

7-18-1979

Robinson v Magovern

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27 Fed.R.Serv.2d 810, 27 Fed.R.Serv.2d 1372, 1979-1 Trade Cases P 62,658, 4 Fed. R. Evid. Serv. 573, 4 Fed. R. Evid. Serv. 1313

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Robinson v. Magovern, 83 F.R.D. 79 (1979)

27 Fed.R.Serv.2d 810, 27 Fed.R.Serv.2d 1372, 1979-1 Trade Cases P 62,658...



KeyCite Yellow Flag - Negative Treatment

Disagreement Recognized by [Corrigan v. Methodist Hosp.](#), E.D.Pa., July 11, 1994

83 F.R.D. 79

United States District Court, W. D. Pennsylvania.

John N. ROBINSON, Plaintiff,

v.

George J. MAGOVERN, Cardiothoracic, Surgical Associates, Inc., Allegheny General Hospital, and Henry G. Allyn, Jr., Gay E. Bodick, Fred Brand, Jr., Henry Chalfant, Ronald R. Davenport, Harry Edelman, III, Harry M. Epstein, William H. Genge, W. R. Krome George, R. Burt Gookin, Thomas C. Graham, Kenneth C. Hewitt, John A. Huffman, Jr., B. F. Jones, III, Bernard H. Jones, Caryl M. Kline, Richard K. Means, Francis B. Nimick, David B. Oliver, II, Robert B. Pease, G. Harton Singer, III, Elizabeth A. Smith, W. P. Snyder, III, Leonard A. Swanson, W. Bruce Thomas and Paul H. Weyrauch, Individually and as Trustees of Allegheny General Hospital, Defendants.

Civ. A. No. 77-75.

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May 22, 1979.

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On Motion to Compel July 18, 1979.

Synopsis

Open-heart surgeon brought action under Sherman Anti-Trust Act as well as under state law seeking recovery from, among others, general hospital and professional association of surgeons for denial of hospital staff privileges. Plaintiff moved for order compelling defendants and certain third-party witnesses to respond to discovery requests and deposition questions. The District Court, Snyder, J., held that: (1) although information sought was apparently relevant to both federal and state claims, federal common law was determinative of whether defendants had properly invoked a privilege; (2) although there is a powerful interest in confidentiality embodied in Pennsylvania Peer Review Protection Act, the Act would not be applied to shield from discovery events surrounding denial of staff privileges, including what occurred at meetings of hospital's credentials

committee and executive committee; and (3) discovery could be had of nonparty hospitals with respect to open-heart operations performed at such facilities.

Motion granted.

West Headnotes (16)

[1] Privileged Communications and Confidentiality Definition of “privilege”

311H Privileged Communications and Confidentiality

311HI In General

311Hk2 Definition of “privilege”

(Formerly 170Ak1272.1, 170Ak1272)

Term “privileged” as used in rule providing that the parties may obtain discovery regarding any relevant matter not privileged is generally understood to refer to those evidentiary privileges applicable at trial. [Fed.Rules Civ.Proc. rule 26\(b\)\(1\)](#), [28 U.S.C.A.](#)

13 Cases that cite this headnote

[2] Federal Courts Antitrust, unfair competition, and consumer protection

170B Federal Courts

170BXV State or Federal Laws as Rules of Decision; Erie Doctrine

170BXV(B) Application to Particular Matters

170Bk3063 Substantive Matters

170Bk3079 Trade, Business, and Finance

170Bk3079(4) Antitrust, unfair competition, and consumer protection

(Formerly 170Bk402, 265k25(7))

Scope of discovery in Sherman Anti-Trust Act suit was governed by federal law, notwithstanding that information sought was relevant to both federal and pendent state claims and, hence, court would look to federal common law to determine if defendants, resisting discovery, properly invoked a privilege.

Sherman Anti-Trust Act, §§ 1, 2, [15 U.S.C.A.](#)

§§ 1, 2; [28 U.S.C.A.](#) § 1332; [Fed.Rules](#)

Civ.Proc. rule 26(b)(1), 28 U.S.C.A.; Fed.Rules Evid. rule 501, 28 U.S.C.A.

9 Cases that cite this headnote

[3] **Privileged Communications and Confidentiality** 🔑 Presumptions and burden of proof

311H Privileged Communications and Confidentiality
311HI In General
311Hk24 Evidence
311Hk26 Presumptions and burden of proof (Formerly 170Ak1272.1, 170Ak1272)
Party objecting to discovery on basis of privilege has the burden of establishing the existence of privilege. 📄 28 U.S.C.A. § 1332; Fed.Rules Civ.Proc. rule 26(b)(1), 28 U.S.C.A.; Fed.Rules Evid. rule 501, 28 U.S.C.A.

