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Brandon Regional Hospital v. Maria Murray

SC05-1864

PLEASE RISE.

HEAR YE, HEAR YE, HEAR YE.>`

THE SUPREME COURT OF FLORIDA IS`
NOW IN SESSION.>`

ALL WHO HAVE CAUSES TO PLEA,`
DRAW NEAR, GIVE ATTENTION AND`
YOU SHALL BE HEARD.>`

GOD SAVE THESE UNITED STATES,`
THE GREAT STATE OF FLORIDA, AND`
THIS HONORABLE COURT.,,`

CLEAR`

LADIES AND GENTLEMEN, THE`
FLORIDA SUPREME COURT.>`

PLEASE BE SEATED.

GOOD MORNING ALL.>`

WELCOME TO THE FLORIDA SUPREME`
COURT AND OUR ORAL ARGUMENT`
CALENDAR FOR TUESDAY,`
OCTOBER 31.>`

THE FIRST CASE ON THE DOCKET`
THIS MORNING IS BRANDON REGIONAL`
HOSPITAL, VERSUS MURRAY.>`

ARE YOU READY TO PROCEED,`
MR. TOLE TON?

YES, YOUR HONOR, THANK YOU`
VERY MUCH.

I WOULD ALSO ADVISE ALL TO`
PLEASE NOTE, WE CERTAINLY ARE`
FAMILIAR WITH THE FACTS, WE ASK`
A LOT OF QUESTIONS, WE WANT TO`
BE SURE THAT YOU GET IN YOUR`
ARGUMENTS AS YOU WALK AWAY, SO`
PLEASE USE YOUR TIME`
JUDICIOUSLY.

THANK YOU, YOUR HONOR.>`
APPRECIATE IT.>`

AGAIN, MY NAME IS JERRY!!!!!!!!!!!!!! JERE TOLTON,`
ALONG WITH RUSS SMITH.>`

WE ARE HERE ON BEHALF OF THE`
PETITIONER TODAY, BRANDON`
REGIONAL HOSPITAL.>`

YOUR HONOR, WE COME TO YOU TODAY`
WITH A VERY NARROW ISSUE.>`
AS YOU KNOW, THIS IS A MEDICAL`

MALPRACTICE CASE, IN WHICH THE TRIAL COURT HAS ALLOWED DISCOVERY AND USED IN DISCOVERY OF A HOSPITAL'S INTERNALLY GENERATED RECORD, DECIDING WHICH SURGICAL PRIVILEGES TO GRANT OR DENY TO A REQUESTING PHYSICIAN SEEKING APPOINTMENT ON THIS CASE, REAPPOINTMENT, TO MEDICAL STAFF AT THE HOSPITAL.

THE COURT HAS HELD THAT SUCH A RECORD IS A FINAL REPORT AND BECAUSE IT IS A FINAL REPORT, IT IS EXEMPT FROM DISCOVERY IMMUNITY OF SECTION 756.101.

[5]

AND 395.0195.

HAS THE DOCTOR BEEN DEPOSED IN THIS CASE?

THE DOCTOR HAS BEEN DEPOSED TWICE.

HAS HE BEEN ASKED THE QUESTION, WHAT PRIVILEGES HE'S BEEN GRANTED?

HE MOST CERTAINLY HAS, YOUR HONOR.

AND HE'S ANSWERED THAT QUESTION?

HE HAS ANSWERED THAT QUESTION, YOUR HONOR.

AND IF I MAY, THE WAY HE HAS ANSWERED THAT QUESTION IS IN THIS CASE, THE MEDICAL PROCEDURE THAT IS AT ISSUE IS A PROCEDURE KNOWN AS A SPHINCTER PLASTY AND THE ISSUE BECAME WHETHER OR NOT HIS BEING CREDENTIALLED IN A PROCEDURE CALLED THIRD OR FOURTH DEGREE LACERATION REPAIR ENCOMPASSED A SPHINCTER PLASTY PROCEDURE.

THE DOCTOR TESTIFIED IT DOES.

HE ALSO GAVE THE NUMBER OF TWO FELLOW PHYSICIANS, TWO COLLEAGUES, WHO WOULD BE ABLE TO CORROBORATE HIS COMPETENCY TO PERFORM THAT PROCEDURE, AN WE HAVE ALSO TURNED OVER OPERATIVE REPORTS INDICATING THAT HE HAS PERFORMED THIS PROCEDURE ON AT LEAST 20 OCCASIONS, PRIOR TO THE PROCEDURE --

LET'S GO BACK TO THE --

JUSTICE ASKED IF HE HAD BEEN

DEPOSED.`

FIRST OF ALL, WE'RE DEALING HERE`
WITH STATUTORY CONSTRUCTION`
QUESTION.`

THIS IS AN ORDINARY UNDER THE`
RULES WORK PRODUCT ISSUE OF`
WHETHER YOU CAN DEMONSTRATE`
NECESSITY, CORRECT?

THAT'S EXACTLY CORRECT, YOUR`
HONOR.

BUT I DO WANT TO UNDERSTAND`
SOMETHING ABOUT THIS PARTICULAR`
LIST, AND WHAT IT IS THAT IS`
IMPORTANT FOR YOU TO HAVE OR FOR`
THE HOSPITAL NOT TO -- WELL,`
WAIT A SECOND.`

YOU'RE THE HOSPITAL.

THAT'S CORRECT.

OK.`

THE DOCTOR GAVE UP A -- OR`
PRODUCED A PRIVILEGE, DIDN'T HE`
HE?

IN THE BEGINNING OF THE CASE,`
PROBABLY IN PRESUIT, WHAT WE`
THINK, HE GAVE UP HIS`
GYNECOLOGICAL LIST.

AND THE -- WHAT DOES -- IS`
THAT LIST IN EVIDENCE, OR IS IT`
PART OF THE RECORD IN THIS CASE?`
THAT LIST, IN FACT, I BELIEVE`
THERE ARE A SERIES OF FOUR`
GYNECOLOGICAL LISTS THAT ARE IN`
THE RECORD.

DOES IT ACTUALLY SHOW THE`
PRIVILEGES WHO!!!!!!! THAT ARE GRANTED AND`
LIBERATED -- WHAT IS CONTAINED`
ON THERE THAT WOULD BE PART OF`
WHAT YOU SAY IS REALLY THE`
DELIBERATIVE PROCESS AS OPPOSED`
TO JUST HERE'S THE LIST, IT`
SHOWS JUST WHAT WAS GRANTED?`
THANK YOU, JUSTICE.`

THIS IS -- I'M REFERRING TO --`
ACTUALLY, THE RECORD THAT IS IN`
DISPUTE TODAY IS ALSO IN YOUR`
RECORD AT 253.`

AND BASICALLY, IT IS A WORK IN`
PROGRESS DOCUMENT, AND LET ME`
EXPLAIN WHAT I MEAN BY THAT.`
THE DOCTOR GETS THIS FORM, THIS`
IS A FORM PRODUCED BY THE`
HOSPITAL, GENERATED BY THE`
HOSPITAL, AND HE OR SHE CLICKS`
OFF, CHECKS OFF THE SURGICAL`

PROCEDURES THAT HE OR SHE IS REQUESTING.

THIS DOCUMENT THEN GOES ALONG WITH THE FILE TO THE CHAIR OF THE DEPARTMENT OF THE OBSERVING DEPARTMENT.

-- OB-GYN DEPARTMENT, WHO THEN MAKES A RECOMMENDATION AFTER REVIEWING THE FILE AS TO WHICH PROCEDURES TO APPROVE, WHICH PROCEDURES PERHAPS NOT TO APPROVE.

AND ALTHOUGH IT DOESN'T EXIST IN THIS CATEGORY, THEY'RE ALSO ALLOWED TO REFER A PROCEDURE UNTIL PENDING FURTHER CERTIFICATION OR SOMETHING LIKE THAT.

THIS DOCUMENT THEN TRAVELS TO -- AFTER THE DEPARTMENT CHAIR, TO THE CREDENTIALS COMMITTEE AT THE HOSPITAL.

THE CREDENTIALS COMMITTEE THEN REVIEWS THE CREDENTIALS FILE, AND EITHER SIGNS OFF ON THE DEPARTMENT CHAIR'S RECOMMENDATIONS OR REJECTS THEM.

THE DOCUMENT THEN -- SO THE CREDENTIALING COMMITTEE'S WORK IS A DIFFERENT WORK PRODUCT THAN YOU'RE TALKING ABOUT TODAY?

ALTHOUGH IT DOES TOUCH UPON THE IDENTICAL THING?

WELL, YOUR HONOR, THIS ACTUALLY, THE DOCUMENT, ONCE IT TRAVELS THROUGH ALL THE VARIOUS COMMITTEES, ENDS UP IN THE CREDENTIAL COMMITTEE FILE.

SO THERE'S NEVER A SEPARATE APPLICATION AND A SEPARATE DOCUMENT SHOWING WHAT CREDENTIALS ARE ACTUALLY GIVEN? THAT'S CORRECT, YOUR HONOR.

