



## Credentialing Files and Physician Procedure Logs Are Protected Against Disclosure

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In a recent published opinion, the Michigan Court of Appeals emphatically confirmed the protection against disclosure for credentialing and privileging files maintained by hospitals. The court also broadly applied the physician-patient privilege to prohibit disclosure of a physician's log of procedures even if patient names are deleted. *Johnson v Detroit Medical Center*, Docket No. 293304 (December 21, 2010).

The plaintiff in a malpractice action sought discovery of the hospital's credentialing file for the defendant physician. The plaintiff also subpoenaed the operative logs listing the dates and procedures performed by the defendant surgeon. The Court of Appeals held that both documents were protected against disclosure.

The Public Health Code requires hospitals to "assure that physicians and dentists admitted to practice in the hospital are granted hospital privileges consistent with their individual training, experience, and other qualifications." Because this obligation helps to ensure quality of care, the court held that "a credentialing committee is a peer review committee." Unless one of the limited statutory exceptions applies, the materials gathered and evaluations made by a credentialing committee are confidential. The court held that "everything within the file is protected," so that a hospital does not have to justify the protection against disclosure for individual documents.

The physician-patient privilege statute extends to "any information. . . 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." The court also held that a physician's operative log of dates and types of surgical procedures was privileged. Because the statute prohibits disclosure of "any information," the privilege applies even if patient names are redacted. The privilege belongs to the patient, so that a physician cannot waive the protection if the information is sought by

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the plaintiff and cannot disclose the information as part of her or his defense to the plaintiff's claim. The court's analysis should apply to other procedure logs maintained by physicians.

The decision is noteworthy because the Court of Appeals broadly enforced the protection against disclosure afforded by the peer review and physician-patient privilege statutes. Although *Johnson v DMC* is consistent with prior cases, the opinion eliminates any question about the protection of privileging and credentialing files as peer review material. The decision also rejects the commonly made argument that removing patient names and identifying information defeats the physician-patient privilege.

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