15 Cases that cite this headnote

[4] **Privileged Communications and Confidentiality** 🔑 Privileges not favored

311H Privileged Communications and Confidentiality
311HI In General
311Hk7 Privileges not favored (Formerly 170Ak1274)
Evidentiary privileges operate to exclude relevant information from the fact finder and thus are not favored. 📄 28 U.S.C.A. § 1332; Fed.Rules Civ.Proc. rule 26(b)(1), 28 U.S.C.A.; Fed.Rules Evid. rule 501, 28 U.S.C.A.

1 Cases that cite this headnote

[5] **Privileged Communications and Confidentiality** 🔑 Privileged Communications and Confidentiality

311H Privileged Communications and Confidentiality
311HI In General
311Hk1 In general (Formerly 410k184(1))

The law will sustain a claim of privilege only when necessary to protect and preserve the interest of significant public importance that the specific privilege is designed to serve.

[6] **Privileged Communications and Confidentiality** 🔑 Medical or Health Care Peer Review

311H Privileged Communications and Confidentiality
311HVII Other Privileges
311Hk419 Peer Review Privilege
311Hk422 Medical or Health Care Peer Review
311Hk422(1) In general (Formerly 410k196.4, 410k196)
Pennsylvania Peer Review Protection Act seeks to foster the greatest candor and frank discussion at medical review committee meetings; through grants of immunity and confidentiality the state has attempted to encourage peer evaluation of health care provided so as to: (1) improve the quality of the care rendered; (2) reduce morbidity and mortality, and (3) keep within reasonable bounds the cost of health care. 63 P.S.Pa. §§ 425.1 et seq., 425.2, 425.4.

15 Cases that cite this headnote

[7] **Privileged Communications and Confidentiality** 🔑 Medical or Health Care Peer Review

311H Privileged Communications and Confidentiality
311HVII Other Privileges
311Hk419 Peer Review Privilege
311Hk422 Medical or Health Care Peer Review
311Hk422(1) In general (Formerly 410k184(1), 265k25(7))
Professional Standards Review Organization legislation had no application to claim of privilege, as asserted by defendant hospital and others in antitrust action in regard to discovery of what occurred at credentials committee and executive committee concerning plaintiff's unsuccessful application for hospital staff privileges. Social Security Act, §§ 1151-

1173, 1155, 1166, 1167, 42 U.S.C.A. §§ 1320c to 1320c-22, 1320c-4, 1320c-15, 1320c-16; Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

5 Cases that cite this headnote

[8] **Federal Courts** 🔑 Privilege and confidentiality

170B Federal Courts
170BXXV State or Federal Laws as Rules of Decision; Erie Doctrine
170BXXV(B) Application to Particular Matters
170Bk3022 Procedural Matters
170Bk3043 Witnesses
170Bk3043(2) Privilege and confidentiality
(Formerly 170Bk433, 170Ak51)

Although federal common law of privilege is controlling as regards discovery in a federal question suit, the district court may look to the privileges created by state courts and applicable state statutes if the court finds them appropriate.

28 U.S.C.A. § 1332; Fed.Rules Civ.Proc. rule 26(b)(1), 28 U.S.C.A.; Fed.Rules Evid. rule 501, 28 U.S.C.A.

5 Cases that cite this headnote

[9] **Federal Courts** 🔑 Privilege and confidentiality

170B Federal Courts
170BXXV State or Federal Laws as Rules of Decision; Erie Doctrine
170BXXV(B) Application to Particular Matters
170Bk3022 Procedural Matters
170Bk3043 Witnesses
170Bk3043(2) Privilege and confidentiality
(Formerly 170Bk416, 170Ak51)

Where important federal interests are concerned, a court should examine a state's policy of confidentiality before adopting a state rule of testimonial privilege as the federal rule. 28 U.S.C.A. § 1332; Fed.Rules Civ.Proc. rule 26(b)(1), 28 U.S.C.A.; Fed.Rules Evid. rule 501, 28 U.S.C.A.

[10] **Privileged Communications and Confidentiality** 🔑 Medical or Health Care Peer Review

311H Privileged Communications and Confidentiality
311HVII Other Privileges
311Hk419 Peer Review Privilege
311Hk422 Medical or Health Care Peer Review
311Hk422(1) In general
(Formerly 410k184(1), 170Ak1272.1, 170Ak1272, 265k25(7))


Although there is a powerful interest in confidentiality embodied in Pennsylvania Peer Review Protection Act, the Act would not be applied to bar discovery, in suit charging hospital and surgeons association with violating Sherman Act as well as state law, in regard to events in connection with denial of plaintiff surgeon's request for hospital staff privileges, including discovery of what occurred at meetings of credential committee and hospital executive committee and why plaintiff's application was denied. Sherman Anti-Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2; 28 U.S.C.A. § 1332; Fed.Rules Civ.Proc. rule 26(b)(1), 28 U.S.C.A.; Fed.Rules Evid. rule 501, 28 U.S.C.A.; 63 P.S.Pa. §§ 425.1 et seq., 425.2, 425.4.