THIS STARTS AS PART OF THE APPLICATION, AND ENDS UP BEING THE FINAL APPROVAL BY THE BOARD OF TRUSTEES AT THE HOSPITAL, AS TO WHAT THE DOCTOR CAN OR CANNOT DO AT THE HOSPITAL.

ISN'T THAT -- I GUESS THE QUESTION IS, DON'T WE ALL NOW KNOW WHAT HE CAN AND CANNOT DO? I MEAN, AS FAR AS FROM THE

HOSPITAL'S POINT OF VIEW?`
BECAUSE HE WAS DEPOSED, I`
PRESUME THERE WAS DISCOVERY FROM`
THE HOSPITAL.`

YOU KNOW, AS FAR AS WHETHER THIS`
IS REALLY A WORK IN PROGRESS OR`
JUST SIMPLY A STATEMENT THAT`
THESE ARE THE PRIVILEGES AND`
THESE ARE THE PROCEDURES HE CAN`
PERFORM, AND THE OTHER ONES HE`
CAN'T PERFORM, SO IN TERMS OF`
UNDERSTANDING WHETHER THIS IS`
INTENDED TO BE COVERED THROUGH`
THIS, YOU KNOW, BROAD IMMUNITY`
FOR THE PEER REVIEW PROCESS,`
IT'S DIFFERENT THAN I THINK A`
LOT OF CASES THAT WE'VE`
CONTEMPLATED, YOU KNOW, WHERE`
THERE'S A MEDICAL INCIDENT AND`
THEN THERE'S REVIEW OF THAT, SO`
EXPLAIN AGAIN WHAT IS IN THERE`
THAT REALLY SHOWS THE`
DELIBERATIVE PROCESS AS OPPOSED`
TO, AS THE SECOND DISTRICT, THE`
END RESULT THAT REALLY IS NEVER`
CONTEMPLATED TO BE WITHIN THE`
PURVIEW OF THE PRIVILEGE OR`
IMMUNITY.

WELL, I'LL GIVE YOU TWO`
EXAMPLES, YOUR HONOR.`
ONE IS THAT IT OBVIOUSLY REVEALS`
THE IDENTITIES, IF YOU CAN READ`
THE SIGNATURES, OF MEMBERS --`
MEMBER PARTICIPANTS ON ALL OF`
THESE COMMITTEES, AND OF COURSE,`
THAT HAS BEEN HELD TO BE A`
MATTER OF PRIVILEGE.`

SECONDLY, ON THIS PARTICULAR`
OBSTETRICS LIST, THIS AGAIN IS A`
253.`

THERE ARE TWO PROCEDURES.`
I DON'T KNOW WHAT THEY ARE, I`
KNOW WHAT THEY ARE, I DON'T KNOW`
WHAT THEY MEAN, BUT THERE ARE`
TWO, POSSIBLY THREE PROCEDURES,`
WHERE THE DOCTOR HAS REQUESTED`
THE PROCEDURE, AND THE PROCEDURE`
HAS BEEN DENIED, AND SOMEONE, I`
DON'T KNOW WHO, HAS WRITTEN`
ERROR OVER THE PROCEDURE.`

NOW, YOUR HONOR, I THINK TO GET`
YOUR QUESTION ABOUT WHAT IS THE`
HARM HERE, YOU'RE RIGHT.`

AND --

I GUESS THE REAL QUESTION IS`
DO YOU AGREE THAT THE PLAINTIFFS`
IS ENTITLED TO KNOW THE`
PRIVILEGES THAT THE DEFENDANT'S`
PHYSICIAN HAS BEEN GRANTED AT A`
HOSPITAL?`

I BELIEVE THAT'S REALLY THE CRUX`
OF IT.

THEY ARE ABSOLUTELY ENTITLED`
TO KNOW WHAT THEY ARE, AND AS`
YOU POINTED OUT IN YOUR QUESTION`
EARLIER JUSTICE CANTERO THEY DID`
ASK THAT QUESTION OF THE DOCTOR`
AND THEY DID TELL HIM.

MUST THEY RELY ON THE`
DOCTOR'S ANSWER TO THAT QUESTION`
AT A DEPOSITION OR CAN THEY`
OBTAIN SOME DOCUMENTATION TO`
VERIFY WHETHER THE DOCTOR IS`
TELLING THEM THE TRUTH?

WELL, THEY COULD, FOR EXAMPLE99!!!!!!!!!!!!!!`
EXAMPLE, REQUEST FOR ADMISSION`
TO THE HOSPITAL, DR. BLOCKER HAS`
TOLD US IN SWORN TESTIMONY HE'S`
CREDENTIALLED TO DO THESE TWO`
PROCEDURES, AFFIRM OR DEFINE.`

-- OR DEKNIFE.`

THEY CAN -- OR DEKNIFE.`

THEY CAN ASK HIS COLLEAGUES WHO`
WORK WITH HIM AND HE'S NAMED`
THEM ON THE PROCEDURE, HAS HE`
DONE THIS PROCEDURE OR ARE YOU`
AWARE THAT HE'S DONE THIS`
PROCEDURE.`

IT'S JUST THE DOCUMENTS IN THE`
FILE THAT WE'RE TRYING TO --`
I UNDERSTAND.`

IS THERE A FINAL LETTER THAT'S`
SUBMITTED OR SENT TO THE DOCTOR`
SAYING YOU ARE AUTHORIZED TO`
PERFORM THE FOLLOWING PROCEDURES`
AT THIS HOSPITAL?

I KNOW -- I CAN'T SPEAK FOR`
ALL HOSPITALS, JUSTICE, BUT I`
KNOW BRANDON DOES NOT SEND OUT A`
FINAL LETTER.`

THEY BASICALLY GIVE HIM ACCESS`
TO A DOCUMENT LIKE THIS, THIS`
DOCUMENT.

BUT YOU'RE BEING -- THE`
HOSPITAL IS BEING SUED BECAUSE`
THE CLAIM IS THAT THEY GRANTED`
PRIVILEGES THAT HE SHOULDN'T`
HAVE HAD OR VICE VERSA, I MEAN,`

WHAT'S THE CRUX OF THAT CLAIM AS FAR AS FROM THE HOSPITAL'S POINT OF VIEW, WHERE IN THE PRIVILEGE TO DO WITH THIS DOCUMENT?

WELL, YOUR HONOR, IF I -- I KNOW YOU'LL TELL ME IF I'VE MISSED YOUR QUESTION, BUT I THINK YOU RAISE A VERY VALID POINT.

IN MANY RESPECTS, OBVIOUSLY THE HOSPITAL IS VERY CONCERNED ABOUT SAFEGUARDING THEIR PEER REVIEW DOCUMENTS, BUT IN MANY RESPECTS, THIS PARTICULAR CASE HAS MOVED ON.

THE CASE NOW IS TO THE POINT WHERE THE PLAINTIFFS ARE SAYING, WELL, YOU MAY HAVE BEEN CREDENTIALLED TO DO THAT, BUT WE DON'T THINK YOU SHOULD HAVE BEEN.

WELL, ARE YOU SAYING THE ISSUE IS MOOT IN THIS CASE, BECAUSE OBVIOUSLY -- YOU AGREE THERE'S STILL A CONFLICT OUT THERE?

ABSOLUTELY.

THE CONFLICT STILL EXISTS, BUT IN THIS -- STILL EXISTS, BUT IN THIS CASE IT'S A BATTLE OF THE EXPERTS.

IN OTHER CASES THERE ARE MUCH BROADER REQUESTS INCLUDING THE APPLICATION FORM AND EVERYTHING. IS THERE -- I MEAN, I DON'T --

IS THERE ACTUALLY ACCOMPLISHED BETWEEN THE SECOND DISTRICT, YOU, AND THE OTHER DISTRICTS?

YOUR HONOR, I BELIEVE THERE IS A CONFLICT, BECAUSE ALTHOUGH IN MANY OF THOSE OTHER CASES, THE REQUESTS WERE BROADER, AS YOU SAY.

EVERY ONE OF THOSE CASES IN THE THIRD, THE FOURTH, BOCA RATON AND THE CASE WHICH PRECEDED YOUR CASE AND THE TWO GIBBS CASES, THEY SPECIFICALLY ASKED FOR INFORMATION ABOUT THE DELINEATION OF STAFF PRIVILEGES TESTIFY HOSPITAL AND THE SECOND D.C.A., I WILL GRANT YOU, DID NOT ALLOW THE MALICES ON THIS.

