

## Surgeon seeks records criticizing him

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In a lawsuit against the hospital, however, Curtsinger has sought the files, contending that one document was used to smear his reputation when it was leaked. The peer review as a whole cleared Curtsinger of wrongdoing, and the critical report in the peer review has been described as an unadopted minority opinion. There are conflicting accounts of who asked that it be written.

Citing a Kentucky Supreme Court ruling last year that said hospital records could be released in medical malpractice cases, Russell in January ordered Lourdes to turn over nearly all of Curtsinger's peer-review file to the plaintiffs.

But Russell refused to release the critical document, saying it "had no relevance" in the case. Russell acted even though Lourdes had privately shared the report with the plaintiffs. He ordered the document sealed.

Plaintiffs in the malpractice suit are alleging that Curtsinger's battle with Lourdes over the peer review left him distraught and that Lourdes negligently let Curtsinger remain on staff. To support their argument, the plaintiffs sought Curtsinger's peer-review records.

The suit arose when the estate of Billy Crouch of Smithland alleged that Curtsinger in 1994 delayed an op-

eration, allowing a fatal gangrene infection to develop, and that Lourdes Hospital was negligent for issuing credentials to Curtsinger. Both deny wrongdoing. Crouch was admitted to the hospital in the midst of Curtsinger's early battle over the report.

William McMurry, a Louisville lawyer representing Crouch's estate, in a hearing last week called records from Curtsinger's early battle over the report the "single most important direct evidence" of Curtsinger's emotional state at the time, and he says he intends to delve into it during the trial.

Lourdes Hospital lawyer David Kelly on Feb. 25 wrote to Curtsinger's lawyer, Mark Greene of Louisville, saying that he and McMurry had a prior private agreement that if McMurry found the report to be "irrelevant," it would be "returned . . . uncopied." The two lawyers say that is what happened and they argue that is why it should stay secret.

Greene said in an interview that he has never encountered a situation in which one party to a case had been denied documents that other parties have examined.

"They say it's not relevant," he said. "We'd like an opportunity to see for ourselves."

Russell and McMurry have joined a small but growing group of judges and lawyers who have interpreted the Supreme Court's decision in the Jef-

erson County case of Leanhart vs. Humana as a vehicle to provide access to records.

Observers say the Leanhart opinion seems to allow continued protection for peer-review records from disgruntled doctors who want to sue over bad reviews but opens them up in malpractice actions.

"(Leanhart) is a very significant ruling, and that's good for society as a whole when you get Kentucky appellate courts and the federal bench agreeing," said Barry Willett, president of the Kentucky Academy of Trial Attorneys. "You have had one party wanting to cloak documents in secrecy . . . keeping facts from the open process of litigation."

Willett added that there has "been some belief that hospitals have been dumping damaging documents in peer-review files" to keep them secret.

Russell's order to release the records is "extremely disturbing," said Carole Christian, an attorney with Wyatt, Tarrant and Combs who also is counsel for the Kentucky Hospital Association.

"Hospitals have been fighting this for years," she said. Hospitals argue that if the peer-review results can become public, then the system will break down because doctors will be less likely to candidly criticize their colleagues, she said.

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