

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE EX REL KIRKSVILLE
MISSOURI HOSPITAL COMPANY
LLC D/B/A NORTHEAST REGIONAL
MEDICAL CENTER**

RELATOR,

v.

**HONORABLE RALPH H. JAYNES,
VISITING JUDGE, CIRCUIT COURT
OF BOONE COUNTY, MO**

RESPONDENT.

DOCKET NUMBER WD72684
DATE: November 9, 2010

Appeal From:

Boone County Circuit Court
The Honorable Ralph H. Jaynes, Judge

Appellate Judges:

Writ Division: James E. Welsh, Presiding Judge, Mark D. Pfeiffer and Cynthia L. Martin,
Judges

Attorneys:

Philip R. Dupont and Albert S. Laferte, Kansas City, MO, for relator.

Leland F. Dempsey and Ashley L. Baird, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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HONORABLE RALPH H. JAYNES,
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RESPONDENT.

No. WD72684

Boone County

Before Writ Division: James E. Welsh, Presiding Judge, Mark D. Pfeiffer and Cynthia L. Martin, Judges

Original proceeding in prohibition following issuance of preliminary writ of prohibition. Relator Kirksville, Missouri, Hospital Company, LLC, d/b/a Northeast Regional Medical Center seeks to prohibit the respondent, the Honorable Ralph H. Jaynes, visiting judge in the Circuit Court of Boone County, Missouri, from allowing plaintiffs, Francis and Janie Watson to discover documents relating to the credentialing of Dr. John Bailey in an underlying medical malpractice and negligent credentialing action. Forty pages of documents were ordered produced, following *in camera* review. NERMC claims all of these documents are protected from discovery by section 537.035.4, the peer review statute.

PRELIMINARY WRIT OF PROHIBITION DISSOLVED.

Writ Division holds:

(1) Documents already in a party's possession do not warrant protection from production via a writ of prohibition.

(2) Section 537.035.4, the peer review statute, protects from discovery *either* certain specified documents of peer review committees that concern the health care provided any patient, *or* information acquired by a person in attendance at a peer review proceeding.

(3) The "exceptions" thereafter described in section 537.035.4, including the exception relating to information from an original source, are not pertinent and need not be addressed unless the discovery sought falls within one of the two categories of protected information.

(4) Outside report generated at the request of Relator was not "a peer review committee" document. Had the legislature intended all information or materials sought, secured or reviewed by a peer review committee to be protected from discovery, it would have said so.

(5) In any event, there was no indication the report from the outside source had been sought in connection with a credentialing decision. Instead the report was sought to justify a credentialing decision Relator had already made.

(6) Outside report generated at the request of Relator is not information acquired by the preparer of the report as a result of an appearance before a peer review committee proceeding.

(7) Outside report is not eligible for protection from discovery under either of the protected categories described in section 537.035.4.

(8) Similarly, a letter prepared by Dr. Bailey to respond to the outside report is neither "a peer review committee report," nor information acquired by a person from attendance at a peer review committee proceeding. The letter, therefore, is not protected from discovery by section 537.035.4.

(9) Executive Committee minutes are "peer review committee" documents. However, the minutes in question did not concern the health care provided any patient, and thus were not subject to protection from discovery by section 537.035.4.

(10) Whether Executive Committee minutes were otherwise subject to protection from discovery by the attorney/client privilege is beyond the scope of this original proceeding.

Opinion by: Cynthia L. Martin, Judge

November 9, 2010

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