



October 6, 2015

**JARRELL V. KAUL RULING IMPOSES NEW DUTIES
ON HEALTH CARE FACILITIES**

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On September 29, 2015, in the matter of Jarrell v. Kaul, (A-42-13)(072363), the New Jersey Supreme Court ruled that health care facilities have a continuing affirmative duty to ensure that each credentialed physician maintains professional liability insurance in accordance with New Jersey statutory requirements.¹ The Jarrell Court further held that an aggrieved party can assert a claim for negligent hiring against a health care facility that grants privileges to any physician who fails to meet these minimum requirements.

The Jarrell case involved a spine surgery performed at an outpatient New Jersey ambulatory surgery center. The patient filed a civil action for negligence against both the physician and the facility for complications arising from the surgery. Discovery revealed that the professional liability policy of the defendant physician excluded coverage for spine surgery, rendering the physician uninsured for the incident. Both the trial court and the appellate court held that the surgery center bore no duty to ensure that credentialed physicians maintain professional liability insurance for services provided there. The Supreme Court disagreed, holding that the statutory requirement for insurance is akin to a license requirement. The surgery center maintains the same responsibility to ensure that physicians who perform services at the facility maintain sufficient insurance as it does in verifying the status of its credentialed physicians' licensure and board certifications. The Court allowed the plaintiff to litigate against the surgery center based on a theory of negligent credentialing.

What does the Jarrell decision mean to a health care facility when assessing the professional liability insurance of the providers it credentials?

- The facility has a legal duty to verify that the practitioners it credentials and affords privileges to maintain sufficient professional liability insurance. It must review the declaration of insurance and all endorsements, to ensure that there are no specific exclusions for services that the physician provides to patients at the facility.

- If the policies are "claims made" and expire annually, the facility has a duty to ensure that the policy is renewed or a new policy is purchased so that there is no gap in coverage.

¹ N.J.S.A. 45:9-19.17 requires each physician licensed to practice medicine in the State of New Jersey to have professional liability insurance with minimum indemnity limits of \$1 million per occurrence and \$3 million in the annual aggregate. In the alternative, a physician may furnish a letter of credit demonstrating that he or she maintains at least \$500,000 in assets to satisfy a judgment.

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