Incident Reports: Court Discusses Extent Of Quality Review Privilege.

An incident report or risk management report and its contents are not subject to discovery in a civil lawsuit nor are they admissible in evidence at trial. These documents and their contents are considered privileged.

The term "discovery" refers to the required pre-trial disclosure of information to the other side, information that is properly subject to discovery under pertinent statutes and rules of court.

The privilege specifically targets documents that report incidents involving injury or potential injury suffered by a patient while receiving medical care by a healthcare provider.

However, the privilege applies only if the incident report was prepared for use by a peer-review or quality assurance committee that functions internally to review patient-care incidents candidly with a view toward improving the quality of patient care.

Merely labeling a document an "incident report," in and of itself, does not invoke the privilege.

COURT OF APPEALS OF OHIO
August 11, 2006

The underlying lawsuit against the outpatient rehab facility arose from an incident involving a husband and wife who were both coming in for medical care.

The husband was being treated by a respiratory therapist for his emphysema. The wife was recuperating from open-heart surgery.

The husband's respiratory therapist disconnected his portable O_2 tank and connected him to the wall port with a lengthy hose. The wife got up from where she was sitting to go into the restroom to attach her cardiac monitors, the usual procedure before her therapy started. She tripped and fell over the husband's oxygen hose.

There has been no ruling as yet on the validity of the underlying lawsuit alleging negligence against the facility.

The issue now is whether the patients' lawyers are entitled to a copy of the incident report. The Court of Appeals of Ohio ruled the report is legally privileged and the patients' lawyer may not see it.

Peer-Review / Quality Assurance

To make its point the court looked at a contrasting case where the patient's lawyer was entitled to see the incident report. In that other case the facility merely labeled its incident report as an "incident report." There was no indication in that case that the report was to be used and would be used by the facility's peer-review or quality assurance committee, or even that the facility had a peer-review or quality assurance committee.

In this case, on the other hand, the facility's risk manager, a registered nurse, testified through a sworn affidavit that the incident report was prepared for use internally by the Risk Management and Quality Assurance Committee and that it would be used in an effort to improve the quality of patient care within the facility, which was the committee's function. That was enough for the court. **Quinton v. Medcentral Health System, 2006 WL 2349548 (Ohio App., August 11, 2006).**