

# Physician

The Independent Medical Business Newspaper



## Hospital medical-staff bylaws

*A recent Minnesota Supreme Court ruling*

**By Greg Myers, JD; David Asp, JD; and Elizabeth Snelson, JD**

**O**n Dec. 31, 2014, the Minnesota Supreme Court held that a hospital's medical staff may have the capacity to sue, or be sued, as an unincorporated association, and that medical-staff bylaws could constitute an enforceable contract between the hospital and its medical staff.

The decision, *Med. Staff of Avera Marshall Reg'l Med. Ctr. v. Avera Marshall*, No. A12-2117, 2014 WL 7448532 (Minn. Dec. 31, 2014), is significant for medical staffs that rely on bylaws to cover everything from credentialing applications to call coverage to disciplinary proceedings. It means that, as long as the terms of staff bylaws are sufficient to create a contract, a medical staff has the capacity to sue for enforcement.

But the decision also underscores the need for any medical staff to be careful about what it agrees to in its bylaws.

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## Health exchange transparency

*Are we there yet?*

**By Candace DeMatteis, JD, MPH**

**I**magine being required to purchase a box containing a year's supply of food in advance. All you know is the cost of several boxes being offered, that these boxes contain some essentials like milk and bread, and the name of the store offering the boxes. How would you decide which

box to buy? Making matters more challenging, what if you or a family member have a health condition that requires a particular diet? If the food in the box that you chose does not meet your needs, you will end up having to buy different items

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**Hospital medical-staff bylaws**  
*from cover*

If not careful, a medical staff could expose itself to future liability by agreeing to bylaw provisions that it cannot follow. Or, in other cases, a hospital may ask a medical staff to agree to provisions that disavow the existence of a contract altogether, meaning the medical staff would voluntarily give up the very protections recognized in Avera Marshall.

**Background on medical-staff bylaws**

Both Minnesota and federal law require the governing body of a hospital to appoint a medical staff, and require the medical staff to formulate bylaws, policies, and rules to govern its operations.

Even before the Minnesota Supreme Court's decision in Avera Marshall, there were potential legal consequences whenever a hospital or medical staff violated a material

provision of the bylaws. For example, a hospital's violation of the bylaws could support an argument against a peer-review action as arbitrary or motivated by bad faith.

*The medical staff had the capacity to sue.*

The question of whether a medical staff may file suit for breach of the bylaws, however, has been the subject of significant debate among courts and lawyers across the country. Many state courts have held that medical-staff bylaws are contractual, and that members of the medical staff may sue or be sued to enforce bylaw provisions, while others have used a case-by-case analysis depending on the specific terms

of the bylaws themselves.

The question of whether medical-staff bylaws could be contractual had never been decided directly by the Minnesota Supreme Court, although a 1977 decision from the Court referred to the bylaws as creating a "contractual" right without any analysis of the issue.

**The facts of the Avera Marshall decision**

Avera, a South Dakota-based hospital system, operates a medical center in Marshall, Minn. The medical staff at the hospital adopted bylaws, including a provision requiring that the medical staff be required to approve any changes to the bylaws by two-thirds vote. Despite this provision, the hospital's board repealed the existing bylaws and approved a set of revised bylaws in 2012 without the medical staff's support.

The medical staff sued the hospital, arguing that the hospital board violated the bylaws. Among other relief, the medical staff sought a declaration that it had the legal capacity to file a lawsuit and that the medical-staff bylaws were enforceable against Avera Marshall. The district court dismissed the case, and the Minnesota Court of Appeals affirmed that decision.

**The Supreme Court's decision**

The Minnesota Supreme Court reversed the lower court decisions, concluding that (1) the medical staff had the capacity to sue the hospital and (2) the medical-staff bylaws qualified as an enforceable contract under Minnesota law.

Justice Alan Page, writing for a majority of justices on the Minnesota Supreme Court, first concluded that even though the medical staff had not created a formal legal entity (such as

a corporation), the medical staff satisfied Minnesota's statutory requirements as an unincorporated association, with the legal capacity to sue and be sued. The medical staff was found to be an unincorporated association because it was "composed of two or more physicians who associate and act together for the purpose of ensuring proper patient care at the hospital under the common name 'Medical Staff.'"

As to the second issue, Justice Page wrote that Avera Marshall's bylaws qualified as a contract under Minnesota law because the medical staff had consented to the bylaws by agreeing to provisions that exceeded the minimum standards required under state law—as a result, the bylaws were not merely the product of a preexisting legal obligation. Further, because the hospital-required medical staff members had to agree with the bylaws in order to be appointed to the medical staff, the hospital had formed a contractual relationship with each member of the medical staff upon appointment.

**Significance of the decision for medical staff**

Minnesota joins the majority of jurisdictions recognizing that medical-staff bylaws may be contractual, which is also a long-standing position of the American Medical Association. Members of a medical staff now have additional assurances that the requirements of the bylaws will be followed and, if the bylaws are not followed, medical staff now have a legal mechanism for enforcing the bylaws' requirements.

But this mechanism also could work the other way, when bylaws are enforced against the medical staff or one of its members. As a result, the decision is a warning for members of medical staff to be careful about what they agree to in their medical-staff bylaws.

Although Avera Marshall likely means that, in general, staff bylaws constitute a

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contract, the case does not establish that bylaws always will form a contract. In each case, the relationship between a hospital and medical staff will be determined by the facts of the situation and the terms of the bylaws.

Medical staff may encounter situations where hospitals propose bylaw provisions that disavow the existence of a contract altogether. A footnote in Avera Marshall contemplates this practice by comparing medical-staff bylaws to employee handbooks, which also may constitute an enforceable contract depending on the language. If a hospital seeks to prevent bylaws from becoming contractual, it may seek to include a disclaimer that disavows the document is a contract, similar to disclaimers that frequently appear in employee handbooks.

Where the terms of staff bylaws clearly create a contract, medical staff should be careful

not to agree to provisions that create burdensome or complicated obligations for staff members. If medical staff is unable to comply with the requirements of staff bylaws, the staff and its members may be exposed to potential liability for breaching the bylaws' terms.

The decision in Avera Marshall clarifies that a medical staff may have the legal ability and right to enforce staff bylaws. Yet as it recognized the new rights for medical staff, the Minnesota Supreme Court's decision underscores that the obligation of medical staff to carefully review the bylaws before agreeing to them is just as important as it was before. ❏

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**Publication Date: June 2015**

We are seeking nominations of exceptionally designed health care facilities in Minnesota. The nominees selected for the honor roll will be featured in the June 2015 edition of Minnesota Physician, the region's most widely read medical publication. Eligible facilities include any construction designed for patient care: hospitals, individual physician offices, clinics, outpatient centers, etc. Interiors, exteriors, expansions, renovations and new structures are all eligible.

In order to qualify for the nomination, the facility must have been designed, built or renovated since January 1, 2014. It also must be located within Minnesota (or near the state border within Wisconsin, North Dakota, South Dakota or Iowa). Color photographs are required at **300 dpi resolution** (no more than eight) **with caption of each** to amarlow@mppub.com. If you would like to nominate a facility, please fill out the form below and, **a brief project description (150-250 words)** by Friday, May 8, 2015.

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Architect/interior design firm \_\_\_\_\_

Architect address, phone \_\_\_\_\_

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Engineer \_\_\_\_\_

Contractor \_\_\_\_\_

Completion date \_\_\_\_\_

Total cost \_\_\_\_\_

Square feet \_\_\_\_\_

Brief description \_\_\_\_\_

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