



THE MAJORITY OF STATES NOW ALLOW CLAIMS TO BE ASSERTED AGAINST HOSPITALS FOR NEGLIGENT CREDENTIALING

The majority of states now allow patients to assert a claim for negligent credentialing. By asserting this cause of action, patients can overcome limitations on medical malpractice damages and obtain damages far in excess of that recoverable under traditional med mal claims.

The theory underlying the claim is that a hospital has a duty to investigate, select, and retain only qualified and competent physicians, and its failure to do so can give rise to negligence. Different courts have given the claim various labels, including corporate or institutional negligence, negligent selection, retention, or supervision, and most commonly, negligent credentialing.

To better understand the basis for liability, let's take a look at a couple of cases.

In *Friego v. Silver Cross Hospital and Medical Center* an Illinois appellate court upheld a \$7.7 million jury verdict based on negligent credentialing. A podiatric physician operated on the plaintiff's foot despite the presence of an infected ulceration on the foot, which ultimately had to be amputated. The plaintiff claimed that the defendant hospital should not have given the podiatrist surgical privileges as he failed to meet the hospital's criteria for receiving Level II surgical privileges, which included postgraduate training, board certification, and other qualifications.

The court found that the podiatrist had failed to meet the standards set out in the medical staff bylaws for Level II surgical privileges and he could not be grandfathered in because the bylaws were silent on the issue of grandfathering.

In *Larson v. Wasemiller*, a 2007 case, the Minnesota Supreme Court recognized for the first time, that a cause of action exists against a hospital for the manner in which it credentials a physician to see patients within the facility. The plaintiff sued two physicians following gastric bypass surgery which did not go well. After suing the docs, the plaintiff amended her complaint to sue the hospital after she discovered that one of the doctors had been the subject of ten prior medical malpractice claims or lawsuits and struggled to obtain medical malpractice insurance. He had also been disciplined and failed his board certification three times before passing. In upholding the verdict, the Supreme Court analogized the claim of negligent credentialing to negligent hiring because negligence could be shown on the basis of what was actually known or should have been known at the time of the credentialing decision.

There are two ways a hospital can be found negligent:

If the hospital had a sound credentialing process, but failed to follow it, or if the hospital followed its credentialing process, but the process was inadequate. An essential element to the claim is proving that the patient was harmed by the negligence of the physician.

As more states recognize this basis for liability and more plaintiffs' lawyers exploit it, it is now more important than ever that hospitals have sound credentialing programs and rigorously apply their requirements in making hiring and privileging decisions.



Shield Screening provides products and services to protect against negligent credentialing liability, including its flagship medical monitoring program Shield Watch.

Jurisdictions that recognize the tort of “negligent credentialing” generally require a plaintiff making the claim to prove: (1) the hospital unreasonably selected and screened the physician it granted medical staff privileges to whose treatment provided the basis for the underlying medical malpractice claim; (2) while practicing pursuant to negligently granted staff privileges, the physician was negligent; and (3) the hospital’s negligent granting of medical staff privileges was a proximate cause of the plaintiff’s injuries. See [Frigo v. Silver Cross Hospital and Medical Center](#), No. 1-05-1240, (Ill. App. 2007) (upholding \$8 million verdict against hospital for negligently granting surgical privileges to podiatrist)

The Court of Appeals then outlined the elements of negligent credentialing, adopted from 18 Causes of Action 2d 329 by Peter Schmit. To establish a prima facie case in the Commonwealth of Kentucky for negligent credentialing, a plaintiff must prove: (1) the defendant hospital owed the patient a duty to ensure a competent medical staff, (2) the hospital breached that duty by granting privileges to an incompetent or unqualified physician, and (3) the physician caused harm to the patient. [2011 Ky. App. LEXIS 94, 6.] Additionally this opinion mandated that the underlying medical malpractice claim must also be proven for if the physician had not been negligent, a hospital’s failure to exercise reasonable care in their medical staff selection could not be the proximate cause of the patient’s injuries. [63 U. Cin. L. Rev. 607, 632]

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