

Credentials Materials Are Not Privileged Under the Health Care Professional Credentials Data Collection Act

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The Illinois Supreme Court recently held in *Klaine v. Southern Illinois Hospital Services*, 2016 IL. 118217 that a physician's application for hospital privileges, which included information obtained from the National Practitioners Data Bank ("NPDB"), was not privileged from discovery under §15 (h) of the Credentials Act 410 ILCS 517-15(h), and that information reported to the NPDB was not privileged under the Health Care Quality Improvement Act, 42 U.S.C §11137. The *Klaine* Court held that there was a distinction between statutes categorizing information as "confidential," as is the case with the Credentials Act, and "privileged," as used in the Illinois Medical Studies Act 735 ILCS 5/8-2010. The Court noted that although the Credentials Act identifies credentials data collected as "confidential," the Act does not categorize the materials as "privileged." In the absence of a privilege, the documents were subject to discovery in the context of an alleged negligent credentialing case.

We recommend Illinois hospital medical staff offices encourage applying physicians to provide only the information required by the credentials application and allow the hospital Credentials Committee to gather the additional information needed including NPDB information as part of its deliberation process. Outside Illinois, the analysis of the impact of the *Klaine* decision should be undertaken with counsel in consideration of applicable state statutes and case law.

For more information, please contact Jerrod L. Barenbaum. This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.

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