

SUPREME COURT OF IDAHO

Verska v. Saint Alphonsus Regional Medical Center, 151 Idaho 889

265 P.3d 502 (2011) · No. 37574-2010 · Decided November 9, 2011

SUMMARY

The Idaho Supreme Court affirmed an order protecting peer review records from discovery in a physician's lawsuit against a hospital concerning the denial of renewed medical staff privileges. The court held that Idaho Code section 39-1392b applies by its terms to actions beyond medical malpractice claims and rejected the argument that courts may revise an unambiguous statute based on allegedly absurd results. It also held that the physician's lawsuit waived his own ability to assert the privilege for purposes of the litigation, while defendants could elect to use protected information in their defense under section 39-1392e(f).

CASE DETAILS

COURT	Supreme Court of Idaho
WRITING FOR THE COURT	Eismann, Justice; Burdick, Chief Justice; Horton, Justice; Jones, Justice; Trout, Justice Pro Tem
JURISDICTION	Idaho
DECIDED	November 9, 2011
DOCKET	37574-2010
DISPOSITION	affirmed
PROCEDURAL POSTURE	Permissive interlocutory appeal under Idaho Appellate Rule 12 from an order denying plaintiffs' motion to compel discovery and granting defendants' protective order based on Idaho's peer review privilege.
STANDARD OF REVIEW	The court reviewed the interlocutory discovery and protective-order ruling and interpreted the applicable statutes de novo. Because the appeal was permissive, the court addressed only the precise question presented to and decided by the district court.
PRECEDENTIAL VALUE	Published, precedential Idaho Supreme Court opinion
PARTIES	Joseph M. Verska, M.D., The Spine Institute of Idaho v. Saint Alphonsus Regional Medical Center, Christian G. Zimmerman, M.D., Donald Fox, M.D.

TOPICS

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QUESTIONS PRESENTED

1. Whether Idaho Code section 39-1392b applies to peer review records sought in a lawsuit alleging that a hospital acted in bad faith by refusing to renew a physician's privileges.
2. Whether a court may modify or disregard an unambiguous statute when applying it as written allegedly produces a palpably absurd result.
3. Whether Idaho Code section 39-1392e(f) waives defendants' peer review privilege in its entirety when the investigated physician brings suit.
4. Whether the Supreme Court could address the scope of Idaho Code section 39-1392c when the district court had not ruled on that issue.

HOLDINGS

1. Idaho Code section 39-1392b applies by its terms to all peer review records in this litigation, including records sought in a physician's lawsuit alleging that a hospital used peer review proceedings in bad faith or for anticompetitive purposes.
2. The court lacks authority to revise or disregard an unambiguous statute on the ground that applying it as written would produce a palpably absurd result.
3. When a physician who was the subject of peer review brings suit based on the health care organization's activity, the physician waives the right to assert the peer review privilege in that litigation; the defendant health care organization and its staff or committee members may elect to waive the privilege to use protected information in defense, but the waiver is limited to the litigation of that claim.
4. The court would not address the scope of Idaho Code section 39-1392c because the district court had not ruled on that issue.

KEY QUOTATIONS

"If this Court were to conclude that an unambiguous statute was palpably absurd, how could we construe it to mean something that it did not say?" (508)

"Thus, we have never revised or voided an unambiguous statute on the ground that it is patently absurd or would produce absurd results when construed as written, and we do not have the authority to do so." (509)

"By bringing the lawsuit, the physician waives his or her right to assert the privilege." (510)

FACTUAL BACKGROUND

Joseph Verska was an orthopedic spine surgeon who held privileges at Saint Alphonsus Regional Medical Center until the hospital declined to reappoint him after peer review proceedings. Verska and his professional

corporation alleged that the hospital and two physicians acted in bad faith, including to eliminate competition, and asserted tort, contract, fiduciary-duty, due-process, and related claims. Plaintiffs sought discovery concerning the peer review process, but the hospital claimed that the records and related testimony were protected by Idaho's peer review privilege.

PROCEDURAL HISTORY

Verska and The Spine Institute sued Saint Alphonsus Regional Medical Center and two physicians after the hospital refused to renew Verska's medical staff privileges. During discovery, plaintiffs sought peer review records concerning the hospital's decision; defendants asserted the statutory peer review privilege. The district court denied the motion to compel and granted a protective order. The Idaho Supreme Court accepted a permissive appeal and affirmed.

DISPOSITION

affirmed

CASES CITED

- Aardema v. U.S. Dairy Systems, Inc., 147 Idaho 785, 789, 215 P.3d 505, 509 (2009)
- Budell v. Todd, 105 Idaho 2, 4, 665 P.2d 701, 703 (1983)
- Winn v. Frasher, 116 Idaho 500, 501, 777 P.2d 722, 723 (1989)
- Viking Constr., Inc. v. Hayden Lake Irr. Dist., 149 Idaho 187, 191-92, 233 P.3d 118, 122-23 (2010)
- In re Estate of Miller, 143 Idaho 565, 567, 149 P.3d 840, 842 (2006)
- State v. Schwartz, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003)
- City of Sun Valley v. Sun Valley Co., 123 Idaho 665, 667, 851 P.2d 961, 963 (1993)
- State, Dep't of Law Enforcement v. One 1955 Willys Jeep, 100 Idaho 150, 595 P.2d 299 (1979)
- Berry v. Koehler, 84 Idaho 170, 177, 369 P.2d 1010, 1013 (1962)
- Porter v. Board of Trustees, Preston School Dist. No. 201, 141 Idaho 11, 14, 105 P.3d 671, 674 (2004)
- In re Application for Permit No. 36-7200, 121 Idaho 819, 823-24, 828 P.2d 848, 852-53 (1992)
- State v. Village of Garden City, 74 Idaho 513, 525, 265 P.2d 328, 334 (1953)
- In re Winton Lumber Co., 57 Idaho 131, 136, 63 P.2d 664, 666 (1936)
- Brian and Christie, Inc. v. Leishman Elec., Inc., 150 Idaho 22, 29, 244 P.3d 166, 173 (2010)
- Jaffee v. Redmond, 518 U.S. 1, 9, 11, 116 S. Ct. 1923, 1928-29, 135 L. Ed. 2d 337, 344-45 (1996)

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