



When a Hospital Enters into an Exclusive Provider Contract: Do the Adversely Affected Physicians Have a Right to a Fair Hearing Pursuant to the Hospital's Bylaws

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It is common practice for both public and private hospitals to enter into exclusive contracts with physicians for the purpose of securing service in specific areas of medicine.¹ To avoid liability related to the consequential effect on the medical staff privileges of physicians currently affiliated with the hospital, hospitals must abide by their existing bylaws as well as the terms of the affected physicians' contracts.² Hospital bylaws typically provide a physician the right to a fair hearing³ if the physician's medical staff privileges are adversely affected as a result of decisions made based on the quality of care or competence of the physician.⁴ However, hospital bylaws may not address whether the adversely affected physician is entitled to a fair hearing where the decision to enter into an exclusive contract with another physician or group is a managerial decision, not based on the quality of care or competence of the adversely affected physician.⁵ Whether a physician will be due a fair hearing in such an instance, the physician and the hospital must look not only to the hospital's bylaws and the language of physician's exclusive contract⁶, but also to federal and state court decisions on this issue.

In certain jurisdictions, a physician's privileges at a hospital, although adversely affected due to an exclusive contract awarded to another, are not considered reduced, revoked or suspended pursuant to the hospital's bylaws and thus, the physician is not entitled to a fair hearing.⁷ For example, according to a Wyoming Court, although a public hospital contracted with a new group of radiologists of which physician was not a member and physician could no longer perform radiology procedures at the hospital, the Court held that the physician's medical staff privileges were not revoked pursuant to its bylaws because the hospital had not negatively assessed the physician's competence, but rather had merely made an administrative decision to enter into a group contract to which the physician was not a party.⁸ Additionally, an Illinois Court held that the granting of medical privileges is different from the right to exercise such privileges; therefore, the fact that a hospital exclusively contracted with a group of cardiovascular surgeons of which the physician was not a member, disallowing the physician from practicing cardiovascular surgery at the hospital, was not deemed by the Court a reduction, revocation or suspension of the physician's staff privileges because the hospital had not based its decision on the physician's competence to practice medicine.⁹ In a federal court, where a physician could no longer practice pathology at a hospital due to the hospital's entering into an exclusive contract with a group of pathologists of which the physician was not a member, the Court held that this was not a reduction of the physician's staff privileges at the hospital because the decision to contract with the new group was a managerial decision rather than a decision based on the physician's quality of care.¹⁰ Furthermore, a Maine Court held where a hospital contracted with emergency physicians' group of which a physician was not a member, the hospital Board had the authority to make such decision as part of its management of the hospital and such decision did not constitute a revocation or reduction of the physician's staff privileges.¹¹

However, in other jurisdictions, if a physician's medical staff privileges at a hospital are adversely affected as a result of the hospital contracting with another physician or physician group, this is sufficient to entitle the physician the right to exercise any procedural protections available to him or her under the hospital's bylaws.¹² For instance, in Georgia, when a hospital disallowed a

physician access to certain cardiology equipment and resources due to the hospital's entering into an exclusive contract with a cardiology group of which physician was not a member, the Court held the physician was entitled to a fair hearing under the hospital's bylaws as such action was deemed a reduction of the physician's medical staff privileges.¹³ Furthermore, in a Florida Court, the termination of a physician's medical staff privileges due to the hospital's entering into an exclusive contract with a group of which physician was not a member was considered the taking of adverse action against such physician's staff privileges pursuant to the hospital's bylaws, thus warranting a hearing for termination of such privileges.¹⁴

Still other courts have held that when a physician's medical staff privileges are terminated completely, and such termination is based on a business decision of the hospital, such termination will not warrant a fair hearing pursuant to the hospital's bylaws.¹⁵ According to a Minnesota Court, a hospital will not have breached its bylaws by terminating a physician's staff privileges without a hearing when the bylaws only provide for a hearing when the hospital takes "corrective action," and such physician's privileges were terminated due to a business decision by the hospital to enter into an exclusive contract, not corrective action.¹⁶ In addition, a Florida court held that where a physician was denied renewal of his staff privileges due to the hospital's entering into an exclusive contract of which physician was not a member, physician was not entitled to a hearing as such was a business decision by the hospital that was not based on the physician's competence.¹⁷

