

SUPREME COURT OF NORTH DAKOTA

St. Alexius Medical Center v. Nesvig

2022 ND 65 (2022) · No. No. 20220005 · Decided March 17, 2022

SUMMARY

The North Dakota Supreme Court granted St. Alexius Medical Center’s petition for a supervisory writ and directed the district court to vacate its order compelling disclosure of information concerning documents claimed to be protected by the statutory medical peer review privilege. The Court held that the privilege log adequately described the records and that the dates, authors, recipients, and positions associated with the documents did not have to be disclosed. The Court also recognized that a district court has discretion to conduct an in camera review when a privilege claim is challenged.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Daniel J. Crothers; Jon J. Jensen, C.J.; Gerald W. VandeWalle; Lisa Fair McEvers; Jerod E. Tufte
JURISDICTION	North Dakota
DECIDED	March 17, 2022
DOCKET	No. 20220005
DISPOSITION	writ_granted
PROCEDURAL POSTURE	St. Alexius Medical Center petitioned the North Dakota Supreme Court for a supervisory writ challenging a district court discovery order requiring disclosure of information concerning documents claimed to be protected by the statutory medical peer review privilege.
STANDARD OF REVIEW	Supervisory-writ review is discretionary and is exercised only to rectify errors and prevent injustice in extraordinary cases where no adequate alternative remedy exists. District courts have broad discretion regarding the scope of discovery and discretion to conduct an in camera review when a sufficiently identified privilege claim is challenged.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	St. Alexius Medical Center, a North Dakota Corporation, d/b/a CHI St. Alexius Health Bismarck v. The Honorable Pam Nesvig, Judge of the

TOPICS

writ of certiorari discovery dispute privilege medical records privacy appellate procedure

PRACTICE AREAS

civil procedure health law evidence appellate procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court should exercise supervisory jurisdiction over a nonappealable discovery order compelling disclosure of information concerning allegedly privileged peer review records.
2. Whether the dates of documents withheld under North Dakota's medical peer review privilege must be disclosed in a privilege log.
3. Whether the identities and positions of the authors and recipients of the withheld documents must be disclosed.
4. Whether a district court has discretion to conduct an in camera review of documents when a sufficiently identified peer review privilege claim is challenged.

HOLDINGS

1. The Supreme Court may grant a supervisory writ to review a discovery order that is not immediately appealable when the order leaves the privilege claimant with no adequate alternative remedy and requires disclosure or exposure to contempt.
2. A party asserting North Dakota's medical peer review privilege is not required to disclose the dates on which the privileged documents were created when the privilege applies regardless of when the records were created.
3. A party adequately identifies documents for purposes of a North Dakota medical peer review privilege claim by describing them as peer review committee correspondence, meeting minutes, or similar peer review committee documents; the party need not disclose the identities or positions of the documents' authors and recipients.
4. A district court has discretion to conduct an in camera review of documents when a party challenges a peer review privilege claim identified in a sufficient privilege log.

KEY QUOTATIONS

“The power to issue such a writ is discretionary and is used “only to rectify errors and prevent injustice in extraordinary cases where no adequate alternative remedy exists.”” (¶ 6)

“Peer review records are privileged and are not subject to subpoena or discovery or introduction into evidence in any civil or administrative action,” (¶ 10)

“We conclude CHI adequately described the nature of the documents, enabling McKibbage to assess CHI’s claim of privilege.” (¶ 20)

FACTUAL BACKGROUND

Kevin McKibbage brought a medical-malpractice action arising from a 2017 surgery performed by Daniel Dixon. St. Alexius produced some discovery materials but withheld others under the North Dakota medical peer review privilege and supplied an amended privilege log identifying committee correspondence and meeting minutes. The district court ordered St. Alexius to disclose the dates of the documents and the identities and positions of their authors and recipients.

PROCEDURAL HISTORY

Kevin McKibbage sued Daniel Dixon, The Bone and Joint Center, and St. Alexius Medical Center for medical malpractice. After St. Alexius produced some documents and asserted privilege over others, McKibbage moved to compel additional information in the privilege log. The district court ordered disclosure of document dates, the identities and positions of authors, and the identities and positions of recipients. The district court stayed proceedings while St. Alexius sought supervisory relief.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The district court must vacate its November 8, 2021 order compelling disclosure of the dates of the privileged documents and the identities and positions of their authors and recipients. The opinion also recognizes that the district court may, in its discretion, conduct an in camera review if the privilege claim is challenged.

CASES CITED

- Trinity Med. Ctr., Inc. v. Holum, 544 N.W.2d 148, 151 (N.D. 1996)
- Kraft v. Essentia Health, No. 3:20-cv-121, 2021 WL 4143941 (D.N.D. Sept. 7, 2021)
- State v. Hunter, 2018 ND 173, ¶ 37, 914 N.W.2d 527
- Alerus Fin., N.A. v. Erwin, 2018 ND 119, ¶ 12, 911 N.W.2d 296
- Martin v. Trinity Hosp., 2008 ND 176, ¶ 17, 755 N.W.2d 900