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HOSPITAL AND CHIEF OF STAFF CAN BE HELD LIABLE UNDER STATE'S CIVIL RIGHTS LAW FOR DISCRIMINATION AGAINST PHYSICIAN WITH STAFF PRIVILEGES

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Overturning precedent on March 28, 2007, the Michigan Supreme Court has opened the door for physicians having staff privileges to sue hospitals and chiefs of staff for discrimination in violation of the Elliott-Larsen Civil Rights Act (ELCRA) under its "public accommodations" provision. This ruling may have far broader consequences than apparent at first blush and may provide causes of action under ELCRA to independent contractors.

In *Haynes v Neshewat, et al.*, Dr. Haynes, an African-American physician with staff privileges at Oakwood Hospital-Seaway Center, claimed that he had been treated differently than other, similarly situated physicians because of his race. Specifically, he claimed that he had been subjected to "excessive charges of unprofessional behavior and administrative hearings designed to discourage him from using the facilities at Oakwood." As a result, Dr. Haynes alleged that he was deprived of the "ability and opportunity to fully utilize the medical facilities" in violation of the ELCRA.

To prove his claim, Dr. Haynes needed to establish, among other things, that he was discriminated against (1) because of a protected status, (2) by a person, (3) resulting in the denial of the full and equal enjoyment of goods, services, facilities, privileges, advantages or accommodations, (4) of a place of "public accommodation." The court quickly found that staff privileges are a right or benefit protected by the act, and then focused on the more interesting issue of whether the hospital qualified as a place of public accommodation for purposes of Dr. Haynes' claim.

The hospital argued that, while it clearly provides services to the public, Dr. Haynes' was not a member of the public and that his ability to practice medicine was not a privilege the hospital offers to the public. The Supreme Court rejected those arguments, concluding that the ELCRA does not require that the services, facilities, privileges or advantages at issue be offered to the public or that the plaintiff be a member of the public. The court held that the ELCRA "forbids unlawful discrimination against any individual in a place of public accommodation, not just against members of the public." As a result, Dr. Haynes will be permitted to proceed with his discrimination claim against both the hospital and the chief of staff.

A potential extension of the holding above could provide a cause of action to independent contractors who, in the past, have been unable to bring claims under the ELCRA against the company utilizing their services because they could not state a claim under the "employment" provisions of the act. Now, however, independent contractors whose services are furnished at "a place of public accommodation" may be able to rely on the holding of *Haynes* and bring a discrimination claim under the public accommodation provision of the act. The ELCRA provides broad relief to a successful plaintiff, including emotional distress damages and attorneys' fees.

For a complete copy of the Michigan Supreme Court ruling in *Haynes v Neshewat, et al.*, docket number 129206 (dated 3/28/07), click here.

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