WELL, THEY RELIED ON A CASE

THAT REALLY IS TOTALLY -- OR NOT
ON POINT, YOU AGREE WITH THAT?
THEY RELIED ON A CASE.
WITH ALL DUE RESPECT TO THE 2nd
D.C.A. COURT, THEY MISSED IT,
AND YES, THE -- IT WASN'T ABOUT
THE DOCUMENTS, IT WAS ABOUT THE
ENTITY REQUESTING THE DOCUMENTS.
SO LET'S GO BACK TO THEN
THOUGH THE CASE AGAINST THE
HOSPITAL, DOES TURN ON THE
PRIVILEGES GRANTED OR NOT.
NOW WHETHER THIS IS ACTUALLY
AGAIN, NEEDED AS A DOCUMENT IS
NOT THE ISSUE YOU'RE BEFORE THE
COURT ON.
IS THIS -- YOU KEEP ON SHOWING A
DOCUMENT.
IS THAT OF THE ONE THAT IS --
WAS IT PRODUCED UNDER SEAL OR IS
THERE NOW -- OR IS THAT ACTUALLY
THE DOCUMENT THAT WAS REQUESTED,
PRODUCED, AND WE CAN LOOK AT AND
SEE WHETHER IT --
OB!!!!!! UNFORTUNATELY FOR THE
HOSPITAL, IT IS IN THE RECORD.
THERE WAS A STAY ENTERED BY THE
TRIAL COURT PENDING REVIEW IN
THE 2nd D.C.A. ON JANUARY 11
PURSUANT TO ORAL MOTION, AND
THEN THE CO-DEFENDANT AT THE
TIME, DR. BLOCKER'S VOLUNTARY --
WELL, PRODUCED THAT PURSUANT TO
THE COURT ORDER.
I DON'T WANT TO SAY VOLUNTARILY
PRODUCED IT, BUT THERE WAS A
STAYED EFFECT, AND SHORTLY THERE
AFTER WE PETITIONED THE 2nd
D.C.A. FOR RELEASE.
SO, YOUR HONOR, WE BELIEVE THAT
BASICALLY, WHAT THE 2nd D.C.A.
HAS DONE IN MURRAY IS TO LIMIT
THE DEFINITION OF THE TERM
RECORDS IN THE STATUTE.
AND OF COURSE, THERE JUST ISN'T
A READING OF THE STATUTE THAT
SUPPORTS THE VIEW THAT THE
LEGISLATURE INTENDED SUCH A
READING, AND OF COURSE THE
MURRAYS IN THIS CASE RELY
HEAVILY ON THIS COURT'S
DECISION.
WOULD YOUR ARGUMENT BE THE
SAME IF THERE WAS IN FACT A

DOCUMENT THAT'S PRODUCED THAT
SIMPLY SAYS WHAT THE PRIVILEGES
ARE, WITHOUT NAMING WHO WAS ON
THE PEER REVIEW COMMITTEE,
WITHOUT INDICATING WHAT WERE THE
PRIVILEGES THAT WERE ASKED FOR
BY THE DOCTOR, BUT A DOCUMENT
THAT SIMPLY SAYS, THESE ARE THE
PRIVILEGES YOU'RE ENTITLED TO AT
THE HOSPITAL, WITH THE SAME
ARGUMENT -- WOULD THE SAME
ARGUMENT APPLY HERE THAT THAT
WOULD NOT BE DISCOVERABLE?
YOUR HONOR, I WOULD PROBABLY
MAKE THE SAME ARGUMENT IN THAT
CASE, BECAUSE IT'S
CORRESPONDENCE FROM THE HOSPITAL
TO THE DOCTOR SAYING HERE ARE
YOUR PRIVILEGES.

BUT DOES THE RULE -- DOES THE
STATUTE REALLY SAY THAT?
THE WORDING OF THE STATUTE YOU
THINK WOULD COVER SUCH A
DOCUMENT?

WELL, I -- I SEE YOUR POINT,
YOUR HONOR.

I MEAN, THE -- THE WORDING IN
THE STATUTE THAT I THINK TIES UP
INTO ALL OF THIS, WE LOOK AT
THAT FIRST CLAUSE, BROADLY
WORDED, INVESTIGATION,
PROCEEDINGS, RECORDS, ALL
PROTECTED FROM DISCOVERY, BUT
THEN AS YOU GO TO THE SECOND
SECTION OF THE STATUTE, WHICH,
YOU KNOW, PROTECTS MEMBERS AND
PARTICIPANTS FROM COERCED
TESTIMONY, ONE OF THE THINGS
THAT YOU CANNOT ASK A DOCTOR OR
FORCE A DOCTOR -- OR FORCE A
PHYSICIAN MEMBER TO TESTIFY
ABOUT THE COMMITTEE'S FINDINGS,
RECOMMENDATIONS, OPINIONS,
ACTIONS, AND SO, IN A SENSE, I
THINK EVEN A DOCUMENT LIKE THAT
MIGHT ENCOMPASS, YOU KNOW,
THAT -- THOSE VERY BROADLY
FINDINGS, RECOMMENDATIONS,
ACTIONS, OPINIONS, SO THAT'S WHY
INCOMPETENT MAKE THAT ARGUMENT,
YOUR HONOR.

THAT'S THE ARGUMENT,
INCIDENTALLY, THAT JUSTICE HOGAN
MAKES IN HIS SPECIAL CONCURRENCE

IN KRUEGER.

KRUEGER WASN'T ABOUT THE`
PRIVILEGES DOCUMENT.`
THAT WAS REALLY ABOUT THE ACTUAL`
APPLICATION DOCUMENT, BECAUSE IF`
I RECALL CORRECT LIP, THERE'S A`
FOOTNOTE IN THERE THAT SAYS`
THEY'RE NOT REALLY ADDRESSING`
THIS EYE OF THE -- THE ISSUE OF`
THE PRIVILEGES THAT WERE`
ACTUALLY GIVEN TO THE DOCTOR.`
THAT IS CORRECT.`

THE PLAINTIFFS IN THAT CASE`
ABANDONED THEIR -- THAT CASE WAS`
LITIGATED IN THE 4th D.C.A. AND`
OF COURSE THE 4th D.C.A. HELD`
THAT IT WAS PART OF THE PEER`
REVIEW PRIVILEGE DOCUMENT.`
CREDENTIALS REVIEW.`
BUT IT WAS ABANDONED BY THE`
PETITIONERS IN THE SUPREME`
COURT.`

YOUR HONOR, THE REASON THEY`
ABANDONED THE ARGUMENT BECAUSE`
THEIR THEORY OF THE CASE IS THAT`
AN APPLICATION IS SEPARATE FROM`
PEER REVIEW BECAUSE IT IS`
SOMETHING THAT'S COMPLETED`
BEFORE PEER REVIEW STARTS.`
THAT'S A THEORY THIS COURT`
REJECTED.`

WELL, WITH ALL DUE RESPECT, THE`
MURRAYS HAD MADE THE SAME`
ARGUMENT, BUT IT'S JUST ON THE`
OTHER END OF THE TIME LINE.`
THEY'RE ARGUING THAT BECAUSE`
IT'S A FINAL REPORT, IT IS`
SOMEHOW ABOVE AND BEYOND THE`
PEER REVIEW PROCESS.

I GUESS WHAT BOTHERS ME IS`
THAT -- IT SEEMS TO ME A PATIENT`
SHOULD KNOW, AT LEAST WHAT`
PRIVILEGES A DOCTOR HAS AT A`
HOSPITAL, AND WHAT BETTER WAY TO`
GET THAT INFORMATION IS FROM THE`
HOSPITAL ITSELF, AS OPPOSED TO`
RELYING ON THE DOCTOR TO TELL US`
WHAT PRIVILEGES THE DOCTOR HAS.`
THAT'S RIGHT, JUSTICE QUINCE,`
AND THAT'S WHY I SAY THAT IN A`
SITUATION LIKE THIS, ALL THE`
MURRAY AS NEED TO DO IS SAY`
REQUEST FOR ADMISSION TO THE`
HOSPITAL.

WOULDN'T IT ALSO BE`
ACCOMPLISHED BY REDACTING ALL`
OTHER INFORMATION IN THE`
DOCUMENT, OTHER THAN THE`
PRIVILEGES GRANTED, IF IT'S NOT`
A FINAL DOCUMENT LIKE YOU SAY,`
IF WE DON'T HAVE A LETTER`
TELLING THE DOCTOR WHAT`
PRIVILEGES HE'S BEEN GRANTED, WE`
HAVE WHAT YOU CALL A WORK NO`
PROGRESS, CAN'T WE REDACT`
EVERYTHING ELSE?

YOUR HONOR, AS A PRACTICAL`
MATTER, I SEE YOUR POINT.`
MY RESPONSE WOULD BE THAT IF WE`
ARE REDACTING OR IN ANY WAY`
TRYING TO STERILIZE A DOCUMENT,`
IT'S ALMOST A CONCESSION, THAT`
IT'S A PEER REVIEW DOCUMENT,`
WE'RE TRYING TO SOMEHOW FIX IT,`
AND I THINK THE PROBLEM IS THE`
STATUTE JUST IS VERY, VERY --`
VERY PLAIN AND IT SAYS THESE`
DOCUMENTS SHALL NOT BE SUBJECT`
TO DISCOVERY.

