

Incident Reports: Court Upholds Hospital's Quality Review Privilege.

Shortly after surgery a patient fell and broke his hip in the hospital's intensive care unit while attempting to get up to go to the bathroom.

His widow sued the hospital for negligence. The lawsuit alleged the patient should have been classified as a high risk for falling because his physical and mental capabilities were impaired by his medications. Further, his physician had ordered his bed rails to be raised and that he be kept under direct observation at all times, yet he was allowed to get up unassisted.

Patient's Widow's Lawyers Demanded Nurse's Incident Report

At this point the court has not passed judgment on the allegations of negligence filed against the hospital. This issue at this point is whether the lawyers should be allowed a copy of the ICU nurse's incident report. The hospital has claimed it is unable to locate this document, but is arguing that even if it can be located it is privileged and does not have to be turned over.

Quality Review Privilege Upheld

The hospital has a specific quality review form that is to be filled out by the nursing staff on duty any time a patient falls.

The Court of Appeal of California, in an unpublished opinion, pointed out this form was not intended to be used for risk management purposes, that is, it was not intended as advance preparation for the eventuality that the hospital could be sued over the incident in question.

Instead, the form was strictly to be used for internal quality review. Quality review had seen a specific need to cull out and review all incidents at the hospital involving patient falls to look at what could be done to prevent patient falls, the purpose being to improve patient safety and enhance the quality of care at the hospital. The quality review privilege applies to all aspects of quality improvement, not just medical staff review. **Sutter Davis Hospital v. Superior Court**, 2004 WL 1988009 (Cal. App., September 8, 2004).

The records and proceedings of organized committees in hospitals having the responsibility of evaluation and improvement of the quality of care rendered in the hospital are not to be made available to patients suing the hospital.

This includes not only medical staff committees but also multidisciplinary committees where the members may be nurses and administrators.

The rationale is that outside access to investigations conducted by staff committees stifles candor and inhibits objectivity in voicing constructive criticism which is necessary to enhance safety and improve the quality of care.

Inability to access a hospital's internal quality review records may impair a patient's ability to pursue a lawsuit against a doctor or the hospital, but on balance quality improvement as more important.

Patients' lawyers still have access to testimony of hospital employees and the patient's medical chart to prove their cases

COURT OF APPEAL OF CALIFORNIA
UNPUBLISHED OPINION
September 8, 2004

Pregnancy Discrimination: Comparison Must Be The Same In All Respects.

A night-shift patient care observer (PCO) was fired after a staff nurse and a nursing supervisor both verified they saw her sleeping on duty sitting with a patient who was considered a suicide risk and had been assigned a one-on-one PCO for that reason. After her termination she sued for pregnancy discrimination.

Even though sleeping on the job is a serious infraction for a patient caregiver, the US District Court for the Eastern District of Pennsylvania agreed with the PCO that she might have valid grounds to sue for pregnancy discrimination, if she could prove the hospital did not terminate other non-pregnant patient-care personnel for sleeping on the job.

To prove pregnancy discrimination, the person filing the lawsuit has to demonstrate that she was treated differently than at least one person who was exactly the same in all relevant respects except for not being pregnant.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
August 5, 2004

Two aides who were not pregnant had been caught sleeping on the job and were not fired. One was sleeping in the break room on break. One was sitting with a non-suicidal patient.

The Court ruled neither of them committed an offense as serious as the PCO. The PCO's basis of comparison failed and her lawsuit was dismissed. **Jones v. Hospital of University of Pennsylvania**, 2004 WL 1773725 (E.D. Pa., August 5, 2004).

Racial Discrimination: Comparison Must Be The Same In All Respects.

The US District Court for the Northern District of Illinois dismissed an African-American nurse's racial discrimination suit filed against the nursing care center where she had worked. Although given numerous promotions, she was not offered an assistant executive director position for which she was not considered qualified. She resigned and filed suit.

The nurse who filed this lawsuit has not been able to identify any non-minority who was situated similarly to her in the workplace who was treated more favorably.

The nurse has not shown that the person who got the executive director position had basically the same qualifications and experience as her, except for not being a minority.

UNITED STATES DISTRICT COURT
ILLINOIS
August 31, 2004

To prove discrimination it is necessary to identify a non-minority similar in all relevant respects who was treated more favorably. The nurse could not show that the person who got the promotion had the same qualifications as she, specifically the same lack of management experience.

After she resigned and sued, her job was filled with a non-minority making \$1.45 per hour less than what she was making, tending to disprove a discriminatory climate existed in her workplace. Hussey v. Sunrise Senior Living Services, 2004 WL 2033754 (N.D. Ill., August 31, 2004).

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The hospital's risk management committee investigates identified risk exposures and reports of patient dissatisfaction with the quality of care.

The hospital's risk management committee has a function which is financial in nature, attempting first to quantify and then to adjust the hospital's risk exposure.

The hospital's risk management committee does not come under the quality review privilege or the medical review privilege.

On the other hand, the hospital's quality review committee exists to review and evaluate the provision of patient care in the hospital. There is also a medical review committee which specifically reviews issues of physician competence in the rendering of medical care. Both functions are geared toward quality improvement and come under legal privileges against outside disclosure of internal documents.

Patients have other avenues to obtain evidence for their legal cases.

COURT OF APPEALS OF TEXAS
August 31, 2004

A patient sued the hospital after an incident in which she allegedly was over-medicated by a patient controlled analgesia (PCA) morphine pump during the night while she was asleep following surgery.

Her over-sedated and unresponsive condition was detected in time by her nurses and the morphine overdose was immediately corrected with Narcan.

It was not clear from the court record what harm the patient claimed to have suffered.

The patient's own expert witness admitted he had no idea whether the PCA was defective or if the hospital's caregiving staff had somehow mis-programmed it. On the basis of inadequate proof, the lower court dismissed the case.

The patient's lawyers asked the Court of Appeal of Texas to rule that the hospital should have been required to turn over its quality review file on the incident, from which the lawyers speculated the patient's medical expert would have been able to extract sufficient factual data to be able to render an opinion that the hospital was negligent. The Court of Appeal disagreed.

Quality Review Privilege Upheld

Some confusion resulted from the fact it was the hospital's risk manager who provided an affidavit to the court that the nurse's incident report was exempt from disclosure as a quality-review document.

Risk management, strictly speaking, does not involve improvement of patient care. Risk management is not covered by the quality review or medical review privilege.

However, quality review, the process of trying to improve patient care by investigating adverse incidents, comes under a legal privilege which cannot be violated even if the patient requires quality review materials to pursue a successful lawsuit, which of course has secondary risk-management benefit. Martinez v. Abbott Laboratories, ___ S.W. 3d ___, 2004 WL 1944403 (Tex. App., August 31, 2004).