

## Negligent Credentialing: Illinois the Latest State to Recognize the Tort

By John J. D'Attomo

The evolving tort of "negligent credentialing" presents yet another potential source of liability for hospitals arising from poor patient outcomes. Hospital administrators should be aware of the potential serious consequences of failing to ensure that all physician-credentialing decisions are made consistent with the hospital bylaws, medical staff bylaws and applicable accreditation standards.

### The Legal Theory Underlying Negligent Credentialing

Hospitals owe a duty of care to their patients to exercise reasonable care in the management and operation of the hospital. This duty exists separate and apart from the duty of care owed by physicians and other medical professionals rendering medical services at the hospital. A hospital's failure to exercise reasonable care with respect to the care of its patients can give rise to a claim of "institutional negligence."

The doctrine of "negligent credentialing" has evolved from the theory of "institutional negligence." Courts have recognized that an injured patient can assert a claim for negligent credentialing against the hospital that granted staff privileges to a physician who did not meet the requirements for staff privileges. The theory underlying this claim is that the hospital breached its duty of care in its management by granting privileges to an unqualified physician. In such cases, liability is founded on the duty of care the hospital owes to its patients, independent of any duty owed by the physician.

### Illinois Recognizes Negligent Credentialing

With the Illinois Appellate Court's decision in *Frigo v. Silver Cross Hospital and Medical Center*<sup>1</sup>, Illinois has joined the growing number of states in adopting the doctrine of

<sup>1</sup> *Frigo v. Silver Cross Hospital and Medical Center*, 876 N.E.2d 697 (1st Dist. 2007).

negligent credentialing. In *Friego*, a jury awarded \$7.7 million to a patient whose foot was amputated as a result of a negligent surgery performed by a podiatrist. The evidence showed that the hospital granted category II surgical credentials to the podiatrist even though he never completed a 12-month podiatric surgical residency and was not board certified as required by the hospital's bylaws and hospital accreditation standards. The hospital mistakenly believed that the podiatrist qualified for category II surgical privileges based on a "grandfather clause" in certain of its rules. In support of her negligence claim, plaintiff alleged that the hospital breached its duty of care in the management and operation of the hospital by granting the podiatrist privileges without verifying that he satisfied the hospital's own credentialing requirements.

In affirming the jury's verdict against the hospital, the court adopted the doctrine of negligent credentialing for the first time in Illinois. After surveying case law from other jurisdictions, the court set forth the elements necessary to prevail on a negligent credentialing claim. First, the plaintiff must prove that the hospital failed to exercise reasonable care in granting staff privileges to the physician whose treatment gave rise to the underlying malpractice claim. Second, the plaintiff must prove that the physician breached the applicable standard of care while rendering medical care pursuant to the negligently granted staff privileges. Finally, the plaintiff must prove that the hospital's negligence in granting privileges was a proximate cause of the plaintiff's injuries.

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## A New Variation on Established Principles

In recognizing the cause of action for negligent credentialing, the Illinois Appellate Court observed that the principles involved "are not new." The court noted that Illinois decisions from more than 40 years ago acknowledged that hospitals owe an independent duty of care to their patients and could be liable for "institutional negligence" if they breach that duty. See *Darling v. Charleston Community Memorial Hospital*.<sup>2</sup>

In *Darling*, plaintiff was treated at the defendant hospital for a broken leg. The treatment included placing his leg in a cast. During his hospital stay, the hospital staff failed to notice that the circulation in plaintiff's leg was constricted leading to the amputation of plaintiff's leg below the knee. In addition to suing the treating physician, plaintiff sued the hospital alleging, among other things, that the hospital nurses failed to monitor the circulation in his leg as frequently as necessary to recognize the progressively gangrenous condition of his leg. Plaintiff alleged that the hospital had a duty to ensure that adequate monitoring procedures were followed and that the hospital failed to satisfy its duty. The Illinois Supreme Court upheld the jury's verdict against the hospital recognizing that the hospital could be liable for negligence, *i.e.*, "institutional negligence," independent of any negligence of the treating physician.

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<sup>2</sup> *Darling v. Charleston Community Memorial Hospital*, 211 N.E.2d 253 (Ill. 1965).

## The Underlying Theory of Institutional Negligence Continues to Evolve

Although not involving negligent credentialing, a more recent decision from the Illinois Appellate Court extended the doctrine of institutional negligence to impose liability on a hospital even where the treating physician was not found negligent. See *Longnecker v. Loyola*.<sup>1</sup> In that case, plaintiff sued the hospital after her husband died following a heart transplant, alleging that the surgeon who acted as the "harvesting" surgeon for the donor heart committed professional negligence by failing to properly test and inspect the donor heart. Plaintiff further alleged that the hospital committed institutional negligence by failing to ensure that the harvesting physician understood that his duties as part of the transplant team included evaluating the heart for transplantation, not simply harvesting the donor heart. At trial, the jury found in favor of the surgeon on the professional negligence claim, but found against the defendant hospital on the claim of institutional negligence and awarded the plaintiff \$2.7 million. On appeal, the court held that the defendant hospital could be liable for institutional negligence even where the defendant surgeon was found not negligent.

### Conclusion

An increasing number of courts have recognized "negligent credentialing" as a common law cause of action. Claims of negligent credentialing often implicate issues concerning hospital bylaws, medical staff bylaws, hospital accreditation standards, credentialing procedures and the peer review process. Hospitals should be aware that every medical malpractice case arising from medical care rendered at the hospital by a physician with staff privileges may potentially lead to scrutiny of the hospital's credentialing procedures. Hospitals are well advised to review their credentialing procedures to ensure that all credentialing decisions have been made, and will be made, in compliance with the hospital bylaws, medical staff bylaws and applicable accreditation standards. Recent court decisions vividly illustrate that a hospital's failure to adhere to proper credentialing procedures may have serious consequences.

<sup>1</sup> *Longnecker v. Loyola*, 891 N.E.2d 954 (Ill. App. 1st Dist. 2008).

*John J. D'Attomo is a member of the Commercial Litigation Practice Group and can be reached at John.DAttomo@dbr.com or (312) 569-1359.*