THERE MUST BE SOME CONTOUR OR`
PARAMETERS WITHIN WHICH YOU'RE`
WORKING, ONE WOULD ASSUME THAT`
DOCTORS IN A FACILITY ARE`
INVOLVED IN PEER REVIEW, FOR ANY`
NUMBER OF THINGS.

YES, SIR.

AND CERTAINLY WOULD ASSUME`
THAT THEY CAN -- THEY'RE`
CONCERNED WITH THE PROPER`
OPERATION AND RISK MANAGEMENT,`
IF YOU WILL, BUT THERE APPEARS`
THERE MUST BE SOME CONTOURS OR`
WE RUN THE RISK THAT EVERYTHING`
BECOMES -- WELL, THAT'S PART OF`
OUR PEER REVIEW PROCESS, THAT WE`
KEEP THINGS UNDER WRAPS.`

THAT'S WHY I'M HAVING -- WE'RE`
REACHING, I THINK, HERE THE`
QUESTIONS HERE, WHAT ARE THE`
CONTOURS, AND THESE BLANKET`
STATEMENTS, THEY'RE NOT --`
BECAUSE NOW A LETTER BECOMES`
THAT WAY.`

WHAT ARE THE CONTOURS?`
ARE THERE ANY EXCEPTIONS TO THIS`
AT ALL OR IS IT JUST ANYTHING`
THAT YOU WANT TO DESIGNATE PEER`
REVIEW THEN BECOMES WITHIN THAT`

CATEGORY?

YOU SEE WHAT I'M ASKING?

YES, SIR, I DO, AND I

APPRECIATE YOUR QUESTION AND I

DO THINK THERE ARE CONTOURS.

I THINK THE CONTOURS ARE SIMPLY

THAT THERE ARE WAYS TO GET AT

THIS INFORMATION OTHER THAN THE

DOCUMENTS THEMSELVES.

WHY SHOULD THE THE WAY BE TO

FILE A REQUEST FOR EXTENSION,

GOING BACK TO JUSTICE QUINCE'S

QUESTION, SUPPOSE THE IN TARNAL

PROCEDURES OF THE HOSPITAL

PROVIDED THAT ONCE ALL THIS WAS

COMPLETED, THAT THEY DESIGNATED

THE HOSPITAL ADMINISTRATOR, OK,

WOULD WRITE A LETTER TO THE

PHYSICIAN, AND OUTLINE THE

PRIVILEGES, YOU KNOW, THAT HAD

BEEN GRANTED BY THIS HOSPITAL TO

THAT PARTICULAR PHYSICIAN?

I'M HAVING DIFFICULTY WITH YOUR

APPARENT ANSWER TO HER QUESTION,

THAT NO, EVEN IF THAT'S THE WAY,

YOU KNOW, SO THAT THEY REMOVED

IT REALLY, YOU KNOW, FROM THE

CREDENTIALING COMMITTEE OR THE

PEER REVIEW THAT WAS GOING ON

THERE, IN ANNOUNCING THAT, AND

THEN YOU COMING BACK AND SAYING,

WELL, ALL THEY WOULD HAVE TO DO

IS FILE A REQUEST FOR ADMISSION,

AND THE HOSPITAL WOULD SAY THE

SAME THING, IN RESPONSE TO A

REQUEST FOR ADMISSION, THAT THE

ADMINISTRATOR MAY HAVE SAID

UNDER THE INTERNAL PROCEDURES OF

THE HOSPITAL AND THERE COMES A

POINT WHERE IT BECOMES SO

ARTIFICIAL AND YOU HAVE BEEN

VERY CANDID WITH US AT THE

OUTSET AND WE VERY MUCH

APPRECIATE THAT, AND IT POINTS

OUT OR POINTS UP THE SORT OF

ARTIFICIALITY ABOUT IT, SO AS

LONG AS THE SOURCE ISN'T THE

CREDENTIALING COMMITTEE ITSELF,

OR THE PEER REVIEW COMMITTEE

ITSELF, OR THEIR RECORD, WHAT'S

THE PROBLEM WITH DISCOVERING

THIS OBVIOUSLY FUNDAMENTAL

INFORMATION, YOU KNOW, THAT

SHOULD BE KNOWN?

WELL, I DON'T THINK --
JUSTICE HANSON!!!!!!!!!!!!!! I DON'T THINK THERE'S A
PROBLEM WITH DISCOVERING THIS
INFORMATION.
IF ANY HOSPITAL IN FLORIDA MADE
A DECISION LIKE THIS AND THEN
TRANSCRIBED THAT DECISION IN A
LETTER TO THE DOCTOR, THERE ARE
COURTS THAT HAVE HELD THAT TO BE
PRIVILEGED, BUT IN A SITUATION
LIKE THAT WHERE ALL THEY'RE
DOING IS COMMUNICATING THEIR
FINAL DECISION TO THE DOCTOR,
MAYBE THAT IS AN AREA THAT IS A
LITTLE BIT MORE IN THE SHADOWS,
BUT THIS IS CLEARLY NOT THAT
DOCUMENT, AND TO MY KNOWLEDGE --
WELL, HERE WE HAVE THE CURVE
OF OF COURSE.
YOU SAY THE COURT RELYING ON A
DIFFERENT CASE, A DIFFERENT, YOU
KNOW, AS OPPOSED TO ANALYZING IN
THE WAVE YOU!!!!!!!!!! -- THE WAY THAT YOU
ARE.
YOU ARE BEYOND YOUR TIME.
PLEASE ANSWER VERY CONCISELY AND
WE'LL GIVE YOU JUST A MINUTE OF
REBUTTAL, BUT ANSWER AS
CONCISELY AS YOU CAN.
THANK YOU, CHIEF JUSTICE.
BUT YOU'RE RIGHT, YOUR HONOR.
THIS DOCUMENT DOES DEAL WITH
MORE THAN JUST THOSE -- THAN
JUST THOSE ITEMS, THE
PRIVILEGES, AND IT DOES INVITE
SPECULATION AS TO WHAT IS MEANT
BY THESE LITTLE COMMENTS IN THE
MARGIN.
WE WILL GIVE YOU A COUPLE OF
MINUTES AS REBUTTAL.
MR. VAKA.
GEORGE VAKA FROM VAKA, LAR
SON & JOHNSON.
LET ME JUMP OUT OF THE BOX HERE
BECAUSE FOR THE FIRST TIME TODAY
I HEARD AN EXPLANATION ON HOW
THIS DOCUMENT IS A PROGRESSIVE
DOCUMENT ON HOW IT IS -- STARTS
WITH SOME MEMBERS OF SOME
COMMITTEE AND WORKS ITS WAY
THROUGH THE HOSPITAL.
THERE IS NO EVIDENCE IN THIS
RECORD OF -- TO SUPPORT THAT AT
ALL.

BEFORE YOU GO DOWN THAT ROAD,
WOULDN'T YOU AGREE THAT THE
SECOND DISTRICT REALLY IS
RELYING ON AUTHORITY OF AN
ENTIRELY DIFFERENT NATURE IN
TERMS OF COMING TO A CONCLUSION
HERE?

I DON'T KNOW THAT HIDE SAY IT
WAS ENTIRELY DIFFERENT NATURE.
I THINK IT WAS THE BASIC -- I
THINK WHAT THE COURT WAS SAYING
IS --

A CASE THAT INVOLVES THE
LICENSING OR SUPERVISION BY THE
GOVERNMENT OF --
WELL, IT INVOLVES THE
GOVERNMENT, IT INVOLVES THE
GOVERNMENT'S AUTHORITY TO
REQUEST DOCUMENTS AND REPORTS,
BUT HOWEVER, I THINK THE POINT
THAT WAS RELIED UPON, CERTAINLY
THE POINT FOR WHICH WE ARGUED
IT, WAS WAIT A MINUTE, THIS
WHOLE DELIBERATIVE PROCESS HAS
GOT TO END SOMETIME, AND THE BAY
FRONT CASE SAYS IT ENDS WITH THE
REPORT THAT DOCUMENTS, WHAT THE
DELIBERATIVE PROCESS CONCLUDED.

WELL, IN ONE OF THE SECTIONS
OF THE STATUTE, WHAT DOES IT
MEAN WHEN IT PROTECTS
RECOMMENDATIONS, EVALUATIONS,
OPINIONS, OR OTHER ACTION OF
SUCH GROUP, WHAT DOES THAT
PARTICULAR PHRASE IN ONE OF THE
SECTIONS OF THE OF
CONFIDENTIALITY STATUTE OR OTHER
ACTIONS OF SUCH GROUP, IS THIS
NOT AN ACTION OF THAT GROUP?

WELL, THIS DOCUMENT IS NOT.
THE VERY DOCUMENT THAT WAS
REQUESTED, WHAT WAS REQUESTED,
OK, WE NEED TO GO BACK TO, WHAT
WAS REQUESTED WAS THE
CREDENTIALS LIST.

