

# Health Law Alert: Medical Staff Bylaws can be an Enforceable Contract—Implications of the Recent Minnesota Supreme Court Decision

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On Dec. 31, 2014, the Supreme Court of Minnesota issued its long-awaited decision in *Medical Staff of Avera Marshall Regional Medical Center v. Avera Marshall*. This case has drawn national attention, addressing the unanswered and often contentious question of enforceability of medical staff bylaws.

The court held the Avera Marshall Medical Staff (the Medical Staff) had standing to sue Avera Marshall Regional Medical Center (Avera Marshall) and that the medical staff bylaws constitute an enforceable contract. The decision has significant implications for hospitals, health systems, and medical staffs alike.

## **THE CASE AGAINST AVERA MARSHALL**

Avera Marshall is a nonprofit hospital that is owned and operated by Avera Health. In January 2012, the Avera Marshall Board of Directors notified the Medical Staff that the board had repealed the medical staff bylaws and approved the adoption of revised bylaws. Relying on a provision in the former bylaws which stated bylaw revisions require an affirmative vote of two-thirds of the members eligible to vote, the Medical Staff voted on the proposed changes and rejected the repeal of the former bylaws and the adoption of the revised bylaws. Nevertheless, the revised medical staff bylaws took effect on May 1, 2012, pursuant to the action by the Avera Marshall Board of Directors.

Two individual physicians and the Medical Staff as a whole filed suit against Avera Marshall, arguing Avera Marshall breached the amendment process specified in the former bylaws. The district court held the Medical Staff lacked the capacity to sue Avera Marshall and that medical staff bylaws do not constitute an enforceable contract. The court of appeals affirmed.

## **THE DECISION**



The Minnesota Supreme Court addressed two issues: (1) whether the Medical Staff has the legal capacity to sue Avera Marshall; and (2) whether the medical staff bylaws constitute an enforceable contract.

In regards to the first issue, the court held Minnesota Statute § 540.151 grants the right to sue to unincorporated associations, such as the Medical Staff. The statute provides, "When two or more persons associate and act...under the common name...they may sue in or be sued by such common name." Avera Marshall argued this provision simply permits associations to sue under a common name when that association otherwise has the legal capacity to sue.

The court determined the Minnesota Statute does not contain language indicating that it applies only if another statute has granted an association the legal capacity to sue. Thus, unincorporated associations have the capacity to sue provided they meet the requirements of Minn. Stat. § 540.151. The court noted the Medical Staff is composed of two or more physicians who associate with each other and act for common purposes using a common name of "Medical Staff." Accordingly, the court held the Medical Staff has the legal capacity to sue Avera Marshall.

The second issue struck the heart of the case. The district court and court of appeals held that the medical staff bylaws were not an enforceable contract because of lack of consideration. Both courts reasoned that Avera Marshall had a preexisting duty under state law to adopt medical staff bylaws, and satisfaction of a preexisting duty does not constitute consideration. The supreme court disagreed. The supreme court noted the bylaws exceed the minimum requirements set out in state law. Thus, according to the supreme court, the district court and court of appeals "miss the point by focusing on the adoption of the medical staff bylaws as a preexisting legal obligation."

The supreme court determined the elements of an enforceable contract were present. There was a bargained-for exchange of promises and mutual consent to the exchange—Avera Marshall offered medical staff privileges to each member, provided each member agreed to be bound by the medical staff bylaws. Importantly, the court held consideration did exist, stating, "both Avera Marshall and the members of its Medical Staff voluntarily assumed obligations on the condition of an act or forbearance on the part of the other." Ultimately, the supreme court held Avera Marshall formed a contractual relationship with each member of the Medical Staff upon appointment.

## **PRACTICAL IMPLICATIONS OF THE *AVERA* DECISION**

With the *Avera* decision, Minnesota joins a substantial number of other states where medical staff bylaws are considered a contract. The *Avera* decision has significant implications for both hospitals and their medical staffs—perhaps more than anything else, the underlying disagreement in that case serves to underscore that for ideal functioning, there must be cooperation and mutual respect between hospital



administrators and the medical staff. After *Avera*, hospitals may wish to review their medical staff bylaws to ensure there are clear statements of the rights and obligations of both the hospital governing board and the medical staff.

It may also be productive to focus on medical staff bylaws provisions pertaining to application for appointment or reappointment to the medical staff. It is more important than ever to define with precision the process of applying for medical staff membership, when a submitted application is complete, and when a physician is admitted or renewed as a member of the medical staff, as the question of membership now bears directly on whether a physician is a party to the contract formed by the medical staff bylaws, with standing to enforce its provisions. Hospitals should also assess how their medical staff bylaws interact with other important operational and governance documents, especially professional service agreements with physician groups—e.g., what happens to a physician's medical staff membership if the professional services agreement with her group terminates? Are notice and hearing rights under the bylaws triggered?—as well as the hospital's corporate bylaws. Typically, medical staff bylaws make clear that in the event of a conflict between the medical staff bylaws and the corporate bylaws, the latter controls (notably, however, this argument did not carry the day in the *Avera* case).

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If you have questions regarding the implications of the *Avera* decision or medical staff bylaws generally, please contact Greg Larson at [greg.larson@lathropgpm.com](mailto:greg.larson@lathropgpm.com) (612.632.3374), Julia Marotte at [julia.marotte@lathropgpm.com](mailto:julia.marotte@lathropgpm.com) (612.632.3280) or Jesse Berg at [jesse.berg@lathropgpm.com](mailto:jesse.berg@lathropgpm.com) (612.632.3374).