

## Profound Physician Credentialing, Quality Oversight and Board Fiduciary Duty Issues Raised in Connection with Indicted Pediatrician

### Financial Exposures Could Force Delaware's Beebe Medical Center into Bankruptcy

Dr. Earle Bradley, a Delaware pediatrician who earlier this year was indicted on hundreds of counts of sexual abuse of children, spent three years at Beebe Medical Center in Lewes, Delaware as an employed physician (1994-1997), and remained on its Medical Staff until 2002 -- twice elected by his peers as Chief of Pediatrics.<sup>1</sup> The Medical Center (along with the State Board of Medicine and other agencies) has now come under fire for alleged failures in credentialing, quality oversight and external reporting regarding Dr. Bradley.

An investigation by the Delaware Attorney General's Office concluded that the Medical Center had violated its external reporting obligations under the Delaware Medical Practice Act on three separate occasions between 1996 and 2005.<sup>2</sup> A separate investigation commissioned by the Governor's Office, while declining to assess culpability, also suggested that a more proactive response by Medical Center leaders to complaints about Dr. Bradley might have led to earlier detection and exposure of his abusive proclivities.<sup>3</sup>

The Attorney General's summary of evidence includes the following facts: (1) during the Medical Center's processing of Dr. Bradley's initial appointment application, the CEO became aware of a prior serious complaint of sexual abuse of a 21-month old baby in Pennsylvania; (2) in 1996, the Medical Center received a complaint from a nurse that raised multiple concerns regarding Dr. Bradley's conduct towards young female patients (including the frequency of urine sample catheterizations of young girls, requiring only girls to undress for sports physicals, and excessive kissing of little girls) and that the Medical Center's files revealed only partial investigation of these allegations; (3) in 1998, the Medical Center received another internal complaint raising additional concerns (including that Dr. Bradley was taking photos of young female patients and had subjected one young girl to a gynecologic exam over her mother's objection); (4) that in 2005 the Medical Center became aware of a criminal investigation of allegations of potential child sexual abuse, which led the Medical Center to instruct Dr. Bradley that, pending completion of the criminal investigation, he could not treat any patient at the Medical Center unless accompanied by a nurse/chaperone.<sup>4</sup>

The Attorney General's Report concluded that the Medical Center violated its duty under the Delaware Medical Practice Act (MPA) to report unprofessional conduct in 1996 and 1998 and of a restriction on the exercise of privileges in 2005.<sup>5</sup> The Delaware MPA imposes a mandatory obligation on any hospital that has a "reasonable belief" that a licensed physician "is or may be guilty of unprofessional conduct."<sup>6</sup> It also requires reporting of a restriction on privileges while the person is under formal or informal investigation for possible unprofessional conduct.<sup>7</sup> The Report found many other failures in Delaware's patient protection system, including that the professional reporting standards are not clearly defined.

According to the independent report commissioned by the Governor, when Medical Center officials were queried as to why they had never reported any of the allegations about Dr. Bradley to any public officials, they replied that they had "relied on the state-granted secrecy of the peer review statute, the procedures of their accreditation standards, federal statutes, and the fact that they believed that once other experts in the field had cleared Bradley's actions as accepted medical practice, they had no further obligation to report because they had no knowledge or good faith belief that anything was wrong."<sup>8</sup>

The Medical Center is now facing a cascade of lawsuits, including a class action, on behalf of sexual abuse victims for alleged quality oversight and reporting failures. The mounting financial exposure has led Medical Center officials to consider filing for bankruptcy.<sup>9</sup>

This matter raises profound questions for a hospital industry already under fire for well-documented, long-standing failures in its patient safety practices.<sup>10</sup> The Delaware Attorney General has already issued a set of specific recommendations for ways to strengthen hospital's external reporting obligations, including:

- Mandating hospital reports of *all* actions resulting in restriction of privileges;

- Strengthening penalties for violation of the duty to report;
- Amending the MPA to clarify that an Attorney General subpoena supersedes the peer review privilege;
- Broadening the class of persons required to report suspected child abuse to include not just individuals, but entities.<sup>11</sup>

