



# Virmani v. Novant Health, Inc., 194 Fed. Appx. 143 (4th Cir. N.C. 2006) (unpublished opinion)

Topics Covered: Peer Review

**Outcome: Unfavorable**

## Issue

The issue in this case was whether the federal courts should recognize a state law peer review privilege in a federal cause of action (employment discrimination).

## AMA Interest

The AMA supports the confidentiality of medical peer review proceedings.

## Case Summary

Presbyterian (later Novant) Hospital in Matthews, North Carolina, granted Dr. Virmani privileges to practice as an obstetrician-gynecologist. Dr. Virmani punctured the iliac artery of a patient during a laparoscopic procedure, resulting in severe complications. The hospital launched a review of all procedures for which Dr. Virmani was primarily responsible during his tenure at the hospital. The hospital found 24 of 102 procedures “problematic” and terminated Dr. Virmani’s privileges.

Dr. Virmani filed a state court action, claiming that the hospital had failed to adhere to its own bylaws during the peer review process. The North Carolina Court of Appeals ordered a new hearing. Following the second hearing, Dr. Virmani’s privileges were terminated again.

Dr. Virmani then filed a federal court action, alleging that the hospital was motivated by racial and national origin bias in its decision to terminate his privileges. He also alleged state-based claims of intentional and negligent infliction of emotional distress.

During the course of discovery, Dr. Virmani requested that the hospital disclose twenty years’ worth of peer review records. The hospital moved for a protective order to bar the discovery, but the court denied the bulk of that request. Relying on Federal Rule of Evidence 501, the court ruled that state laws extending privileges to peer review records (such as the North Carolina statute) were not controlling in federal court, although the court could apply the state privilege law if it chose to do so. The court further held that the need to fairly redress the alleged discriminatory acts overrode the interest in withholding the records of peer review proceedings. The court ordered the hospital to disclose its records relating to inquiries into the competency of obstetrician – gynecologists at the hospital.

The court also certified the question of peer review records disclosure to the United States Court of Appeals. The Fourth Circuit granted the hospital's request for an interlocutory appeal to address the issue of peer review privilege.

The Fourth Circuit affirmed, holding against the peer review privilege. It found that the social policies favoring full evidentiary disclosure in an employment discrimination case outweighed the potential benefits that would have derived from a fully confidential peer review. The hospital petitioned the Fourth Circuit for a rehearing en banc, but that motion was denied.

### **Litigation Center Involvement**

The Litigation Center, along with the North Carolina Medical Association filed an *amicus* brief on the hospital's behalf, supporting the peer review privilege.