defendants-Appellants.

FOR PUBLICATION
December 21, 2010
9:05 a.m.

No. 293304
Wayne Circuit Court
LC No. 08-123817-NH

Before: DONOFRIO, P.J., and CAVANAGH and FITZGERALD, JJ.

PER CURIAM.

Defendants appeal the trial court's order granting plaintiff's motion to compel discovery and requiring defendants to produce allegedly protected or privileged peer review and non-party patient documents. The case is before this Court pursuant to our Supreme Court's order, in lieu of granting leave to appeal, remanding the case to this Court "for consideration as on leave granted." *Johnson v Detroit Med Ctr*, 485 Mich 870; 771 NW2d 797 (2009). We reverse.

Defendants argue that the trial court erred in compelling disclosure of Dr. Andre Nunn's credentialing/privileging file. We agree.

A trial court's ruling on a discovery motion is reviewed for an abuse of discretion. *Holman v Rasak*, 486 Mich 429, 436; 785 NW2d 98 (2010). However, whether production of requested documents is barred by statute is a question of law that we review de novo. *Dye v St John Hosp & Med Ctr*, 230 Mich App 661, 665; 584 NW2d 747 (1998).

Article 17, part 215, of the Public Health Code, MCL 333.21501 *et seq.*, governs the regulation of hospitals. A hospital's responsibilities and duties concerning its medical staff's credentials and privileges is addressed in MCL 333.21513, which provides, in pertinent part:

The owner, operator, and governing body of a hospital licensed under this article:

(a) Are responsible for all phases of the operation of the hospital, selection of the medical staff, and quality of care rendered in the hospital.

(b) Shall cooperate with the department in the enforcement of this part, and *require that the physicians, dentists, and other personnel working in the hospital who are required to be licensed or registered are in fact currently licensed or registered.*

(c) Shall assure that physicians and dentists admitted to practice in the hospital *are granted hospital privileges consistent with their individual training, experience, and other qualifications.*

(d) Shall assure that physicians and dentists admitted to practice in the hospital are organized into a medical staff to enable an effective review of the professional practices in the hospital for the purpose of reducing morbidity and mortality and improving the care provided in the hospital for patients. The review shall include the quality and necessity of the care provided and the preventability of complications and deaths occurring in the hospital. [Emphasis added.]

MCL 333.21515 provides that the following collected materials are confidential:

The records, data, and knowledge collected for or by individuals or committees assigned a review function described in this article are confidential and shall be used only for the purposes provided in this article, shall not be public records, and shall not be available for court subpoena.

The use of the word “shall” in the statute indicates that this provision is mandatory. Additionally, MCL 333.21521 provides that “[a] hospital *shall meet the minimum standards and rules authorized by this article* and shall endeavor to carry out practices that will further protect the public health and safety, prevent the spread of disease, alleviate pain and disability, and prevent premature death.” [Emphasis added.]

Our Supreme Court has recognized that, under § 21513, “[h]ospitals are required to establish peer review committees whose purposes are to reduce morbidity and mortality and to ensure quality of care.” See *Attorney General v Bruce*, 422 Mich 157, 169; 369 NW2d 826 (1985). “Included in their duties is the obligation to review the professional practices of licensees, granting staff privileges consistent with each licensee’s qualifications.” *Id.*; see, also, *Dye*, 230 Mich App at 664-665. Thus, a credentialing committee is a peer review committee.

Accordingly, in *Dye*, 230 Mich App at 668, this Court “reject[ed] [the] plaintiff’s conclusion that materials relating to the provision of staff privileges are outside the purview of the [peer review] statutes.” The Court stated that § 21515 “protect[s] against disclosure of information relating to [the doctor’s] application for staff privileges at defendant hospital.” *Id.* at 669. Thus, absent a statutory exception, which plaintiff does not allege exists in this case, “the materials gathered by the credentials committee . . . with respect to [the doctor’s] qualifications and the extension of staff privileges” are confidential. *Id.* at 668-669.

We conclude that § 21515 clearly and unambiguously prohibits discovery of Dr. Nunn's privileging and credentialing file. *Attorney General*, 422 Mich at 173. "To hold otherwise would require us to create an exception to the privilege granted such information by the Legislature; that is not for us to do." *Id.* Therefore, the trial court erred to the extent that it required defendants to disclose the contents of Dr. Nunn's privileging and credentialing file.¹

Defendants also argue that Dr. Nunn's operative logs are protected by the doctor/patient privilege and, therefore, the trial court erred in ordering defendants to disclose them. We agree.

MCL 600.2157 provides, in pertinent part:

Except as otherwise provided by law, a person duly authorized to practice medicine or surgery *shall not disclose* any information that the person has acquired in attending a patient in a professional character, *if the information was necessary to enable the person to prescribe for the patient as a physician, or to do any act for the patient as a surgeon.* [Emphasis added.]

The doctor/patient privilege protects the identity of non-party patients regardless of need. *Dorris v Detroit Osteopathic Hosp Corp*, 460 Mich 26, 29-39; 594 NW2d 455 (1999). The privilege prohibits the disclosure of "'any information' acquired under the requisite circumstances," even if the patient's identity is redacted. *Baker v Oakwood Hosp Corp*, 239 Mich App 461, 475; 608 NW2d 823 (2000). The statute is clear and unambiguous, and no further construction is necessary or permitted. *Id.* Further, "[t]he privilege belongs to the patient and can be waived only by the patient." *Id.* at 470. Therefore, defendants' alleged failure to timely raise this issue does not waive the privilege.

The operative logs at issue in this case contain information acquired by Dr. Nunn in attending to patients in his professional capacity as a surgeon, i.e., the dates and types of surgeries performed. Further, the type of surgeries performed, as well as the time and the dates of the surgeries, are information necessary to attend and evaluate a patient's condition, progress, and recovery after the procedure. Therefore, we conclude that the information contained in Dr. Nunn's operative logs was gathered under the circumstances identified in the statute and, therefore, it is protected by the doctor/patient privilege. Accordingly, the trial court erred in ordering defendants to disclose Dr. Nunn's operative logs.

Reversed.

/s/ Pat M. Donofrio
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald

¹ Because everything within the file is protected, there is no merit to plaintiff's argument that defendants should be required to prepare a list of the file's contents so that items can be evaluated individually.