NOTICE
Decision filed 05/20/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-10-0209

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

JUANITA TOMLINSON, Plaintiff-Appellee and Cross-Appellant, v. PARIS COMMUNITY HOSPITAL, Defendant-Appellant and Cross-Appellee, and GREGORY LAWSON, M.D., MIDWEST EMERGENCY DEPARTMENT SERVICES, INC., and MIDWEST EMERGENCY DEPARTMENT SERVICES, Defendants.	)	Appeal from the Circuit Court of St. Clair County. No. 08-L-102 Honorable Michael J. O'Malley, Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Presiding Justice Chapman and Justice Stewart concurred in the judgment.

R U L E 2 3 O R D E R

Held: The trial court erred in finding some documents to be unprotected by privilege under section 8-2101 of the Medical Studies Act because the documents were legitimately protected as a part of credentialing and recredentialing processes. The trial court's findings regarding internal peer-review studies were correct.

Defendant and contemnor Paris Community Hospital (the Hospital) appeals three orders of the circuit court of St. Clair County: the April 6, 2010, order finding the Hospital in "friendly contempt" and ordering a monetary sanction of $50 and the February 26, 2010, and February 11, 2010, discovery orders that form the basis for the finding of contempt. The plaintiff, Juanita Tomlinson, cross-appeals certain rulings of the trial court. For the reasons that follow, we vacate the contempt order and the accompanying monetary sanction, affirm

in part and reverse in part the remaining two orders, and remand for further proceedings not inconsistent with this order.

FACTS

On February 26, 2008, the plaintiff filed the complaint at issue in this case, alleging medical malpractice and other theories of recovery against the defendants. In the course of discovery, a dispute arose between the plaintiff and the Hospital over whether certain documents in the possession of the Hospital were privileged. In an order dated February 11, 2010, the trial judge concluded, following an *in camera* inspection of some of the documents at issue, that the documents found in the credentialing file (hereinafter referred to as Exhibit A, because that is how the documents were subsequently marked and how they have been filed, under seal, as a part of the record on appeal) of defendant Dr. Gregory Lawson were not privileged under section 8-2101 of the Medical Studies Act (the Act) (735 ILCS 5/8-2101 (West 2008)); that letters dated October 15, 2008, and April 29, 2009, and found within Exhibit A were not privileged; that memoranda to Dr. Lawson dated March 28, 2007, April 29, 2008, and August 4, 2008, and found within Exhibit A were privileged; and that "[t]he balance of the documents received" and found within Exhibit A were not privileged.

Following a hearing held on February 17, 2010, the trial judge entered an order on February 24, 2010, in which he found that additional documents submitted to him *in camera* were "all privileged pursuant to physician/patient privilege" and that in all those additional documents, there was only one reference to the plaintiff. On February 26, 2010, the trial judge entered yet another order. In it, the judge stated that his February 24, 2010, order referred to Exhibit C, which he described as "a large box containing over 300 pages of documents." He reiterated that Exhibit A referred to the documents covered by his February 11, 2010, order, and he noted that Exhibit B referred to documents produced at the hearing on February 17, 2010, many of which were duplicates of those in Exhibit A. The judge then

restated his earlier ruling that "the credentialing documents" were not privileged; with regard to the letters of October 15, 2008, and April 29, 2009, he modified his February 11, 2010, ruling, concluding that the latter letter was not privileged and must be released (with sentences dealing with a nonparty physician redacted) and that the first and third paragraphs of the former letter were privileged and must be redacted but that the middle paragraph was not privileged and must be released. The Hospital filed a motion to reconsider and asked, if that motion was denied, to be found in "friendly contempt" so that the rulings could be appealed. On April 6, 2010, the judge entered an order finding the Hospital in "friendly contempt" and ordering a monetary sanction of $50. This timely appeal and cross-appeal followed. Additional facts will be provided as necessary throughout the remainder of this order.

ANALYSIS

We begin our analysis with a consideration of the parameters of our jurisdiction over the Hospital's appeal and the plaintiff's cross-appeal. The Hospital filed its interlocutory appeal pursuant to Illinois Supreme Court Rule 304(b)(5) (eff. Feb. 26, 2010), after being found to be in "friendly contempt" and being sanctioned in the amount of $50 by the trial court for declining to comply with the trial court's February 11, 2010, and February 26, 2010, discovery orders. "Because discovery orders are not final orders, they are not ordinarily appealable." *Norskog v. Pfiel*, 197 Ill. 2d 60, 69 (2001). It is well-settled, however, that the correctness of a trial court's discovery order may be tested by a party through contempt proceedings. *Norskog*, 197 Ill. 2d at 69. When a party appeals a finding of contempt and accompanying sanctions, the discovery order becomes subject to review as well, because "[r]eview of the contempt finding necessarily requires review of the order upon which it is based." *Norskog*, 197 Ill. 2d at 69. An appeal by one party calls into question the correctness of the entire order and allows "review of all the trial court's rulings on the application of" the

privileges in question, including rulings in the appealed order contested by the nonappealing party. *Norskog*, 197 Ill. 2d at 70. Accordingly, we shall review the contentions raised both by the Hospital and by the plaintiff with regard to the February 11, 2010, and February 26, 2010, discovery orders.

