

Pennsylvania Bar Institute

*25th Annual Health Law Institute
Health Law Year in Review
Hospital Perspective*

March 12, 2019
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Case Law Developments

- PA cases
- Other noteworthy cases

Regulatory Developments

- NPDB
- CMS

PA Case Law Developments

- EMTALA
- Peer Review Privilege
- Antitrust
- PSQIA

EMTALA

Gilmore v. Holland (3d Cir. 2018)

**EMTALA stabilization requirements
not applicable to inpatients.**

Peer Review Privilege

Reginelli v. Boggs, 181 A.3d 293 (2018)

Performance file of emergency
physician not protected.

Open question –

Is review conducted by external committee of health care professionals under a contract protected?

Yes –

**In Re: Westmoreland Hospital Cardiac
Stent litigation (Ct. Com. Pl.
Westmoreland Cty. Dec. 18, 2018)**

Antitrust

*McGary v. Williamsport Reg'l. Med.
Ctr.* (M.D.Pa. May 22, 2018)

Volume eligibility criteria not
evidence of intent to monopolize.

Patient Safety and Quality Improvement Act

- *Earhart v. Elder*, W.D.WV Feb. 5, 2019
- *Crawford v. Corizon Health, Inc.*, W.D.Pa. July 10, 2018

Recent Developments

- Penn State Hershey Med. Cntr. 3^d Cir. 2019
(no recovery of fees)
- Montgomery Hosp. and Med. Cntr. v. MCARE Fund (Pa. Cmwlth Ct. Jan. 4, 2019)
(motion for coverage of defense expenses denied; ostensible agency, radiologists)

Regulatory Developments

**October 2018 NPDB
Guidebook Revisions –
no comments sought**

- **Voluntary temporary agreement not to exercise privileges – reportable if more than 30 days**
- **LOA?**

- **Legal authority questionable**
- **Subregulatory guidance**
- **Consider developing a policy designed to demonstrate compliance, based on language in Guidebook**

DOH – Hospital Licensing Regulations to be revised

**CMS proposed rule on regulatory burden
– comments on unified medical staff
(September 17, 2018)**

**CMS sought public comment through
2-19-2019 on accrediting organization
Conflicts of Interest re fee-based
consultative services**

