



PROFESSIONAL ISSUES

Defamation lawsuits may have chilling effect on peer review

A physician who filed a defamation lawsuit says doctors who believe they are wrongly investigated deserve a legal recourse.

By [Tanya Albert](#), AMNews staff. March 1, 2004.

Organized medicine fears that Connecticut doctors will be less willing to report peers they think might be jeopardizing good patient care and less likely to participate in investigations into their colleagues' behavior if a Connecticut Appellate Court decision stands.

In a 2-1 ruling last year, the state's second-highest court gave a physician the go-ahead for a civil lawsuit against several doctors and a hospital he claims, among other things, defamed his reputation when they gave their opinions about his emotional health to the state Dept. of Health.

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The physician, psychiatrist Mohinder Chadha, MD, so far has successfully argued that doctors who participate in "quasi-judicial" proceedings aren't entitled to absolute immunity when they provide information about a colleague. Dr. Chadha believes that denying absolute immunity is needed to prevent doctors from falsely reporting a colleague.

Traditionally, though, physicians who participate in hospital peer review or state investigations into physician conduct have been granted absolute immunity.

The American Medical Association and Connecticut State Medical Society argue that it's critical that the protection remain.

"To protect the public, physicians need to report potential problems and assist with investigations," said Michael D. Neubert, the Connecticut attorney who wrote a brief that the AMA and CSMS filed urging the Connecticut Supreme Court to overturn the lower court ruling.

"Our concern is that [not providing absolute immunity] could have a chilling effect on physicians' willingness to independently report another physician or to cooperate with a department when it is trying to investigate a physician and their conduct," Neubert said.

The high court will hear oral arguments this spring and is expected to make its decision about whether Dr. Chadha's suit will go forward by the end of 2004.

What the lower court said

The appellate court and a trial court in Connecticut each have said that although common law in Connecticut provides for absolute immunity, it does not trump another law in the state that provides only qualified immunity.

In part, the court points to language in the Connecticut statute stating that someone who is making a complaint or providing information to a hospital board, medical board, professional licensing board, medical review committee or the Dept. of Public Health "as part of an investigation ... or disciplinary action ... shall, without showing of malice, be personally liable for damage or injury to a practitioner arising out of any proceeding of such boards ...or department."

The court believes that the Legislature wanted to ensure that the law protected health professionals who report colleagues, but it didn't go as far as to say that the protection was absolute.

"We can presume that the Legislature provided only a qualified immunity to those covered by the statutes for a reason: It wanted to discourage individuals who otherwise would be protected by those statutes from acting out of improper motive," the Connecticut Appellate Court said in its ruling in *Chadha v. Hungerford Hospital et al.* in May 2003.

The court went on to say that other courts had recognized a potential for abuse, quoting from a 1992 case out of New Mexico where the court said "the members of peer review committees are often in direct competition with those being reviewed and the system has potential for abuse of the person being reviewed. Possession of hospital privileges ... is crucial to a physician's success, and a negative decision could be tantamount to excluding a doctor from the profession as a whole."

The Connecticut Appellate Court said that if the Legislature wanted to provide an absolute immunity to those who fall under the state law pertaining to health care providers, it would have done so. "It chose not to," the court concluded.

Finding the right balance

The physicians and hospital on the receiving end of the lawsuit are challenging that interpretation of the law. They say that interpretation gives them less protection than what other professionals receive under Connecticut statutes.

"If people can be sued for the information they provide, they are going to be hesitant to come forward in the first place," said Jeffrey R. Babbin, the attorney representing the physicians and hospital in the case. "The state relies on physicians to come forward with concerns."

But Dr. Chadha argues that leaves physicians who are being reported to state investigative boards at an unfair disadvantage.

"It is just like filling out a false complaint to the police," he said. "We become sitting ducks."

Dr. Chadha's license is currently in good standing.

In 1998, the Connecticut Dept. of Public Health ordered him to participate in "regularly scheduled therapy," which he completed.

Neubert says that physicians who are investigated are given due process and given a chance to provide a defense. And the AMA and CSMS argue that physicians will not be willing to cooperate with investigations if they worry that they could open themselves up to litigation and personal liability.

Even if the lawsuit ultimately was dropped or decided in favor of the physician who did the reporting or provided information, the doctor would have to retain a lawyer, would not be covered by traditional medical liability insurance and would forfeit time that could be spent practicing medicine.

"The unlikely possibility that a health care professional might use the system to professionally harm a competing medical professional is far outweighed by the stifling impact of retaliatory lawsuits on the peer review process and mandatory reporting," the groups said in their brief. "While it is unlikely that a physician will attempt to abuse the system to affect competition, it is very likely that a physician who is the subject of an investigation will be angry with the individual, doctor(s) or committee that initiated the proceedings and, therefore, may file a retaliatory lawsuit."

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ADDITIONAL INFORMATION:

Case at a glance

Venue: Connecticut Supreme Court

At issue: In a 2-1 decision, the appellate court said physicians who participated in a state investigation of Dr. Chadha's behavior are not immune from a civil lawsuit claiming defamation.

Potential impact: Dr. Chadha says physicians deserve the right to sue if they believe colleagues had ulterior motives in filing a complaint. Organized medicine says doctors would be less willing to report colleagues and less willing to participate in peer review if they fear a civil lawsuit.

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