In her cross-appeal, however, the plaintiff also asks this court to review the ruling of the trial court in its February 24, 2010, order, with regard to the documents contained in Exhibit C. We note that the February 24, 2010, order, however, is not properly before this court, and we have no jurisdiction to review the findings contained therein, because it did not form the basis for the contempt finding against the Hospital and accordingly was not included in the Hospital's notice of appeal. Moreover, it was not included in the plaintiff's notice of cross-appeal, nor could it properly have been so included. See *Norskog*, 197 Ill. 2d at 69 (discovery orders are not final orders and are not ordinarily appealable). The plaintiff will have to appeal the February 24, 2010, order at the proper time and in the proper manner, and we may not consider the propriety of the trial court's findings in that order at this time. We note that it is not clear from the record why the judge made his discovery rulings in multiple orders, rather than in one comprehensive discovery order, the whole of which would have been subject to review by this court if any part of it had formed the basis for a finding of contempt.

Against that jurisdictional backdrop, we turn to the issues raised by the parties with regard to the trial court's February 11, 2010, and February 26, 2010, orders, both of which are properly before this court on appeal. The Hospital asks this court for the following relief: (1) find that the letters of April 29, 2009, and October 15, 2008, are privileged, (2) find that the remaining documents contained in the credentialing files known as Exhibit A and Exhibit B are protected by privilege, and (3) vacate the trial court's contempt order. The plaintiff, on the other hand, asks this court for this relief: (1) affirm the findings of no privilege

contained in the February 11, 2010, and February 26, 2010, orders and the finding of contempt, (2) reverse the finding that parts of the October 15, 2008, letter are privileged, and (3) reverse the finding that the memoranda to Dr. Lawson dated March 28, 2007, April 29, 2008, and August 4, 2008, are privileged.

We begin by reciting the basic principles of privilege under the Act. The Act protects from disclosure " 'documents which arise from the workings of a peer-review committee [citation] and which are an integral part, but not the result, of the peer-review process.' " *Anderson v. Rush-Copley Medical Center, Inc.*, 385 Ill. App. 3d 167, 174 (2008) (quoting *Toth v. Jensen*, 272 Ill. App. 3d 382, 385 (1995)). Put another way, although the Act protects against the disclosure of documents that show "the mechanisms of the peer-review process, including information gathering and deliberations leading to the ultimate decision rendered by a peer-review committee," the Act does not protect against the discovery of any "information generated before the peer-review process begins or information generated after the peer-review process ends." *Pietro v. Marriott Senior Living Services, Inc.*, 348 Ill. App. 3d 541, 549 (2004). A party wishing to invoke the protection of the Act bears the burden of establishing that a privilege exists. *Anderson v. Rush-Copley Medical Center, Inc.*, 385 Ill. App. 3d 167, 174 (2008). Whether a privilege under the Act exists is a matter of law, subject to *de novo* review by this court. *Anderson*, 385 Ill. App. 3d at 174. "However, whether specific materials are part of an internal quality control or a medical study is a factual determination, which will not be reversed on review unless it is against the manifest weight of the evidence." *Anderson*, 385 Ill. App. 3d at 174.

We first consider the memoranda to Dr. Lawson dated March 28, 2007, April 29, 2008, and August 4, 2008, which the trial court found to be privileged. Our review of those three documents leads us to conclude that the trial court's factual determination that the documents were a part of an internal quality control is not against the manifest weight of the

evidence and may not be reversed. Each document has a heading that reads "Interoffice Memorandum," each is addressed to Dr. Lawson, and each is from the Emergency Medical Services Committee (the Committee), which, according to the affidavit of Hospital president and CEO Randy Simmons, provides peer review of the Hospital's emergency department. Moreover, each document is signed by a member of the Committee, each states that the Committee reviewed the record of a particular patient (none of whom is the plaintiff) treated by Dr. Lawson in the emergency department, and each requests commentary from Dr. Lawson regarding some aspect of the treatment received by the patient. Although the documents have lines for Dr. Lawson's signature and date, those lines are blank, and it is unclear from the record whether Dr. Lawson ever received and responded to the documents. Nevertheless, it is clear, as described above, that the documents were prepared by the Committee and show "the mechanisms of the peer-review process, including information gathering and deliberations leading to the ultimate decision rendered by a peer-review committee" *(Pietro v. Marriott Senior Living Services, Inc.*, 348 Ill. App. 3d 541, 549 (2004)). Accordingly, the trial court did not err when it found these three documents to be privileged under the Act, and we hereby affirm that finding of the trial court.

