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 **NORTON ROSE FULBRIGHT**

29th Annual UT Health Law Conference Operational Impact of Significant Cases

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ISSUES AFFECTING HOSPITALS AND HEALTHCARE PROVIDERS

Physician Credentialing & HCQIA Immunity

***Walker v. Memorial Health System of East Texas* p. 1**

- In *Walker*, the U.S. District Court for the Eastern District of Texas considered a physician's motion for preliminary injunctive relief in connection with a hospital's filing of an adverse report to the National Practitioner Data Bank ("NPDB" or "Data Bank"). Frank Walker, M.D. is a surgeon who holds clinical privileges at CHI St. Luke's Health Memorial hospital in Lufkin
- Various issues arose related to Dr. Walker's treatment of two patients at the hospital, culminating in peer review proceedings against Dr. Walker

Walker v. Memorial Health System of East Texas
(cont'd)

- Upon conclusion of the peer review, the hospital's medical executive committee ("MEC") recommended that Dr. Walker's next five bowel surgery cases be proctored under the supervision of a proctor approved by the MEC and at Dr. Walker's own expense
- The MEC's recommendation was upheld through an internal appellate process and by the hospital's board of directors
- Significantly, the board did not specify a timetable for completion of the proctored cases

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(cont'd)

- A month later, the hospital filed an adverse report with the NPDB disclosing the proctoring requirement imposed against Dr. Walker and publishing to the Data Bank that the basis for the action was Dr. Walker's "substandard or inadequate skill level"
- Dr. Walker subsequently lodged an administrative dispute of the report and filed an action seeking immediate injunctive relief
- Since an adverse report almost certainly proves detrimental to a practitioner's livelihood the court found healthcare entities must comply with several procedural and substantive requirements before filing an adverse report
- The court noted that not every adverse peer review or sanction is reportable

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(cont'd)

- For example, proctoring sanctions are only reportable if a proctor is assigned to the practitioner for a period longer than 30 days
- Conversely, proctoring sanctions that do not exceed 30 days are not considered a restriction of clinical privileges and should not be reported to the NPDB
- The hospital argued the court lacked authority to issue a preliminary injunction because HCQIA does not provide a private right of action

Walker v. Memorial Health System of East Texas
(cont'd)

- The court noted that Dr. Walker's claims were not brought as a private right of action under HCQIA, but instead stated causes of action for business disparagement, tortious interference with contract and business relations, racial discrimination under 42 U.S.C. § 1981, breach of contract, and declaratory judgment
- The court found that while HCQIA immunity may ultimately bar Dr. Walker from recovering monetary damages, the motion before the court concerned only injunctive relief, which is not subject to HCQIA immunity

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