

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE EMERGENCY MEDICAL SERVICES REGULATORY BOARD

In the Matter of the Application and
License of CART Ambulance, Inc.

ORDER CLARIFYING
JULY 11, 2000 ORDER

On August 10, 2000, Allina Medical Transportation filed a Motion for Clarification of the Order of the Administrative Law Judge dated July 11, 2000. The Petitioner, CART Ambulance, Inc. filed a written reply to the Motion on August 16, 2000. Allina filed a response on August 22, 2000.

Gregory Gisvold, Esq., Halleland Lewis Nilan Sipkins & Johnson, 220 South Sixth Street, Suite 600, Minneapolis, Minnesota, 55402-4501, represented Allina Medical Transportation. Jeffrey K. Priest, Esq., Priest Law Office, P.A., 501 East Highway 13, Suite 114, Burnsville, Minnesota 55337, represented the Petitioner, CART Ambulance, Inc. Cynthia Jokela Moyer, Esq., Fredrikson & Byron, P.A., 1100 International Centre, 900 Second Avenue South, Minneapolis, Minnesota 55402-3397, represented North Medical Transportation Services. Daniel J. Connolly, Esq., Faegre & Benson, 2200 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota 55402-3901, represented Critical Care Services, Inc., d/b/a Life Link III. William M. Beadie, Esq., Moore, Costello, & Hart, 1400 Norwest Center, 55 East Fifth Street, St. Paul, Minnesota 55101-1792, represented HealthEast Transportation.

Based upon the file, record, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS ORDERED THAT:

1. Data acquired by the peer review committee of Allina Medical Transportation in the exercise of its duties is not discoverable.
2. Discovery ordered under the July 11, 2000 Order and this Order must be produced on or before August 31, 2000.

Dated this 23rd day of August, 2000.

GEORGE A. BECK

Administrative Law Judge

MEMORANDUM

In its Motion dated August 9, 2000, Allina sought clarification of the prior discovery order as it applies to what Allina believes is confidential quality review organization data. The July 11, 2000 Order directed Allina and the other ambulance services to produce “any and all documents evidencing consumer-based complaints received regarding ambulance transport service response times over the last three years (1997-2000).”

Allina notes that Minn. Stat. § 144E.32, subd. 1 applies the provisions of the peer review organization statute (Minn. Stat. § 145.64) to ambulance services. Minn. Stat. § 145.64 generally provides that all data and information acquired by a review organization shall not be disclosed to anyone and shall not be subject to subpoena or discovery. It further provides that:

The proceedings and records of a review organization shall not be subject to discovery or introduction into evidence in any civil action against a professional arising out of the matter or matters which are the subject of consideration by the review organization. Information, documents or records otherwise available from original sources shall not be immune from discovery or use in any civil action merely because they were presented during proceedings of a review organization, nor shall any person who testified before a review organization or who is a member of it be prevented from testifying as to matters within the person’s knowledge, but a witness cannot be asked about the witness’s testimony before a review organization or opinions formed by the witness as a result of its hearings.

Allina argues that the quality assurance data ordered to be produced was gathered by a health care review committee and therefore cannot be produced without violating the statute. In its original objection to the subpoena, Allina argued that mistakes made by medical personnel are confidential because such a protection improves the quality of care by encouraging medical professionals to review and adjust their own activities. The statute extends protection to a committee of an ambulance service provider that reviews information relating to the care and treatment of patients in providing emergency medical care,

including employee performance reviews, quality assurance data, and other ambulance service or first responder performance data for ambulance services.¹

In its original submission, Allina objected to items 17 through 20 sought by the Petitioner in its subpoena. In the July 11, 2000 Order, the material ordered to be produced was narrowed to two items, one of which was consumer-based complaints regarding ambulance transport service response times.

In its written submissions, the Petitioner, CART Ambulance, indicated that the data that CART was seeking in regard to quality assurance is how many times each organization has failed to respond for emergency and non-emergency scheduled transfers in a reasonable time frame and the corrective actions taken by management. It stated that the information sought concerns organizational deficiencies that are related to scheduling problems, system management and resource problems but not that related to individual medical care deficiencies that are confidential and protected under the peer review statute. CART also argues that the record does not contain evidence of a review organization at Allina and that consumer based complaints would be within the “original source” exception of the peer review statute, in any event.

The question presented is whether the material ordered to be produced was acquired by a review organization in the exercise of its duties and functions. Allina’s August 22, 2000 response contains an affidavit of its Director of Quality and Risk Management stating that Allina Medical Transportation Services has a peer review committee and that it has one complaint in its file that would be responsive to the subpoena. The Court of Appeals has made it plain that the peer review statute applies not only to documents generated by the peer review committee but also to documents it acquires, such as consumer complaints.²

Accordingly, data acquired by the Allina peer review organization in the exercise of its duties and functions is not discoverable. As Allina acknowledges, the statute is intended to protect mistakes by medical personnel. Any of the quality assurance data in the possession of Allina held outside its peer review committee, such as response time data, is relevant and discoverable and must be produced.

GAB

¹ Minn. Stat. § 144E.32, subd. 2.

² In Re Petition of Fairview University Medical Center, 590 N.W. 2d 150, 154 (Minn. Ct. App. 1999).