

New Decision on Medical Peer Review Immunity

August 19, 2009

On August 5, 2009, the Third District Court of Appeal released: [Cedars Healthcare Group, Ltd. v. Mehta](#), No. 3D08-2980 (Fla. 3d DCA Aug. 5, 2009). In its decision, the Third District found certiorari jurisdiction to review a trial court order denying a hospital's motion to dismiss a physician's claims relating to his peer review. The Court then quashed the trial court's order, finding that physician's claims warranted dismissal based on failure to plead fraud with particularity to overcome the hospital's immunity from suit. In *Mehta*, a cardiologist and his organization brought suit against a hospital and related defendants for various causes of action relating to his peer review including breach of medical staff bylaws contract, tortious interference with a business relationship, intentional infliction of emotional distress, and defamation. Defendants filed a motion to dismiss based on a peer review immunity statute, section 395.0193, Florida Statutes. The trial court denied the motion to dismiss. In their petition for writ of certiorari, defendants argued that they were immune from suit under section 395.0193(5) because the allegations stemmed from the peer review process outlined in section 395.0193 and that to overcome the subsection 395.0193(5) immunity, plaintiffs must plead intentional fraud with particularity, which plaintiffs failed to do. Noting that ordinarily an order denying a motion to dismiss is not reviewable by certiorari, the Third District held that peer review immunity from suit falls within an exception to the general rule. The Court found that since section 395.0193(5) provides immunity from suit, it had certiorari jurisdiction to review the denial of a motion to dismiss. Finding jurisdiction, the Third District agreed with defendants' analysis. Because 395.0193(5) offered immunity from suit for "any action taken without intentional fraud in carrying out the provisions of [395.0193]," plaintiffs were required to plead intentional fraud with particularity to fall outside of that immunity provision.

The Court determined that plaintiffs' broad allegations were insufficient. Plaintiffs failed to "specifically identify misrepresentations or omissions of fact, as well as time, place or manner in which they were made." The Court quashed the trial court's order as to all counts with the exception of defamation, since the underlying allegations did not on their face implicate the peer review process. [Read the Court's Decision here.](#)

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