

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS A. GOLDENBERG, M.D.; AND
MOUNTAIN MEADOWS MEDICAL
GROUP OF CALIFORNIA, INC., D/B/A
TAHOE WOMEN'S CARE,
Petitioners,

vs.

THE NINTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
DOUGLAS, AND THE HONORABLE
DAVID R. GAMBLE, DISTRICT JUDGE,
Respondents,

and

GEORGIA WOODARD AND
HERSCHEL WOODARD,
Real Parties in Interest.

No. 51292

FILED

OCT 13 2008
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER GRANTING IN PART
PETITION FOR A WRIT OF PROHIBITION

This original petition for a writ of prohibition challenges a district court order compelling petitioners to produce petitioner Thomas A. Goldenberg, M.D.'s credentialing files for the last ten years.

This matter arises from a medical malpractice action filed by real parties in interest Georgia and Herschel Woodard, who alleged that Dr. Goldenberg negligently performed a colonoscopy procedure on Mrs. Woodard. They also alleged that defendant Lake Tahoe Surgery Center¹ injured Mrs. Woodard when it negligently awarded staff colonoscopy privileges to Dr. Goldenberg even though he was inadequately trained to perform such a procedure.

¹Lake Tahoe Surgery Center is not a party to this petition.

During discovery, the Woodards sought all of Dr. Goldenberg's credentialing files, including application materials, for each hospital or medical facility for which Dr. Goldenberg had privileges of any kind for the last ten years, including the credentialing files from petitioner Mountain Meadows Group of California, Inc. Dr. Goldenberg objected on the basis that such information was privileged. Thereafter, the Woodards moved the district court to compel production of the documents, and petitioners opposed the motion. The district court ultimately granted the Woodards' motion to compel and ordered Dr. Goldenberg to produce copies of his credentialing files, including the application materials, for the last ten years. This writ petition followed and the Woodards timely filed an answer, as directed. We stayed the district court's order pending our consideration of this petition.

In their petition, Dr. Goldenberg and Mountain Meadows argue that disclosure is prohibited under NRS 49.265(1)(a), which provides that, except as otherwise indicated, the records of organized hospital committees that evaluate and improve the hospital's quality of care are not subject to discovery. Alternatively, they contend that California law applies in determining whether the application materials are privileged and that California does not permit such disclosure.² In opposing the petition, the Woodards contend that Nevada law applies and point to NRS 49.265(2)(b), which provides that statements made by a physician requesting staff privileges at a hospital are not protected from disclosure.

²See Alexander v. Superior Court (Saheb), 859 P.2d 96 (Cal. 1993), disapproved on other grounds by Hassan v. Mercy American River Hosp., 3 Cal. Rptr. 3d 623 (Cal. 2003).

This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial function, when such proceedings are in excess of the district court's jurisdiction.³ A writ of prohibition is an extraordinary remedy, however, and whether a petition will be considered is entirely within our discretion.⁴ Generally, a writ of prohibition is available to prevent the disclosure of privileged information.⁵ Petitioners bear the burden of demonstrating that our intervention by way of extraordinary relief is warranted.⁶

Having considered the petition, the answer thereto, and the parties' supporting documentation in light of these standards, we conclude that our intervention is warranted. Under General Motors Corp. v. District Court,⁷ we determine that California law applies to Dr. Goldenberg's documents at California hospitals and Nevada law applies to those at Nevada hospitals. Both jurisdictions prohibit the disclosure of the peer review materials.⁸

³See NRS 34.320.

⁴See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

⁵Wardleigh v. District Court, 111 Nev. 345, 350-51, 891 P.2d 1180, 1183-84 (1995).

⁶Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

⁷122 Nev. 466, 134 P.3d 111 (2006).

⁸See NRS 49.265(1)(a); Cal. Evid. Code. § 1157(a).

In addition, California law also prohibits the disclosure of application materials.⁹ While California Evidence Code Section 1157(c) provides that statements made by individuals requesting hospital staff privileges are not protected from disclosure, subsection (a) of the same statute states, in part, that records of organized hospital committees or of a peer review body that have the responsibility to evaluate and improve the quality of care provided in hospitals are not subject to discovery. The California Supreme Court has stated that, for purposes of the statutory privilege, an application for staff privileges constitutes a committee record and is thus protected from disclosure.¹⁰ Consequently, we agree with Dr. Goldenberg and Mountain Meadows that the district court may not order the production of the applications for staff privileges that Dr. Goldenberg made at California hospitals because those documents are privileged under California law.

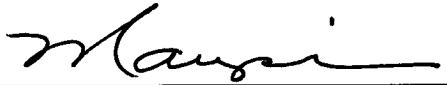
However, despite similar language in Nevada's statutes, we do not interpret NRS 49.265(1)(a) and (2)(b) in the same manner. Rather, we determine that statements made by any person requesting hospital staff privileges, including those statements made in the actual application, when made for the purpose of applying to Nevada facilities are not protected from disclosure. In particular, NRS 49.265(2)(b) and NRS 49.123(1) clearly state that statements made by applicants for staff privileges at hospitals are not protected from disclosure.

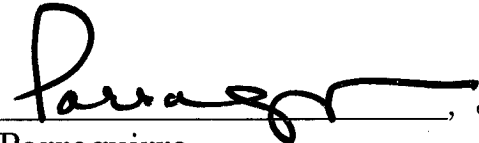
⁹See Alexander v. Superior Court (Saheb), 859 P.2d 96, 101-02 (Cal. 1993), disapproved on other grounds by Hassan v. Mercy American River Hosp., 3 Cal. Rptr. 3d 623 (Cal. 2003).


¹⁰Id.

Thus, while applications for staff privileges that are presented to California facilities are protected from disclosure, any applications for staff privileges, statements made in aid of the applications, and all non-peer review materials that are presented to Nevada facilities are not protected from disclosure. The district court must therefore tailor its order to protect material privileged under Nevada and California law, as applicable. Accordingly, we

ORDER the petition GRANTED IN PART AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF prohibition instructing the district court to vacate its order compelling petitioners to produce copies of petitioner Dr. Thomas Goldenberg's credentialing files for the last ten years and to reconsider this issue in light of the principles set forth in this order.¹¹


_____, J.
Maupin


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. David R. Gamble, District Judge
Mandelbaum & Schwarz, Ltd.
Schuering Zimmerman Scully Tweedy & Doyle LLP
Durney & Brennan/Reno
Douglas County Clerk

¹¹In light of this order, we vacate our stay entered on May 8, 2008.