WE DIDN'T ASK FOR CREDENTIALS
APPLICATIONS, WE DIDN'T ASK FOR
ANY OF THE INFORMATION THAT WAS
OBTAINED DURING THE EVALUATION
OR DELIBERATE TOUGH PROCESS,
WHETHER TO GRANT OR NOT GRANT
DR. BLOCKER HIS PRIVILEGES.
ALL WE ASKED NOR WAS A LIST OF
HIS PRIVILEGES, PERIOD.

NOW, WHAT THE HOSPITAL IS NOW --
HAS NOW ARGUED IS THAT IN SOME
FASHION WAS EXCRET!!!!!!!!!!!!!! CREATED BY THE
COMMITTEE.

BUT THE DOCUMENT PRODUCED TO US
BY DR. BLOCKER HAS FIVE
SIGNATURES ON IT, ONE IS BY A
COMMITTEE MEMBER, ONE IS BY
DR. BLOCKER, ONE IS BY CHAIR OF
THE SECTION OB-GYN SECTION, ONE
IS BY A TRUSTEE OF THE HOSPITAL,
AND ONE IS BY I BELIEVE A
SECRETARY OF THE HOSPITAL.

SO I WANT TO MAKE SURE, THIS
ISN'T US DOING AN END RUN AROUND
THE CONFIDENTIALITY PROVISIONS
OF THE STATUTE AND SAYING, HEY,
WE WANT TO KNOW ALL ABOUT THIS
DELIBERATIVE PROCESS, WE WANT TO
KNOW THE PEOPLE WHO MADE THESE
DESOMETHING'SS AND WHAT YOU
CONSIDERED.

THAT'S NOT WHAT WE ASKED FOR.
ALL WE HAVE ASKED FOR WAS A LIST
OF CREDENTIALS AND THIS IS WHAT
WAS PRODUCED TO US.

ARE YOU TALKING ABOUT TWO
DIFFERENT DOCUMENTS, COUNSEL
HELD UP ONE TODAY THAT
APPARENTLY IS THE HOSPITAL'S
VIEW, IS THE DOCUMENT.

YOU APPEAR TO BE DESCRIBING A
DIFFERENT DOCUMENT?

NO, IT IS EXACTLY THE SAME.

SO ARE YOU SAYING THAT THE
PEOPLE ON THERE ARE ACTUALLY NOT
PART OF THE PEER REVIEW
COMMITTEE.

THEY'RE OFFICIALS WITH THE
HOSPITAL?

THEY ARE PEOPLE WHO ARE
IDENTIFIED JUSTICE PARIENTE,
THERE ARE FIVE SIGNATURES,
DR. BLOCKER, THEN THERE'S THE
DEPARTMENT OR CHAIRPERSON OF THE
DEPARTMENT FOR WHICH THE -- IN
THIS CASE, IT'S PST OB-GYN,
THERE IS A SIGNATURE LINE FOR
THE CREDENTIALS COMMITTEE
CHAIRPERSON, THERE IS A
SIGNATURE LINE FOR THE EXECUTIVE
COMMITTEE CHAIRPERSON, AND THERE
IS A SIGNATURE LINE FOR THE
BOARD OF TRUSTEES' SECRETARY AND

ALL THOSE SIGNATURES APPEAR ON THE DOCUMENT THAT WAS PRODUCED TO US AND REPRESENTED TO US TO BE THE LIST OF CREDENTIALS.

IF YOU WOULD -- COULD YOU ASK IN DISCOVERY WHO WAS THE CHAIR OF THE CREDENTIALS COMMITTEE AT THE TIME THAT THE PEER REVIEW PROCESS FOR THE DOCTOR TOOK PLACE?

IS THAT SOMETHING THAT'S CONTEMPLATED BY DISCOVERY OR NOT?

I DON'T KNOW THAT WE COULDN'T ASK WHO WAS THE CHAIR.

I THINK WE COULD NOT ASK WHO PARTICIPATED IN THE DELIBERATIVE PROCESS, AND IF THAT PERSON WAS THE SAME OR -- THAT PERSON WAS PART OF THE GROUP, LIKE FOR INSTANCE, DR. BLOCKER TESTIFIED IN HIS DEPOSITION THAT HE IS PART OF THE CREDENTIALING COMMITTEE, BUT OF COURSE HE DIDN'T PASS ON HIS OWN CROWDING.

IS THIS REALLY THEN A QUESTION OF HOW THE HOSPITAL CREATES THE CREDENTIALS LIST? WHAT IF IN ONE HOSPITAL THE CREDENTIALS LIST REALLY IS JUST THE APPLICATION AND IT HAS, YOU KNOW, EVERY DELIBERATION THAT OCCURRED AND THEN FUNNELLY THE FINAL ACTION?

WOULD YOU AGREE THEN IN THAT SITUATION, EITHER THERE WOULD HAVE TO BE REDACTING OR COULD YOU GET IT JUST BECAUSE IT ALSO CONTAINS THE FINAL DECISION?

THAT'S A VERY GOOD QUESTION.

AND THE REASON YOU'LL ASKING IS BECAUSE WE'RE TALKING ABOUT A CONFLICT ABOUT AN ISSUE OF A CREDENTIALS LIST AS IF IT'S ONE DOCUMENT THAT'S UNIFORM, THE HOSPITAL, APPARENTLY THAT'S NOT THE CASE, SO WE HAVE TO BE CLEAR ABOUT WHAT WE'RE -- IF WE'RE SAYING --

I THINK THERE ARE SOME THINGS THAT ARE INDISPUTABLE, AT LEAST BASED UPON THE EXISTING LAW INTERPRETING THESE STATUTES.

ONE, WE HAVE NO RIGHT TO THE APPLICATIONS OK.

NONE.

WE CAN'T ASK THAT FROM THE HOSPITAL.

THE DOCTOR CAN FREELY GIVE IT TO US IF HE OR SHE CHOOSES, BUT WE CAN'T REQUEST THAT FROM THE HOSPITAL.

WE CAN'T REQUEST COPIES OF THEIR INVESTIGATIONS IN TO THE QUALIFICATIONS OF THIS PHYSICIAN, TO PERFORM WHATEVER SERVICES IT IS THAT HE OR SHE IS REQUESTING PRIVILEGES FOR.

BUT --

IS THE DOCUMENT THAT'S IN QUESTION HERE, WOULD THAT BE A DOCUMENT THAT WOULD BE NOT PRODUCIBLE UNDER THE CASES OUT OF THE 3rd, 4th AND 5th?

IT IS A DOCUMENT THAT MAY OR MAY NOT BE, YOUR HONOR, AND THE REASON --

IT'S IMPORTANT TO KNOW WHETHER IT IS OR ISN'T.

WELL, AND HAD THE HOSPITAL PROVIDED US WITH ANY SWORN TESTIMONY IN THE TERMS OF AN AFFIDAVIT OR OTHERWISE TO LET US KNOW THAT THIS DOCUMENT PURPORTEDLY WENT THROUGH THE PROCESS THAT WAS JUST DESCRIBED BY YOU, BY THE HOSPITAL'S LAWYER, AND THAT IT WAS A HOSPITAL THAT GENERATED BY THE CREDENTIALS --

DID THE TRIAL COURT EVALUATE THIS ON THE BASIS OF WHETHER IT WAS IN VIOLATION OF THOSE CASES, THE OTHER DISTRICT COURT?

I KNOW IT RULED ON THE BASIS OF BAY FRONT, WHICH SEEMS TO BE IN AGREEMENT HERE THAT BAY FRONT REALLY DIDN'T COVER THIS.

THE TRIAL COURT RULED, THIS IS -- THE TRIAL COURT ACTUALLY RULED TWO TIMES IN EACH CASE.

THERE WAS A FIRST REQUEST FOR PRODUCTION AND DR. BLOCKER PRODUCED JUST HIS -- I BELIEVE IT WAS HIS GYNECOLOGICAL PRIVILEGE LIST.

