

The Court Rules but also Doesn't Rule on Negligent Credentialing in Iowa

May 28, 2021

Although the Iowa Supreme Court did not give a final ruling on negligent credentialing, employers should take note of the nuance of the decisions and review their processes.

The case of *Roxanne Rieder and Tony Rieder v. David Segal, et al.* has been working its way through the courts for a fairly long time, with various actions in the District Court, the Court of Appeals, and finally the Iowa Supreme Court. As with many cases that bounce around like a pinball machine, the final result is not necessarily one that was expected or asked for, with lawyers often being the only ones who can coherently follow the complicated legal action. Below is an overview with significantly less legalese.

Background

The difficulty in discussing any case which relates to medical malpractice is both acknowledging that a patient had a bad outcome, which is something we never want, while balancing the legal concerns of how we navigate complicated and sometimes contradictory law.

In this instance, Ms. Rieder received spinal surgery from Dr. David Segal. There were complications, a second surgery was performed, and although Ms. Rieder was discharged from the hospital, she continued to have substantive pain. On the day that Ms. Rieder was discharged from the hospital, Dr. Segal was formally charged by the Iowa Board of Medicine (IBM) for issues regarding medical competency. This charge was related to patients other than Ms. Rieder who had been treated prior to the statement of charges being filed. Ultimately, the Rieders argued in the lawsuit that not only had Dr. Segal committed malpractice but that the hospital was liable under the tort of negligent credentialing in that "it failed to exercise reasonable care in investigating and selecting medical staff to permit only competent and qualified physicians the privilege of using its facilities." Ultimately, Dr. Segal resolved the IBM charges and discontinued his surgical practice.

Is negligent credentialing a valid claim in Iowa?

As noted, there were multiple court rulings in this case including summary judgment motions which were subject to appeal. Iowa, unlike some 28 other states, has not formally recognized the tort of negligent credentialing. The original argument in the case did not agree that such a tort exists but argued the case as if it could be enforced. Other groups interested in the outcome filed amicus briefs requesting that the court refuse to recognize the tort of negligent credentialing. The court, being the court, said while it probably would be very useful to resolve that issue, they chose not to. Interestingly enough, while choosing not to resolve the issue of whether or not negligent credentialing is a claim in Iowa, they analyzed Ms. Rieder's claim in relation to a negligent credentialing theory.

In the decision, the Court states that three factors give rise to negligent credentialing:

- The credentialing entity failed to exercise reasonable care.
- The physician breached the standard of care.
- The entity's failure to exercise due care is the proximate cause of the injuries.

When to investigate

One issue that had been raised is whether the hospital, by simply becoming aware of an IBM filing against the physician, had a duty to act based exclusively on the knowledge that there was a potentially pending charge. The physician indicates in the case that he had informed the hospital prior to the time of the charge becoming public and the court was aware from testimony that the hospital received a subpoena from the IBM to produce records relating to the physician.

While there is a balancing act in the case of what is a duty to investigate versus what constitutes an actual breach of obligations, the court states that the hospital always has an ongoing duty to “exercise reasonable care” in assessing and evaluating physicians. While not a conclusive opinion, and somewhat complicated to understand, this should serve as a warning to hospitals that careful assessment of physician competency on an ongoing basis, particularly if you become aware of malpractice claims, patient complaints, or a pending IBM investigation, should always be taken into consideration.

Allowing evidence of malpractice claims

The second summary judgment motion in the original case addressed an issue of what evidence could be allowed. Rieders' expert witness had indicated that the hospital's duty of care to evaluate and potentially suspend the physician was not simply based on a pending IBM action but also multiple previously filed malpractice claims. The district court did not allow that testimony based on the standard evidentiary rule in malpractice claims that prior evidence of malpractice is not admissible. It is considered to be more prejudicial than helpful. The Iowa Supreme court indicates that “evidence of prior lawsuits may be admissible under some circumstances in negligent credentialing claims because the existence of prior lawsuits may be directly relevant to the hospital's credentialing decision” going on to state that the expert witness's opinion should have been accepted based on this analysis and as such the case is remanded to the District Court for further action.

Impact of decision on non-healthcare employers

The idea of negligent credentialing, while still not formally recognized in Iowa, has been now referenced in multiple cases with attorneys and the court treating it like a viable claim. While negligent credentialing is specific to the medical world, broader parallels can also be drawn to negligent referencing, negligent hiring, and negligent supervision claims.

This case is a bit of a Frankenstein's monster and does not provide a clear guideline that can be transmitted to supervisors or others. However, the court does appear to fall strongly on the side that, at least in the medical world, the duty to evaluate skill set, ability to perform essential job functions, and similar qualifications is a continuing one. In those industries where the statutes for background checks, credentialing, and similar types of items are not as clear-cut as they are for healthcare, this can be a particularly difficult obligation to apply and enforce. If there are significant concerns regarding conduct or misbehavior such as theft, drug issues, or violence, an employer's path forward is not clear given the national uptick in defamation cases. Consult with your employment attorney to attempt

to untangle these occasionally complex issues.

Your Key Contacts



Jo Ellen Whitney

Shareholder, Des Moines

D +1 515 246 7993

M + 1 515 480 4557

joellen.whitney@dentons.com