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LEXSEE 2001 Nev. LEXIS 46

**KENNETH M. CLARK, Appellant, vs. COLUMBIA/HCA INFORMATION SERVICES, INC., A NEVADA CORPORATION; NEVADA PSYCHIATRIC COMPANY, A NEVADA CORPORATION; IRA PAULY; PHILLIP RICH; LOUIS RICHNAK; JOHN CHAPPEL; NEAL CURY; THOMAS BITTKER; AND JERRY HOWLE, Respondents.**

**No. 29995**

**SUPREME COURT OF NEVADA**

***25 P.3d 215; 2001 Nev. LEXIS 46; 117 Nev. Adv. Op. No. 42***

**June 21, 2001, Decided**

## FACTS

Kenneth M. Clark is a Reno psychiatrist who specializes in child psychiatry. From 1981 to 1993, Clark had intermittent staff privileges at the Truckee Meadows Hospital, now known as West Hills Hospital.

In September 1992, the Truckee Meadows Hospital alleged that Clark was engaging in "activities or

professional conduct which are disruptive to Hospital operations" in violation of Section 8.1-1 of the hospital's Medical Staff Bylaws. [\*\*3] n3 The hospital informed Clark that it would hold a peer review board hearing concerning his conduct. The Statement of Charges specified the conduct in question as: (1) a May 17, 1991, letter to CHAMPUS (a federal insurance provider) regarding Clark's concerns about the hospital's closed staff policy "and other derogatory matters"; (2) a June 3, 1991, letter to Neal Cury explaining the letter to CHAMPUS and expressing concerns of substandard child psychiatric care; (3) September 18, 1991, and November 10, 1991, letters to the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) addressing concerns with the hospital's care; (4) Clark's alleged inquiry regarding another psychiatrist's patient's care; (5) Clark's failure to abide by his agreement of May 7, 1992, to work internally to rectify his grievances and inform the hospital of his external actions; (6) Clark's alleged statements that he would "never relinquish pursuing his vendetta against the hospital"; (7) an August 1992 report to the Nevada State Board of Medical Examiners containing false allegations about another psychiatrist regarding the care of Clark's patient in violation of his May 7, 1992, agreement; [\*\*4] and (8) allegedly doing "rounds" when he had no patients.

n3 Section 8.1-1 provides:

Whenever the activities or professional conduct of any practitioner with clinical privileges are detrimental to patient safety or to the delivery of quality patient care that is optimally achievable, or are disruptive to Hospital operations, corrective action against such practitioner may be initiated by the MEC, the CEO or the Trustees.

The reports Clark made dealt primarily with his concerns that the hospital did not follow appropriate procedures in posting random on-call schedules, provided deficient child psychiatric care, and had policies requiring premature patient discharge when [\*219] patients ran out of insurance to cover their care. Clark also alleged that the hospital diverted patients from him to other psychiatrists. He further alleged that the hospital improperly used his superior credentials to qualify an affiliate hospital for accreditation although he did not work there.

At the peer review board hearing, evidence [\*\*5] was presented detailing Clark's letters and reports to outside agencies in 1991. Respondents discussed their concerns

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After hearing evidence, the peer review board concluded that Clark's actions in reporting to outside agencies and failing to proceed with internal processes by his report to the Nevada Board of Medical Examiners constituted disruptive conduct in violation of Medical Staff Bylaws section 8.1-1. The board concluded that Clark's disruptive conduct would likely continue in the future and "eventually have an adverse impact on the quality of health care" at the hospital. Hence, the board unanimously recommended revoking Clark's staff membership and clinical privileges at the Truckee Meadows Hospital. Both the Medical Executive Committee and the Board of Trustees agreed, and they affirmed the revocation of Clark's privileges.

Clark filed an action in the United States District Court of Nevada, alleging violations of various federal antitrust provisions and state tort and contract causes of action. Respondents filed a motion for summary judgement. The federal district court granted respondents' motion on the federal antitrust claims, stating that Clark had produced no evidence to support these claims. The court further concluded that

even if Clark had presented evidence of an antitrust

that Clark's reporting was having an adverse impact on hospital operations by taking excessive amounts of staff time and was encouraging a distrustful atmosphere.

The hospital also mentioned its concerns with one instance involving patient "KK," who had been admitted for a drug overdose and suicidal tendencies. Clark did not keep KK for observation. Instead, he discharged KK on the day of admission, which the hospital felt was inappropriate. The hospital further stated that Clark's subsequent report to the Nevada Board of Medical Examiners concerning the hospital's response to his treatment of KK violated his agreement to work within internal processes. The hospital also mentioned allegations that Clark had inquired about another psychiatrist's patient in violation of confidentiality. Clark presented testimony rebutting these charges and explaining his actions in discharging KK. n4 No other evidence was presented of deficient psychiatric care or complaints with Clark's psychiatric practice.

n4 Clark stated that both KK and KK's father refused to voluntarily admit the patient, and he discharged KK pursuant to their wishes after informing them of the risks.

By the Court, SHEARING, J.:

This case requires that we interpret the federal Health Care Quality Improvement Act (HCQIA). n1 We must determine whether the immunity provisions of HCQIA apply so as to bar appellant Kenneth M. Clark's underlying tort and contract claims against respondents. n2 We conclude that Clark has overcome the presumption of respondents' immunity by demonstrating by a preponderance of the evidence that the revocation of his hospital staff privileges [\*\*2] was not with the reasonable belief that it was in furtherance of quality health care. Thus, respondents are not immune from liability as a matter of law. Accordingly, we reverse the order of the district court and remand for further proceedings consistent with this opinion.