

Problem: Medical Staff Boycotts of Allied Health Professionals

Centerville Psychiatric (CP) is a for-profit psychiatric hospital in a large town with two other free-standing psychiatric hospitals and with four general hospitals that have smaller psychiatric units. CP attempts to distinguish itself from its competitors by claiming to offer better doctors and more state-of-the-art structured treatment programs that combine intensive counseling and drug therapy for acute episodes of serious mental illness (so-called nervous breakdowns). This treatment approach contrasts with that in general hospitals, which is unstructured, much shorter in duration, and often administered by nonspecialists, and contrasts with other specialized psychiatric hospitals that offer long-term custodial treatment for more chronic conditions.

Consistent with its long-standing bylaws, CP's medical staff presently consists of only board-certified psychiatrists, which are specially trained M.D.s. Alfred Zock, Ph.D. is a psychologist of good reputation with an active counseling and therapy practice in Centerville. He has decided to break the mold by applying for medical staff privileges at CP. The major practical difference between psychiatrists and psychologists is that only the former can prescribe drugs; psychologists are limited by state licensing laws to "couch therapy." In the past, psychologists have been allowed

to see CP patients who were under their care before coming to CP, but only if a staff psychiatrist approved and supervised the psychologist. Dr. Zock would like to admit his own patients directly and treat them at CP without supervision or prior approval. He has admitting privileges at one of the general hospitals in town, but he finds their facilities unsatisfactory.

The existing psychiatrists oppose Dr. Zock's admission because they like things the way they are, for both clinical and financial reasons. The hospital administration is also not in favor, partly because it does not want to antagonize its medical staff in a competitive hospital market where they can take their patients elsewhere, and partly because reimbursement rates under managed care insurance are usually higher for drug therapy than for counseling. On the other hand, it is clear many patients would prefer their own psychologist to be their primary physician.

As lawyer for CP, advise it on the safest way to exclude Dr. Zock. Consider whether to use primarily quality or economic criteria, whether to act under the existing bylaws, or to change them and then consider Dr. Zock individually. Consider what procedures to follow in making these decisions.

After reading about all these lawsuits arising from medical staff disputes, both under the common law fairness doctrine and under antitrust law, it may surprise you to learn that a federal statute confers broad immunity on participants in hospital and HMO credentialing or peer review processes. As you read the following case, note the various qualifications and limitations imposed on this immunity by considering to what extent it would apply to each of the medical staff dispute cases you read in the previous three sections of this chapter.