We turn next to the letters of April 29, 2009, and October 15, 2008. The April 29, 2009, letter was written to Hospital president and CEO Simmons by Dr. William Cruzen, president of defendant Midwest Emergency Department Services (MEDS), the independent entity that hired Dr. Lawson and that managed the staffing of the Hospital's emergency department. The trial court found that although sentences dealing with a nonparty physician must be redacted, the remainder of the letter was not privileged and must be released. We agree. Although both Dr. Cruzen and Mr. Simmons were members of the Committee, there is simply no indicia that the letter relates to Committee business or that it was created by the Committee as a whole rather than by Dr. Cruzen individually in his capacity as the president

of the company that hired Dr. Lawson; to the contrary, the letter is printed on MEDS stationery, never references the Committee or any other peer-review committee, and states that "we are very engaged" at the Hospital and "wish to provide you with the best MEDS has to offer." It goes on to state that "[w]e" will be releasing Dr. Lawson from his duties at the Hospital. Moreover, even if the letter did appear to be a document created by the Committee as a part of a review process, the letter does not reveal the mechanisms of the peer-review process; to the contrary, it reveals only the result of a decision: the decision of MEDS to release Dr. Lawson from his duties at the Hospital "as soon as possible." The letter is not privileged and must be released, with the redactions directed by the trial court, to the plaintiff.

The letter of October 15, 2008, was written by Dr. Cruzen to Dr. Lawson. This letter, too, is written on MEDS stationery and is signed by Dr. Cruzen in his capacity as "President, MEDS"; however, the first paragraph of the letter specifically references the Committee and the Hospital and discusses quality control protocols created by the Committee for use at the Hospital. We agree with the trial court's factual determination that the first and third paragraphs of the letter show "the mechanisms of the peer-review process, including information gathering and deliberations leading to the ultimate decision rendered by a peer-review committee" (*Pietro v. Marriott Senior Living Services, Inc.*, 348 Ill. App. 3d 541, 549 (2004)), and therefore are privileged. We also agree with the trial court that the second paragraph (referred to as the "middle" paragraph by the trial court, although there are actually four paragraphs in the letter) reveals only the policy implementations that are the result of the peer-review process and that therefore the second paragraph is not privileged and must be released to the plaintiff. See *Anderson v. Rush-Copley Medical Center, Inc.*, 385 Ill. App. 3d 167, 174 (2008) (results of peer-review process not privileged). The fourth paragraph provides only contact information and is of no relevance to the case at bar.

We now discuss the remainder of the documents found in Exhibits A and B, all of which were found by the trial court to not be privileged. Remaining in Exhibit A are two stapled bundles of documents. The first stapled bundle contains three two-page form letters, for a total of six pages. Each letter is dated December 11, 2001, each states that Dr. Lawson "has applied for Emergency Staff privileges" at the Hospital, and each requests an evaluation of Dr. Lawson on a number of professional criteria. Each of the three letters was sent to, and returned by, a doctor with a previous professional relationship with Dr. Lawson. The trial court found these documents to be unprivileged because they related to the original credentialing process of Dr. Lawson and therefore preceded the initiation of the peer-review process. In support of this finding, the trial court cited the holding of *Menoski v. Shih*, 242 Ill. App. 3d 117, 120-21 (1993): "Documents such as applications for privileges and educational transcripts are generated prior to the peer-review process and are therefore not privileged." However, the first stapled bundle contains neither Dr. Lawson's application for privileges nor his educational transcripts. It contains form letters that were clearly created by the Credentialing Committee in response to Dr. Lawson's application for privileges, for the purpose of evaluating that application. Documents initiated, created, prepared, or generated by a peer-review committee, such as a credentialing committee, are privileged under the Act. *Webb v. Mount Sinai Hospital & Medical Center of Chicago, Inc.*, 347 Ill. App. 3d 817, 825 (2004). The trial court erred in concluding that the first stapled bundle was not privileged, and we reverse that conclusion of the trial court.

The second stapled bundle in Exhibit A consists of 16 documents. The first document, dated April 23, 2004, informs Dr. Lawson that his appointment to the Hospital's medical staff is "up for renewal in June 2004" and describes the steps Dr. Lawson needs to take to apply for a reappointment. The next 12 documents, all of which bear dates of 2001 or 2002, are evaluation forms and professional profiles related to the initial credentialing of

Dr. Lawson following his application for privileges at the Hospital. The final three documents provide verification of the active status of Dr. Lawson's physician's license in, respectively, Illinois, Indiana, and Michigan. Although none of the final three documents is itself dated, it would appear from the license expiration dates on the documents that these documents, too, were created to facilitate the initial credentialing of Dr. Lawson. All of these documents, like those in the first stapled bundle, either were created by the Credentialing Committee for the purpose of reviewing Dr. Lawson's request for privileges or were generated by third parties in response to a request from the Credentialing Committee for that purpose. They are privileged and are not discoverable by the plaintiff. We reverse the trial court with regard to these documents.

