

LEGAL EAGLE EYE NEWSLETTER

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Quality Review: Court Says Documents Are Exempt From Discovery In Patient's Lawsuit.

A resident of a group home for developmentally disabled persons was assaulted, beaten and stabbed by another resident.

The victim's father filed a civil lawsuit against the group home on his son's behalf. The lawsuit alleged that negligent supervision of the perpetrator by the group home's staff was the cause of his son's injuries.

For the lawsuit to succeed, the father's lawyers needed to find proof that caregivers at the group home knew ahead of time from his prior aggressive acts that the perpetrator had violent tendencies toward other individuals in a similar residential setting.

The father's lawyers believed the proof they needed to succeed with their client's case could be found in the notes and conclusions prepared by the facility's corporate compliance officer who investigated the incident for the quality review committee.

The father's lawyers formally demanded copies of all such documents in the group home's possession, citing the general provisions of the civil court discovery rules.

The group home declined to provide copies, citing the law which shields quality review documents as protected by the peer review and quality assurance privilege.



The compliance officer, a registered nurse, was a member of the group home's corporate parent's performance improvement committee.

After the incident the committee asked her to investigate to determine if adequate safeguards existed for patient safety or whether additional safeguards were necessary to improve patient safety.

SUPREME COURT OF ALABAMA
September 8, 2017

Quality Review Privilege Does Apply

The Supreme Court of Alabama ruled the documents in question were shielded by the quality review privilege and were not subject to civil discovery by the other side in litigation against the group home.

The registered nurse who served as compliance officer in the group home's owner's corporate office gave a sworn affidavit.

In her affidavit she stated that after the incident the performance improvement committee, of which she is a member, asked her to identify the factors that led to the incident and to determine whether adequate safeguards were in place to ensure patient safety or whether additional safeguards needed to be implemented to prevent such incidents in the future.

The telling points were that the nurse/compliance officer was specifically directed by the performance improvement committee to prepare the documents in question for use by the committee and that the investigation was conducted for the purpose of improving the quality of patient care. The nurse's report was not an incident report prepared in the ordinary course of business. ***Ex Parte, __ So. 3d __, 2017 WL 3940949 (Ala., September 8, 2017).***

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Quality Review: Documents Are Not Shielded By Privilege.

The mother was admitted to the hospital at thirty weeks and gave birth to her premature infant the same day. The infant died two weeks after birth.

About a month later the mother contacted the hospital's patient advocate to express her concerns about the care she and her baby had received in the hospital.

The patient advocate was the liaison to the medical staff quality committee but was not a committee member herself.

Fearing the mother's complaints would become a matter for the committee she spoke with two obstetricians on the hospital's staff, with one about the mother's obstetric care and with the other about the baby's neonatal care. The physicians' impressions apparently were not favorable to the hospital.

The patient advocate prepared notes of her conversations with the physicians in an electronic format on the computer.

When the medical staff quality review committee had its regular meeting the next month the patient advocate's notes were discussed.

After the mother sued the hospital for malpractice the mother's lawyers used the civil discovery rules to demand access to the patient advocate's notes.

The hospital refused based on its interpretation of the medical peer review quality assurance privilege.

Notes Not Protected From Discovery

The Appellate Court of Illinois ruled the patient advocate's notes were not shielded from discovery and the hospital had to make them available to the lawyers.

The patient advocate prepared the notes before being directed to do so by the medical review quality committee specifically for this incident.

Further, the hospital was not able to make it clear for the Court that the patient advocate's investigation and her notes pertained to improvement of the quality of patient care, as opposed to risk management.

Risk management per se is not a privileged or protected subject unless attorney-client privilege comes into play once litigation is imminent or has been filed. **Grossheusch v. Hospital**, ___ N.E. 3d ___, 2017 WL 3866498 (Ill. App., September 5, 2017).

The law which defines the peer review quality assurance privilege does not protect documents from discovery in a civil case against a healthcare provider that were generated before the committee knew about and authorized an investigation of a specific incident.

If the documents were prepared in response to a specific request from the committee it would still be necessary for the hospital to document specifically when and in what manner the committee met to discuss the specific matter, when the investigation was authorized that led to the creation of the documents, when the documents or the investigator's impressions and recommendations were considered and when the matter was put to rest by the committee.

The hospital further needed to show that the documents in question were prepared solely for use by the committee for quality assurance and performance improvement, and not also for some other purpose like risk management or for use by legal counsel in the event that litigation ensued.

APPELLATE COURT OF ILLINOIS
September 5, 2017

Nurse Practitioner: Collaborative Practice Agreement Does Not Define Standard Of Care.

The patient was seen in an outpatient clinic by a nurse practitioner.

Possible kidney dysfunction was suggested by the abnormal lab values from the blood drawn at the clinic visit.

The nurse practitioner scheduled a follow-up colonoscopy with a gastroenterologist for the patient's symptoms that suggested Crohn's disease, but did nothing further about the abnormal lab values.

The patient later sued over complications from a drug prescribed for irritable bowel syndrome. The drug might have been contraindicated if the nurse practitioner had explored the abnormal lab values to confirm or rule out kidney disease.

The nurse practitioner's collaborative practice agreement with the physician does not define the legal standard of care.

A nurse practitioner may have other responsibilities to the patient beyond those expressly spelled out in the agreement.

UNITED STATES DISTRICT COURT
MARYLAND
September 15, 2017

The US District Court for the District of Maryland declined to rule out the testimony of one of the patient's experts.

The expert witness proposed to testify that a nurse practitioner cannot limit the scope of the legal duties for which he or she claims to be responsible to the patient to the tasks expressly defined in the collaborative practice agreement with the supervising physician. If follow-up for the abnormal lab values was necessary, it was the nurse practitioner's legal responsibility to see to it. **Harmon v. US**, 2017 WL 4098742 (D. Md., September 15, 2017).