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April 10, 2007

## No Hearing, No Immunity in Peer Review Rules Iowa Federal Court.

There is a curious set of facts in the case of *Estate of Horst G. Blume and Headache & Pain Control Center, P.C., v. Marion Health Center and its successor in interest, Mercy Medical Center-Sioux City*, Case No. 03 CV 4117 filed in the United States District Court For the Northern District of Iowa, Western Division on March 14, 2007. The case arose out of the summary suspension of Dr. Blume from practice on December 2, 1998 apparently based upon some incident reports. The federal district court held that the hospital failed to provide Dr. Blume with a hearing on his suspension and therefor failed to qualify for the statutory requirements for immunity under the *Health Care Quality Improvement Act of 1986 ("HCQIA")*. The circumstances surrounding the failure to provide a hearing are unusual.

Dr. Blume requested a hearing after he received notice from the hospital of his suspension. There then resulted in a lot of procedural delays. Dr. Blume's attorney was barred from appearing at a hearing at the hospital. The hospital "unreasonably delayed" turning over the incident reports that were the basis for the suspension to Dr. Blume and his attorney arguing that his discovery request was "overbroad." There was correspondence between the hospital and Dr. Blume in which the hospital repeatedly asked when Dr. Blume wanted his hearing, but apparently made no attempt to set it over time.

The court repeatedly indicated that Dr. Blume was only required to ask for the hearing once. There is also a fuzzy reference to the fact that the court excluded damages to Dr. Blume for the period in which he had obtained an injunction



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prohibiting a hearing against him in Woodberry County. Dr. Blume filed suit against the hospital on December 2, 2003 for anti-trust, violation of due process, interference and other torts and all were dismissed except a breach of contract claim. The court held on summary judgment motion for Dr. Blume that under Iowa law the medical staff bylaws right to a hearing and other procedures was a contract and that the hospital breached the same by not providing Dr. Blume with a hearing. A jury later found damages in the amount of \$146,025.00 which the the trial court upheld following post trial motions.

I guess the moral of the case is that if a suspended physician timely requests a hearing to which he is entitled under the medical staff bylaws, make sure he gets that hearing, even if he fails to respond to requests as to when he wants it.

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