Exhibit B consists of 34 documents, 13 of which are duplicates of documents found in Exhibit A that, for the reasons discussed above, are protected by privilege. We reverse the trial court with regard to those 13 documents. Of the remaining 21 documents, 11 documents are clearly related to the initial credentialing of Dr. Lawson and clearly either were created by the Credentialing Committee for the purpose of evaluating Dr. Lawson's request for privileges or were generated in response to a request from that committee for that purpose. These documents include a checklist, a reporting form, and a request for additional information addressed to Dr. Lawson to facilitate the credentialing process, routine correspondence with Dr. Lawson to update him on who had and who had not responded to requests regarding his credentialing, copies of responses received by the Credentialing Committee in response to its requests for information to use to evaluate Dr. Lawson's application for privileges, and copies of follow-up documents sent to someone who had not yet responded to the committee's request. Each of these 11 documents shows "the mechanisms of the peer-review process, including information gathering and deliberations leading to the ultimate decision rendered by a peer-review committee" (*Pietro v. Marriott*

Senior Living Services, Inc., 348 Ill. App. 3d 541, 549 (2004)), and each is therefore privileged. We reverse the trial court with regard to these 11 documents.

Of the final 10 documents in Exhibit B, 9 relate to the recredentialing of Dr. Lawson in 2004, 2006, and 2008. These documents include "[d]ata [g]athering" forms sent to Dr. Lawson for him to fill out and return to the Credentialing Committee, questionnaires sent to third parties relating to the recredentialing of Dr. Lawson, and responses received from the National Practitioner Data Bank and the American Medical Association regarding the recredentialing of Dr. Lawson. As above, each of these nine documents shows "the mechanisms of the peer-review process, including information gathering and deliberations leading to the ultimate decision rendered by a peer-review committee" (*Pietro v. Marriott Senior Living Services, Inc.*, 348 Ill. App. 3d 541, 549 (2004)), and each is therefore privileged. Although the plaintiff contends that recredentialing documents should not be protected by privilege, for fear that an incentive would be created for defendants such as the Hospital to set up an "Ongoing Credentialing" committee to protect documents that could be damaging to defendants, there is no support in the record for the supposition that such a thing happened in this case. The recredentialing documents found in Exhibit B are quite mundane, revealing nothing negative about Dr. Lawson, the Hospital, or anyone else. Moreover, the documents are related to distinct Credentialing Committee reviews in 2004, 2006, 2008, not to some nebulous "ongoing" credentialing process. Finally, we note that the Act specifically lists "Credential Committees" as among the peer-review committees whose work is to be protected by the Act (735 ILCS 5/8-2101 (West 2008)). We reverse the trial court with regard to the nine documents related to the recredentialing of Dr. Lawson.

The final document found in Exhibit B is entitled "Temporary Privileges," grants temporary privileges to Dr. Lawson beginning December 28, 2001, and is numbered "62" in the bottom right-hand corner. This document does not show the mechanisms of the peer-

review process. To the contrary, it shows only the result of the peer-review process. It is not privileged and must be released to the plaintiff. See *Anderson v. Rush-Copley Medical Center, Inc.*, 385 Ill. App. 3d 167, 174 (2008) (the results of the peer-review process were not privileged). We affirm the trial court's conclusion that no privilege protects this document.

The Hospital also asks this court to vacate the trial court's contempt order. Where a party has sought a contempt order in good faith and was not contemptuous of the trial court's authority, this court may vacate the contempt order, even if we conclude that the trial court's discovery order was proper. *Webb v. Mount Sinai Hospital & Medical Center of Chicago, Inc.*, 347 Ill. App. 3d 817, 828 (2004). In the case at bar, we have found portions of the trial court's discovery orders to be proper and other portions to be improper. Accordingly, having concluded that the Hospital acted in good faith in contesting the discovery rulings, we hereby vacate the April 6, 2010, order finding the Hospital in friendly contempt.

CONCLUSION

For the foregoing reasons, we vacate the trial court's April 6, 2010, order. We affirm in part and reverse in part the trial court's February 11, 2010, and February 26, 2010, orders, and we remand this cause for further proceedings not inconsistent with this order.

April 6, 2010, order vacated; February 11, 2010, and February 26, 2010, orders affirmed in part and reversed in part; cause remanded.