HE WAS ASKED FOR HIS OBSTETRICAL

AND GYNECOLOGICAL.
HE PRODUCED THE GYNECOLOGICAL.
THE HOSPITAL OBJECTED TO THE USE
OF THAT LIST IN HIS DEPOSITION,
PROMPTING THE FIRST PETITION FOR
WRIT OF CERTIORARI THAT WENT TO
THE 2nd DISTRICT.
THAT HAPPENED IN 2004 AS IT
PERTAINED TO THE GYNECOLOGICAL
LIST.
AFTER THAT PETITION WAS DENIED,
AN WE RAISED THE SAME ARGUMENTS,
ONE, THAT THE END RESULT ISN'T
PART OF THE DELIBERATIVE
PROCESS, AND AT LEAST AS
EXPLAINED BY THIS COURT IN
KRUEGER, THE PURPOSES OF THE
PRIVILEGE IS NOT OFFENDED BY
GIVING THE END RESULT.
IT TAKES US BACK TO THE
QUESTION I THINK WHEN I
INTERRUPTED THAT JUSTICE AN!!!!!! ANSTEAD
WAS PRESENTING, SOMETHING TO THE
EFFECTS OF THE RESULTS OF THIS
PROCESS.
THE WAY I READ THAT STATUTE,
IT CONTEMPLATES THAT THE
COMMITTEE IS GOING TO MAKE A
REPORT THAT SAYS YES, WE AGREE
THAT THIS PHYSICIAN SHOULD GET
THESE PRIVILEGES OR NOT.
AND THAT REPORT WOULD GO
SOMEWHERE TO THE ADMINISTRATION
OF THE HOSPITAL AND THEN.
HOSPITAL WOULD SAY, ANY
DOCUMENT, THIS PERSON DOES OR
DOES NOT HAVE THESE PRIFTS.
BUT IF THEY DON'T HAVE THAT
OTHER DOCUMENT, WHERE ARE YOU
THEN?
THEN I THINK THEY NEED TO
SAY, IN THE PROPER CASE, THEY
NEED TO SAY WE DON'T HAVE SUCH A
DOCUMENT.
LET'S TAKE THE FORM THAT
Y'ALL ARE ACTUALLY -- AND IT'S
VERY HELPFUL, THAT YOU'RE USING
IT HERE, BUT LET'S CHANGE THE
FORM OF IT A LITTLE BIT.
LET'S SAFE IT'S A TWO-PART FORM.
THE TOP PART IS WHAT THE
DEPARTMENT CHAIR OR WHATEVER
ACTS, YOU KNOW, RECOMMENDS OR
SOMETHING LIKE THAT.

AND THEN THERE'S A SLASH DOUBLE`
TRIPLE LINE, AND THEN TO THE`
CREDENTIALING COMMITTEE, OR OF`
WHAT, AND IT HAS ALL THE`
INFORMATION ABOUT WHAT THE`
CREDENTIALING COMMITTEE GOT AND`
WHAT THEY DID.`

WOULD THAT BOTTOM PART OF THAT`
FORM, IN YOUR VIEW, BE`
DISCOVERABLE UNDER THE STATUTE?`
I THINK, AND LET ME PUT IT`
VERY SUCCINCTLY BECAUSE I'M NOW`
HAVING A CHANCE TO PROCESS WHAT`
YOUR QUESTION WAS.`

IN MY VIEWPOINT, YOUR HONOR, THE`
STATUTE CONFERS A VERY BROAD`
CONFIDENTIALITY PRIVILEGE, WITH`
YOU -- BUT IT DOESN'T CONFER`
THAT TO EVERYTHING THE HOSPITAL`
DOES.`

IT CONFERS IT ON A VERY NARROW`
AREA, CREDENTIALS AND PEER`
REVIEW INCIDENT.`

IF THE HOSPITAL HAS IN ITS -- IN`
ESSENCE, CREATED THE SITUATION,`
WHICH WOULD REQUIRE THE WAIVER`
OF THAT PRIVILEGE BY PRODUCING`
A -- THE LIST -- THE PHYSICIANS`
PRIVILEGE, IT'S THE HOSPITAL`
WHO'S BEEN THE ONE WHO HAS`
GENERATED THAT WAIVER.`

IF THE HOSPITAL WANTS TO`
MAINTAIN THE CONFIDENTIALITY,`
THEN IT SEEMS TO ME THAT THE`
HOSPITAL IS THE ONE WHO HAS THE`
RESPONSIBILITY TO SET IT UP IN`
TERMS OF THE PARAMETERS OF THE`
PRIVILEGE WHICH HAS ACTUALLY`
BEEN CONFERRED.

AREN'T WE TALKING NOW ABOUT`
SOMETHING DIFFERENT IN TERMS OF`
WAIVER, AS OPPOSED -- BEFORE YOU`
HAVE GET TO WAIVER, OK, YOU HAVE`
TO FIND THAT THERE'S A PRIVILEGE`
TO BEGIN WITH, DO YOU NOT?`
YES.

SO THAT'S WHERE I'M CONCERNED`
WITH THIS BROAD LANGUAGE, THAT`
SAYS, OR OTHER ACTIONS OF SUCH`
GROUP.`

THE OBVIOUS ACTIONS, THE`
CREDENTIALING COMMITTEE GROUP`
WOULD TAKE WOULD BE GRANTING`
CREDENTIALS, SO IT WOULD AT`

LEAST ON THE PLAIN LANGUAGE SEEM
TO BE THAT BOTTOM PART OF THE
FORM I'M DESCRIBING TO YOU,
WOULD BE ACTIONS OF THE
CREDENTIALING COMMITTEE, WOULD
IT NOT?

YES IT WOULD.

INITIALLY WOULDN'T THERE BE
THE APPEARANCE AT LEAST THAT THE
PRIVILEGE WOULD ATTACH UNDER THE
LANGUAGE OF THE STATUTE?
THE PRIVILEGE WOULD ATTACH TO
THE DOCUMENT OF THE
CREDENTIALING COMMITTEE.

NOW --

ARE YOU CLAIMING THEN THAT
WHAT WE HAVE IS A WAIVER BECAUSE
OF THE WAY THE HOSPITAL
PROCEDURES ARE --

I SAY WE CAN EITHER HAVE A
WAIVER OR THE HOSPITAL HAS
CO-MINGLED THIS.

THE HOSPITAL, IT'S AMAZING,
TODAY I HEAR WE CAN FILE REQUEST
FOR ADMISSIONS TO GET THIS
INFORMATION, WHEREAS IN THE
FIRST PETITION FOR WRIT OF
CERTIORARI, WE WERE TOLD WE
COULD GET THIS INFORMATION BY
SUBPOENAING THE DOCTOR'S RECORDS
FROM MISS MEDICAL SCHOOL OR BY
COMBING THROUGH CIRCUIT COURT
FILES TO SEE ANY OTHER CASES IN
WHICH THE DOCTOR MAY HAVE A
JUDGMENT AGAINST HIM.

WHAT ABOUT DEPOSING AN
OFFICIAL OF THE HOSPITAL, LIKE A
C.E.O. OR SOME OTHER OFFICIAL,
AND ASKING HIM WHAT CREDENTIALS
THE PHYSICIAN HAS BEEN GRANTED
AT THE HOSPITAL?

THAT'S HAND EXCELLENT
SUGGESTION, JUSTICE CANTERO.
THE HOSPITALS WOULD TELL YOU
THAT WE COULDN'T ASK THOSE
QUESTIONS BECAUSE THAT FALLS
WITHIN THE PARAMETER OR THE
PRIVILEGE AITS WELL.

ACCORDING TO THEM, WE CAN'T
ASK

ABOUT CREDENTIALS, PEERPD,
BECAUSE IT CAME THANK YOU A
CREDENTIALING COMMITTEE, --
THROUGH A CREDENTIALS COMMITTEE,

SO WE WOULD HAVE TO GO THROUGH
EITHER ORIGINAL SOURCE OR
SOMETHING ELSE, LIKE MEDICAL
SCHOOL RECORDS TO FIND THE
INFORMATION.

FROM YOUR POINT OF VIEW, IT
SEEMS TO ME, CORRECT ME IF I'M
WRONG, WHAT YOU'RE CONCERNED
ABOUT IS OBTAINING THE
INFORMATION, NOT NECESSARILY
OBTAINING THE DOCUMENTS, WHAT
YOU WANT TO -- YOU JUST WANT TO
KNOW WHAT CREDENTIALS THE
PHYSICIAN WAS GIVEN IN WHATEVER
FORM?

WELL, AND WE'D ALSO NOT VO TO
LIKE TO RELY UPON THE DOCTOR'S
TESTIMONY THAT HE OR SHE HAS
THIS PRIVILEGE OR AN OFFICIAL OF
THE HOSPITAL THAT THIS PHYSICIAN
DOES OR DOES NOT HAVE THIS
PRIVILEGE.

IT SEEMS TO ME THAT THERE IS A
LIST ABANDON I THINK -- AND I
THINK THEY HAVE TO MAINTAIN THE
LIST OF PRIVILEGES FOR THE JOINT
HOSPITAL COMMISSION OR WHATEVER
THE ACCREDITING THINGS ARE.

I THINK THERE ARE OTHER STATUTES
AND REGULATIONS.

DOES IT HAVE TO SUBMIT
RECORDS TO AHCA?

YES, WHICH IS HOW WE GOT TO
TALKING ABOUT THE BAY FRONT
CASE.

SO THERE ARE ALL SORTS OF
RECORDS THAT NEED TO BE
PROVIDED.

THIS ISSUE HAS ARISEN AT LEAST
TODAY BECAUSE THE HOSPITAL IS
SAYING THIS IS THE WAY WE
MAINTAIN THIS INFORMATION, BUT
IF WE'VE COMMINGLED THE
INFORMATION AND NOW THEY WANT TO
SAY --

THAT ISSUE, THAT IS WHETHER
THE DOCUMENT HAS SOME PRIVILEGED
PART AND SOME NON-PRIVILEGED, IS
REALLY NOT HOW THIS CASE CAME TO
US.