16 Cases that cite this headnote

[11] **Antitrust and Trade Regulation** 🔑 Medical services

29T Antitrust and Trade Regulation
29TVI Antitrust Regulation in General
29TVI(E) Particular Industries or Businesses
29Tk593 Medical services
(Formerly 265k28(7.1))

Surgeon, charging hospital, professional association and others with conspiring to refuse him staff privileges and thus eliminate him as a competitor in field of open-heart surgery, had burden of establishing the relevant product and geographic market to establish his Sherman Act

claims. Sherman Anti-Trust Act, §§ 1, 2,  15

U.S.C.A. §§ 1,  2.

[12] Privileged Communications and Confidentiality  Nature of privilege; necessity of statute

311H Privileged Communications and Confidentiality

311HIV Physician-Patient Privilege

311Hk201 Nature of privilege; necessity of statute

(Formerly 410k208(1))

There is no common-law physician-patient privilege, and none has been accorded in the federal courts as a general evidentiary principle. Fed.Rules Evid. rule 501, 28 U.S.C.A.

5 Cases that cite this headnote

[13] Privileged Communications and Confidentiality  Medical or hospital records or information

311H Privileged Communications and Confidentiality

311HIV Physician-Patient Privilege

311Hk256 Medical or hospital records or information

(Formerly 170Ak1598)

Even if Pennsylvania doctor-patient privilege statute were applicable to discovery sought of nonparty hospitals, it would not avail one such hospital, resisting discovery of zip code address of open-heart patients, procedure performed, operating physician, attending physician and referring physician, which information was sought to establish relevant product and geographic market in Sherman Act suit charging conspiracy to eliminate plaintiff as a competitor in field of open-heart surgery. 28 P.S.Pa. § 328, Act June 7, 1907, P.L. 462; Fed.Rules Civ.Proc. rule 26(b)(1), 28 U.S.C.A.; Fed.Rules Evid. rule 501, 28 U.S.C.A.

2 Cases that cite this headnote

[14] Federal Courts  Torts

170B Federal Courts

170BXV State or Federal Laws as Rules of Decision; Erie Doctrine

170BXV(B) Application to Particular Matters

170Bk3063 Substantive Matters

170Bk3067 Torts

170Bk3067(1) In general
(Formerly 170Bk431)

Pronouncement of Pennsylvania Supreme Court on the constitutional right of privacy based on the Federal and State Constitutions was not binding on district court in determining whether the constitutional right of privacy barred discovery of nonparty. Fed.Rules Civ.Proc. rule 26(b)(1), 28 U.S.C.A.

[15] Constitutional Law  Medical records or information



92 Constitutional Law

92XI Right to Privacy

92XI(B) Particular Issues and Applications

92k1227 Records or Information

92k1231 Medical records or information
(Formerly 92k82(7))

Even if constitutional right of privacy protects the general doctor-patient relationship, there would be no improper invasion thereof by ordering nonparty hospitals to produce documents indicating number of open-heart operations performed thereat, as well as zip code address of each patient, procedure performed, name of operating, assisting and referring physicians, where information could be released only under confidentiality order and was sought by plaintiff surgeon to establish relevant product and geographic market for Sherman Act claims that defendant hospital and others conspired to refuse him staff privileges. Fed.Rules Civ.Proc. rule 26(b)(1), 28 U.S.C.A.; Sherman Anti-Trust Act, §§ 1, 2,  15 U.S.C.A. §§ 1,  2.

4 Cases that cite this headnote

Robinson v. Magovern, 83 F.R.D. 79 (1979)

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[16] Constitutional Law 🔑 Absolute, inviolable,
or unlimited nature

92 Constitutional Law

92XI Right to Privacy

92XI(A) In General

92k1214 Absolute, inviolable, or unlimited nature
(Formerly 92k82(7))

Claims of privacy rooted in the Constitution are
not absolute, but are qualified and are to be

balanced against weighty competing private and
state interests.

All Citations

83 F.R.D. 79, 27 Fed.R.Serv.2d 810, 27 Fed.R.Serv.2d 1372,
1979-1 Trade Cases P 62,658, 4 Fed. R. Evid. Serv. 573, 4
Fed. R. Evid. Serv. 1313

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