Separately, the Governor's Report's makes recommendations directed to improving the *internal* reporting and investigation of complaints of possible sexual abuse or other "suspicious incidents."<sup>12</sup>

This matter should trigger a careful re-examination by hospital executives and board members of the adequacy and effectiveness of their credentialing, quality oversight and external reporting practices. Hospital boards, which are ultimately accountable for quality of care and patient safety, should consider such issues as:

- Whether the hospital's credentialing processes lead to probing evaluation of physicians about whom questions or complaints have been raised.
- Whether credentialing options ranging from conditional approval with peer oversight to denial of appointment/reappointment are routinely considered in response to confirmed physician concerns.
- Whether internal complaints are comprehensively investigated, evaluated, and resolved with confirmed issues leading to graduated peer intervention and, when necessary, corrective action.
- Whether there are effective processes in place to enable the hospital to identify "trends" or "patterns" of complaints emerging over time, thus facilitating longitudinal evaluation and response.
- Whether the hospital has a formal credentialing compliance auditing program that facilitates routine Board evaluation of the adequacy and effectiveness of its credentialing, quality oversight and external reporting processes.

If you would like to discuss the credentialing, quality/patient safety, and Board fiduciary duty issues implicated by the Bradley matter, please do not hesitate to contact Robin Locke Nagele at 215-587-1114 or [rnagele@postschell.com](mailto:rnagele@postschell.com) or Brian M. Peters at 215-587-1045 or [bpeters@postschell.com](mailto:bpeters@postschell.com).

<sup>1</sup> Statement by Beebe Medical Center Concerning Earl Bradley, April 18, 2010, published by CapeGazette.com, located at [www.Capegazette.com/zdocuments/2\\_0100419beebe-statement.html](http://www.Capegazette.com/zdocuments/2_0100419beebe-statement.html). ("Beebe Statement").

<sup>2</sup> "In Re: The Investigation of Failures to Report Allegations of Unprofessional Conduct and Child Abuse Against Dr. Earle Bradley under Delaware Law Prior to 2008," Lawrence W. Lewis, State Solicitor, Delaware Department of Justice, May 17, 2010 ("Attorney General's Report") at pp. 25-26.

<sup>3</sup> Final Report Submitted to the Honorable Jack Martell, Governor, State of Delaware, "Independent Review of the Earl Brian Bradley Case," by Linda L. Ammons, J.D., Associate Provost and Dean, Widener University School of Law, May 10, 2010 ("Governor's Report").

<sup>4</sup> Attorney General's Report, at 22-24; See also, Governor's Report, supra, note 3 at 5-6; and Beebe Statement, supra, note 1.

<sup>5</sup> Id, at 25-26.

<sup>6</sup> 24 Del. C. § 1731A(a).

<sup>7</sup> 24 Del. C. § 1731A(b); see Attorney General's Report at 26.

<sup>8</sup> Governor's Report, at 6.

<sup>9</sup> See, Dennis Forney, "Beebe Medical Center is Determined to Survive: Bankruptcy, Restructuring Possible in the Wake of Earl Bradley Lawsuits," CapeGazette.com, at [www.capegazette.com/storiescurrent/201004/beebe-survive20.html](http://www.capegazette.com/storiescurrent/201004/beebe-survive20.html).

<sup>10</sup> See, e.g., U.S. Department of Health and Human Services, Agency for Healthcare Research and Quality, National Healthcare Quality Report, 2009, Publication Number 10-0003, March 2010 (reporting on 2009 data showing that in 25% of Medical Centers nationwide, the measures of effectiveness in patient safety were trending in a "negative direction.")

<sup>11</sup> Attorney General's Report, at 58, 64- 66.

<sup>12</sup> Governor's Report, at 43.

**Disclaimer:** this E-Flash does not offer specific legal advice, nor does it create an attorney-client relationship. You should not reach any legal conclusions based on the information contained in this E-Flash without first seeking the advice of counsel.