



Ubinas-Brache v. Dallas County Medical Society, 261 S.W.3d 800 (Tex. App. 2008)

68 S.W.3d 31 (Tex. App. 2001)

Topics Covered: Peer Review, Medical Society Advocacy

Outcome: Favorable

Issue

The issue in this case was whether medical societies should have the right to determine their members' qualifications through good faith peer review proceedings.

AMA Interest

The AMA supports peer review proceedings brought in good faith and conducted under proper procedures.

Case Summary

Dr. Emmanuel E. Ubinas-Brache had been a member of the Dallas County Medical Society ("DCMS"), a branch of the Texas Medical Association ("TMA"). Each DCMS member agreed to be bound by the AMA's Principles of Medical Ethics and by the DCMS disciplinary procedures. The DCMS bylaws stated that disciplinary actions would be carried out in accordance with the TMA Disciplinary Procedures Manual. The TMA manual provided that hearings would be conducted through a "fair and good faith proceeding."

DCMS received three complaints of medical negligence against Dr. Ubinas from his patients, one of whom was a physician and a family friend. Following an investigation, the complaints were referred to at least three separate levels of review within DCMS. One of the reviewing bodies, the DCMS Board of Censors, recommended that Dr. Ubinas be expelled from DCMS and TMA because he had provided services to patients that were unnecessary and inconsistent with the clinical findings, had failed to deal honestly with his patients, and had engaged in deceptive practices. Dr. Ubinas appealed this recommendation to the DCMS Board of Directors. After a ten-hour hearing in which expert evidence was presented, witnesses were examined and cross-examined, and attorneys' arguments were made, the Board of Directors voted to expel Dr. Ubinas from DCMS.

Dr. Ubinas then appealed to the TMA Board of Councilors, which affirmed the expulsion. He next appealed to the AMA Council on Ethical and Judicial Affairs, which also affirmed the expulsion.

Following exhaustion of these appeals, Dr. Ubinas sued DCMS and TMA in Texas state court, alleging breach of contract and a denial of due process under the Texas Constitution. He contended that the proceedings were not kept confidential, that the evidence was not weighed properly, and that various persons involved in the prosecutorial function were also involved in the deliberative process. Dr. Ubinas sought only injunctive relief, but the trial court referred the matter to a jury. The jury found that Dr. Ubinas had been irreparably injured and that both DCMS and TMA had failed to provide him with "fundamental fairness and a fair and good faith proceeding." The trial court enjoined DCMS and TMA from expelling Dr. Ubinas or from reporting their action to the National Practitioner Data Base. Both sides moved for an award of attorneys' fees, but the court denied those motions.

DCMS and TMA each appealed to the Texas Court of Appeals. The Court of Appeals found that Dr. Ubinas had neither alleged nor proven malice on the part of DCMS, as required under the applicable Texas statute. It reversed the judgment and remanded the case to the trial court for determination of whether attorneys' fees should be entered against Dr. Ubinas.

Following the remand, DCMS argued that Dr. Ubinas had brought a frivolous lawsuit. The court entered final judgment in favor of DCMS and TMA in the amount of \$629,882.43 for attorneys' fees and defense costs. Dr. Ubinas appealed.

The Texas Court of Appeals reversed the fee award, finding that although Dr. Ubinas had lost the case, his suit had not been frivolous. On February 17, 2009, the Texas Supreme Court refused to hear a requested appeal from the Court of Appeals.

Litigation Center Involvement

The Litigation Center contributed toward the fees of the DCMS/TMA expert witnesses. The AMA itself paid for half of the total legal expenses.