Thus, if a physician's medical staff privileges at a hospital are adversely affected as a result of a hospital's managerial decision to enter into an exclusive contract with a physician or a physician group of which physician is not a member, this may or may not, depending on the jurisdiction, entitle the physician to a fair hearing. Whether the physician will be entitled to a fair hearing will depend upon the language of the hospital's bylaws, the jurisdiction's case law and any relevant statutory law. Further, if the adversely affected physician has a contract with the hospital, separate and apart from the hospital's bylaws, it may contain a provision which dictates whether the physician is entitled to a fair hearing.¹⁸ Accordingly, careful consideration should be taken before making the decision to take any action which adversely affects the privileges of a current medical staff member. Physicians should similarly review the hospital's bylaws and provisions of any proposed agreement regarding the right to a fair hearing prior to executing any contract, and seek legal counsel if their privileges are adversely affected to determine their rights.

¹*Satilla Health Services, Inc. v. Bell*, 633 S.E.2d 575, 579 (Ga. App. 2006); [Surgical Care Ctr. v. Hospital Serv. Dist. No. 1](#), 153 F.3d 220, 223 (5th Cir. La. 1998); [Mehta v. HCA Health Servs. of Fla., Inc.](#), 2006 U.S. Dist. LEXIS 79536 (M.D. Fla. 2006); *McMorris v. The Williamsport Hospital*, 597 F. Supp. 899 (M.D. Pa. 1984); *Hospital Corp. of Lake Worth v. Romaguera*, 511 So. 2d 559, 561 (Fla. 4th DCA 1987).

²This article focuses on what effect federal and state court decisions have on allowing a fair hearing for a physician, pursuant to a hospital's bylaws, when such physician's staff privileges are affected due to the hospital entering into an exclusive contract; it does not discuss what effect the language of a physician's exclusive contract will have on allowing a fair hearing for a physician in this situation. Nonetheless, physicians and hospitals should carefully review all relevant documentation to better understand physician's rights with respect to his or her medical staff privileges.

³This article does not discuss whether a fair hearing is in fact "fair" pursuant to the law. In addition, this article only focuses on a physician's right to a fair hearing pursuant to a hospital's bylaws as recourse for physicians whose privileges are adversely affected and does not discuss whether a physician has the right to judicial review of a hospital's decision.

⁴*Satilla Health Services, Inc.* 633 S.E.2d at 580; *See also Egan v. St. Anthony's Med. Ctr.*, 244 S.W.3d 169, 172 (Mo. 2008); *See also Stears v. Sheridan County Mem. Hosp. Bd. of Trs.*, 491 F.3d 1160, 1163 (10th Cir. Wyo. 2007).

⁵*See Bloom v. Clara Maass Med. Ctr.*, 685 A.2d 966, 972 (N.J. Super. Ct. App. Div. 1996); *See also Tenet Health Ltd. v. Zamora*, 13 S.W.3d 464, 469 (Tex. App. 2000).

⁶See endnote 2.

⁷See endnotes 8-11.

⁸ *Stears* , 491 F. 3d at 1163-1164.

⁹*Garibaldi v. Applebaum* , 742 N.E. 2d 279, 284-285 (Ill. 2000).

¹⁰*Collins v. Associated Pathologists* , 844 F.2d 473, 481 (7 th Cir. 1988).

¹¹*Bartley v. Eastern Main Medical Center* , 617 A. 2d 1020, 1022 (Me. 1992).

¹²See endnotes 13-14.

¹³*Satilla Health Services, Inc.*, 633 S.E.2d at 582; *See also generally St. Mary's Hospital of Athens, Inc. v. Radiology Professional Corp.*, 205 Ga. App. 121, 127-128 (Ga. Ct. App. 1992).

¹⁴*University of Miami v. Spunberg* , 784 So. 2d 541, 546-547 (Fla. 4 th DCA 2001).

¹⁵See endnotes 16-17.

¹⁶[*Bloom v. Hennepin County*, 783 F. Supp. 418, 433 \(D. Minn. 1992\).](#)

¹⁷*Naples Comm. Hospital*, 918 So. 2d 323, 326-327 (Fla. 2d DCA 2005).

¹⁸See endnote 2.

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