IT IS NOT.

I JUST WANT TO MAKE SURE
BECAUSE YOU WERE TELLING ME AND
I THOUGHT IT WAS HELPFUL, WHAT

YOU WERE -- WHAT YOU AGREE YOU CANNOT GET, YOU CANNOT GET THE APPLICATION.

CORRECT.

YOU CANNOT GET THE INVESTIGATION.

CORRECT.

WAS THERE OTHER LISTS OR OTHER CATEGORIES OF DOCUMENTS THAT YOU SAID -- AT THAT POINT, I THINK YOUR ANSWER WAS INTERRUPTED.

WHAT ELSE, WAS THERE ANYTHING ELSE?

THOSE ARE THE THINGS THAT I KNOW FOR SURE, THAT THERE'S NO DOUBT ABOUT UNDER FLORIDA LAW. KRUEGER VERSUS LOVE IS CLEAR YOU DON'T GET APPLICATIONS, IT TALKS ABOUT THE PURPOSES OF THE PRIVILEGE AND WHAT IS INTENDED BY THIS PRIVY THINK IS -- PRIVY THINK IS THE COURT SAYS WE WANT AN OPEN AND FORTH RIGHT DISCUSSION ABOUT THE EQUAL IF I HAVE INDICATIONS OF PHYSICIANS, WE DON'T WANT THEM TO FEAR THEY MAY BE RETALIATED AGAINST IN SUBSEQUENT LITIGATION BY HAVING BEEN FORTH RIGHT.

WHAT IS YOUR CLAIM AGAINST THE HOSPITAL, THAT THEY GRANTED PRIVILEGES TO A DOCTOR THAT SHOULD NOT HAVE BEEN GRANTED PRIVILEGES IN THAT PARTICULAR AREA?

THERE'S ACTUALLY TWO.

AND/OR THAT HE DIDN'T HAVE THE PRIVILEGE AND YET THEY ALLOWED HIM TO PERFORM THE SURGERY ANYWAY.

SO IT SEEMS TO ME, THE DOCUMENT THAT SAYS, THE FINAL RESULTS, NOT OF THE COMMITTEE, BUT THEN THE HOSPITAL ASSIGNING -- IS SIGNING OFF ON IT, THE ARGUMENT WOULD BE THAT THAT IS NOT ANY MORE THE RECORD OF THE COMMITTEE, THAT IS BEEN NOW ADOPTED BY THE HOSPITAL AS THE HOSPITAL'S DECISION AS TO WHAT PRIVILEGES THIS DOCTOR WILL HAVE OR NOT HAVE?

CORRECT.

THAT'S PRECISELY WHAT WE'VE SAID.

THE DELIBERATIVE PROCESS IS DONE.

THERE HAS TO BE SOME RECORD OF WHAT THIS PHYSICIAN CAN OR CANNOT DO --

WOULD YOU HAVE AGREED IF THEY WOULD HAVE SAID WE WANT TO REDACT THE PART THAT SAYS ASSUMING THAT THESE WERE, THE COMMITTEE, NOW YOU SAY THEY WEREN'T THE COMMITTEE, BUT IF IT HAS INFORMATION ON IT THAT IS STILL PART OF THE DELIBERATIVE PROCESS, WOULDN'T THE ANSWER TO THAT BE TO HAVE THE -- THAT THOSE PARTS WOULD BE REDACTED FROM THE DOCUMENT?

ABSOLUTELY.

YOU WOULD AGREE THAT THAT IS APPROPRIATE FOR THE HOSPITAL TO BE ABLE TO DO THAT?

THERE'S NO DOUBT, WE DON'T WANT ANY OF THE DELIBERATIVE INFORMATION.

THAT'S -- THAT IS PLAIN ON THE FACE OF THE STATUTE.

WE CANNOT HAVE THAT.

DO YOU AGREE OR DISAGREE THAT UNDER 395.091A THAT YOU COULD NOT CALL FOR EXAMPLE, THE HEAD OF THE OB-GYN DEPARTMENT AND SCP HIM WHEN THIS DOCTOR ASKED FOR PRIVILEGES, WHAT DID YOU DECIDE, WHAT DID THE HOSPITAL DECIDE? ANYBODY WHO WAS IN HEY TEND DANCE AT THE -- ATTENDANCE AT THE MEETING, WE CANNOT QUESTION THEM ABOUT WHAT WENT ON AT THE MEETING.

OR THE FINDINGS?

WE CAN'T ASK HIM OR HER WHAT THE FINDINGS WERE.

BUT THIS DOCUMENT IS DOING THE SAME THING?

DOESN'T IT REPRESENT THE FINDINGS OF THE COMMITTEE?

IN A WAY IT DOES BUT IN A WAY IT DOESN'T, BECAUSE AT LEAST AS I ANTICIPATE IN READING THE CASES THAT PERTAIN TO LITIGATION BETWEEN PARTICIPANTS IN THESE COMMITTEES, THERE ARE THINGS

THAT ARE SAID DURING THESE`
MEETINGS FOR WHICH PEOPLE WERE`
CONCERNED THAT THEY WERE GOING`
TO BE SUED BECAUSE OF LIBEL AND,`
YOU KNOW, THOSE TYPES OF ISSUES.`
AND SO WHAT I -- WHAT I ENVISION`
WHEN I READ THIS AND WHEN I LOOK`
HAT WHAT THE COURT SAYS WHAT THE`
INTENT IN KRUEGER WAS, WE WANT`
TO HAVE A ROBUST DISCUSSION WITH`
FREE FLOW OF INFORMATION TO`
DECIDE WHETHER A PHYSICIAN`
SHOULD HORSHOULD NOT BE GRANTED`
PRIVILEGES.`

THE SAME THING WE WANT TO DO IN`
PEER REVIEW INVESTIGATIONS IN TO`
INCIDENTS OF MED MAL, THAT HAVE`
OCCURRED.`

WE WANT EVERYBODY TO COME`
FORWARD AND BE FORTH RIGHT,`
BECAUSE WE WANT TO IMPROVE THE`
QUALITY OF MEDICAL CARE, WE WANT`
TO DECREASE THE COST OF`
PROVIDING MEDICAL CARE AND WE`
WANT TO DECREASE THE AMOUNT OF`
LIFT GAGES AND THE COST OF`
INSURANCE AND THE BEST WAY TO DO`
THAT IS FOR EVERYBODY TO BE OPEN`
AND FORTH RIGHT.`

THE PROBLEM IS, OK, THAT WHEN`
YOU SAY, OK, HOW -- ONCE THE`
RESULTS ARE DONE, WE'VE DECIDED`
WE'RE GOING TO GRANT PRIVILEGES,`
TO THEN SAY, WELL, WAIT A`
MINUTE, YOU CAN'T EVEN GET THAT`
INFORMATION, BECAUSE THAT'S --`
BECAUSE THAT IN SOME WAY GOES`
BACK TO WHAT THE CREDENTIALING`
COMMITTEE RECOMMENDED AND THAT`
YOU'RE NOT ENTITLED TO.

THE IDEA OF SELF-REGULATION`
OF THE HOSPITALS IN MAKING THESE`
DECISIONS.

THE IDEA --
PROMOTING SELF-REGULATION,`
RIGHT?

CORRECT.

NOW IF THIS DOCUMENT IS TO BE`
USED HAS A SWORD AGAINST EITHER`
THE HOSPITAL OR THE DOCTOR, DOES`
IT NOT IMPAIR SELF- -- THE IDEA`
OF SELF-REGULATION?

I DON'T THINK IT IMPAIRS THE`
IDEA OF SELF-REGULATION.`

IT COMPLETELY INSULATES THE HOSPITALS FOR ITS SELF-REGULATORY, PRO HBTS AND TAKES AWAY ALL INCENTIVE, AT LEAST IN MY OPINION TO REGULATE AT ALL. THE PROBLEM WE'RE HAVING IS THAT THE STATUTE IS SO BROAD, IT INCLUDES NOT ONLY INVESTIGATIONS, LIKE YOU SAID, BUT THE FIRST SENTENCE SAYS INVESTIGATIONS PROCEEDINGS, AND RECORDS OF A MEDICAL REVIEW COMMITTEE.

IT SEEMS LIKE THE DOCUMENT THAT WE'VE BEEN DISCUSSING TODAY IS CLEARLY A RECORD OF THE MEDICAL REVIEW COMMITTEE.

WELL, --

HOW COULD IT BE OTHERWISE?

WELL ONE AS NOTED IN KRUEGER, THE TERM RECORDS IS NOT A DEFINED TERM WITHIN THE STATUTE.

TWO, AND THIS IS WHERE WE --

THIS IS WHERE I CAME BACK TO OR I THINK I STARTED IN RESPONSE I BELIEVE TO JUSTICE PARIENTE'S QUESTION, IT MIGHT HAVE BEEN IN RESPONSE TO JUSTICE ANSTEAD'S QUESTION, THE WORK OF THE COMMITTEE HAS TO BE OVER AT SOME POINT IN TIME AND ONCE THAT -- I UNDERSTAND.

AND ONCE THAT WORK IS OVER, JUST BECAUSE SOMEBODY REFERS TO, IN ANOTHER DOCUMENT, REFERS TO JOE SMITH M.D., MEMBER OF CREDENTIALING COMMITTEE, THIS NEW DOCUMENT DOES NOT NOW FALL WITHIN THE PARAMETERS OF THE PRIVILEGE, AND YET THAT'S EXACTLY WHAT THE HOSPITAL HAS ARGUED.

IF WE HAD A LETTER FROM THE HOSPITAL TO THE PHYSICIAN SAYING YOU ARE CREDENTIALLED FOR THE FOLLOWING THING, FOR ME IT WOULD BE AN EASIER CASE.

THERE DOESN'T SEEM IN THIS CASE TO BE SUCH A CLEAR LETTER. IT'S ACCORDING TO COUNSEL, A WORK IN PROGRESS, WHICH SEEMS TO BE A HANDWRITTEN NOTATIONS ON A DOCUMENT, WHICH IS MORE ARGUABLY A RECORD OF THE COMMITTEE.

WELL, IF IT'S A RECORD OF THE COMMITTEE, THEN IT WOULD SEEM TO ME THE HOSPITAL WOULD HAVE PUT FORTH SOME EVIDENCE IN TERMS OF AT LEAST AN AFFIDAVIT.

REMEMBER, IT'S THE HOSPITAL THAT THEY EXERTED THESE OBJECTIONS -- IF THE HOSPITAL ASSERTED THESE OBJECTIONS AND THERE WAS AN EVIDENTIARY BASIS MADE TO ASSERT THE OBJECTIONS, THEY SHOULD HAVE DONE SO, SO TO THE EXTENT THEY HAVEN'T DONE SO, THEY'VE WAIVED THAT ARGUMENT HERE.

BOTTOM LINE, WHO MAKES THE FINAL DECISION, THE CREDENTIALS COMMITTEE THAT MAKES THE DECISION ON WHAT CREDENTIALS WILL BE GIVEN TO A DOCTOR OR IS IT THE HOSPITAL AFTER REVIEW OF THE CREDENTIALS COMMITTEE'S REPORT?

WELL IF YOU LOOK -- THERE'S NO EVIDENCE IN THIS RECORD TO TELL YOU EXACTLY WHAT HAPPENED, I CANNOT TELL YOU WHAT THIS HOSPITAL DOES, BECAUSE IT'S JUST NOT IN THIS RECORD, BUT I THINK WHAT THE STATUTE CONTEMPLATES IS THAT THERE IS A SEPARATE COMMITTEE THAT MAKES A RECOMMENDATION, AND THE THINGS WITHIN THE PARAMETERS OF WHAT THAT COMMITTEE HAS DONE IS INTENDED TO BE PRIVILEGED.

AFTER IT MAKES ITS RECOMMENDATIONS AND THAT RECOMMENDATION OR RECOMMENDATIONS IS ENDORSED BY THE HOSPITAL, I DO NOT READ THE STATUTE NOR THE LEGISLATIVE HISTORY TO MEAN IT WAS THE LEGISLATURE INTENDED TO THEN CONFER ON EVERY DOCUMENT DOWN THE LINE, EVERY TIME A HOSPITAL ADMINISTRATOR SAYS, YES, WE AGREE WITH WHAT THE CREDENTIALING COMMITTEE DID, TO THEN CONFER THAT STATUTORY PRIVILEGE ON THOSE STATEMENTS OR THOSE DOCUMENTS THAT OCCURRED AFTER.

BECAUSE THAT -- IF YOU TAKE THAT TO ITS LOGICAL EXTENSION,

THERE'S NO END TO IT.`

OK?

WITH OUR ASSISTANCE, I THINK`
YOU'VE MAY HAVE HAD YOUR ANSWER`
ON THE LAST ONE.

THANK YOU JUSTICE LEWIS.`

WE WOULD ASK THAT YOU WOULD`
APPROVE THE DECISION OF THE 2nd`
DISTRICT.

THANK YOU.`

TWO MINUTES.`

YOU'VE EXCEEDED YOUR TIME.`
WE'LL GIVE YOU A COUPLE OF`
MINUTES TO ANSWER AND I THINK`
YOU NEED TO BEGIN BY THE`
DOCUMENT, BECAUSE THERE SEEMS TO`
BE A FACTUAL DIFFERENCE IN`
STATEMENTS AS TO WHAT THE`
DOCUMENT IS WE'RE TALKING ABOUT,`
EUROPE SIGNIFICANCE SEEMS TO SAY`
THAT THESE ARE NOT MEMBERS OF`
THIS COMMITTEE THAT YOU REFERRED`
TO.`

I UNDERSTOOD YOU TO SAY THAT`
THESE ARE SIGNED BY THE MEMBERS`
OF THE COMMITTEE.`

COULD YOU ADDRESS THAT?

YES, YOUR HONOR.`

I THINK THE DOCUMENT, THEY SAY`
THERE'S NOTHING IN THE RECORD.`
THE DOCUMENT SPEAKS FOR ITSELF.`
IT BASICALLY SETS FORTH THE`
MEMBER, IT SAYS THE CHAIRPERSON`
OF EACH COMMITTEE, AND THERE'S A`
SIGNATURE ABOVE THE LINES,`
CHAIRPERSON OF THE COMMITTEE.`
AND THERE ARE FOUR SEPARATE`
ENTITIES THIS DOCUMENT PASSES`
THROUGH.`

YOU KNOW --

DO YOU AGREE THAT THOSE ARE`
NOT ALL THE -- YOU LED US TO`
BELIEVE OR AT LEAST I THOUGHT`
THAT THE OTHER PEOPLE LISTED`
WERE MEMBERS OF THE COMMITTEE.`

MR. VAKA SAYS NO, ONE IS A`
TRUSTEE OF THE HOSPITAL, ONE IS`
A CHAIR OF THE DEPARTMENT.

WELL, OK, LET ME CLARIFY.`

I APPRECIATE THAT, YOUR HONOR.`

THERE IS THE CHAIR OF THE`
COMMITTEE, THAT'S THE MEDICAL`
REVIEW COMMITTEE THEY'VE.`

THE MEDICAL EXECUTIVE COMMITTEE`

IS A MEDICAL REVIEW COMMITTEE.
THE ACTUAL STATUTE SAYS
INVESTIGATIONS, PROCEEDINGS, AND
RECORDS OF THE BOARD.
THEY'RE TALKING ABOUT THE BOARD,
THE GOVERNING BOARD OF THE
HOSPITAL.

THE PROBLEM I'M HAVING IS
THAT YOU SEEM TO AGREE THAT THE
INFORMATION, WHAT PRIVILEGES THE
PHYSICIAN HAD, IS DISCOVERABLE.

THAT'S CORRECT, YOUR HONOR.
NOW IF IT'S DISCOVERABLE,
THEN IT OUGHT TO BE ABLE --
THERE SHOULD BE A WAY THAT THE
STATUTE WOULD ALLOW IT TO BE
DISCOVERED IN SOME OFFICIAL
DOCUMENT OF THE HOSPITAL.

WELL, YOUR HONOR --
BECAUSE OTHERWISE, NOT WAFT
TILL YOU GET INTO SUIT.
WHAT HAPPENS IN PRESUIT -- IN TO
PRESUIT PROCEEDINGS?
THEY'VE GOT TO BE ABLE TO HAVE
THE SAME DOCUMENT.

I SUPPOSE THEY HAVE COULD
JUST ASK THE HOSPITAL WHAT ARE
HIS PRIVILEGES.

IT'S A SUBTLE DISTINCTION, BUT
WE'RE TRYING TO PROTECT THE
DOCUMENTS THAT ARE IN THE FILE.
IT SEEMS TO ME THAT'S A VERY
HARD CONSTRUCTION OF THE
STATUTE.

YOU CAN GET IT ONE WAY, IF
YOU'RE IN SUIT, BUT UP CAN'T GET
IT IN ANOTHER WAY IF YOU'RE IN
PRESUIT.

JUSTICE, THESE ARE THE
FINDINGS OF THE MEDICAL REVIEW
COMMITTEE.

THESE ARE THE FINDINGS AND
ACTIONS OF THE MEDICAL REVIEW
COMMITTEE.

THE STATUTE DOESN'T MAKE SENSE
IF THAT'S NOT ENCOMPASSED WHAT
IS IN THE STATUTE.

THAT'S OUR ARGUMENT.

I APPRECIATE YOUR TIME AND
YOU'VE MADE THIS A VERY
PLEASURABLE FIRST EXPERIENCE.
THANK YOU BOTH FOR
ENLIGHTENING ARGUMENTS