

AMA fights to protect patient-safety work from legal discovery

AUG 1, 2018

Andis Robeznieks

Senior News Writer

Too often, voluntarily created and submitted reports meant to be used for analysis and prevention of adverse events are used instead as roadmaps for litigation.

That was the message delivered in an amicus brief filed by the Litigation Center of the American Medical Association and State Medical Societies, the Illinois State Medical Society, and other organizations in the case *Daley v. Teruel and Ingalls Memorial Hospital*, which involves protection of peer-review reports from litigation discovery.

The brief also warned that, if the First District Illinois Appellate Court upheld a trial court's order for Ingalls Memorial to turn over its patient safety reports, it would "send a message to Illinois hospitals that they should not voluntarily document their self-examination of an adverse situation for the purpose of improving health care."

The judges agreed. In its June 28 decision, the court ruled that—under the federal Patient Safety and Quality Improvement Act of 2005 (PSQIA)—the hospital's incident reports, which were submitted to a third-party patient safety organization (PSO) via a computer portal specifically dedicated for that purpose, were shielded from discovery.

PSOs were created by PSQIA to aggregate data from multiple sources and identify causes of adverse events, issue safety alerts, promote best practices and provide feedback that has helped to reduce adverse events and errors and improve medication safety.

Ruling's impact may go past state line

The AMA was one of the leading forces behind PSQIA's passage. Since then, the AMA has made recommendations on its implementation in the federal rule-making process and has fought for it to be properly enforced by the courts.

While the Litigation Center was successful in Illinois, this was not the case in Florida. In a Jan. 31, 2017, ruling, the Florida Supreme Court overturned an appellate court decision in *Charles v. Southern Baptist Hospital of Florida* that protected reports similar to those in Illinois.

The top Florida court said the federal law was intended “to improve the overall health care in this system, not to act as a shield to providers.” The Litigation Center, Florida Medical Association and host of other organizations joined together to submit an amicus brief to the U.S. Supreme Court requesting that it review the case.

“The effects of the Florida Supreme Court’s decision are not, and will not be limited, to Florida,” the brief warned. Last October, the U.S. Supreme Court denied a petition to review the case, letting the ruling stand.

Vital protections being eroded

In March, the confidentiality of safety reports took another hit when the Pennsylvania Supreme Court issued a ruling that said documents generated by a hospital’s outside contractor were not protected from discovery under the state’s Peer Review Protection Act.

By a 4–3 majority, the high court agreed with a lower-court ruling that Monongahela Valley Hospital could not claim privilege for a performance file on an emergency department physician employed by the hospital’s contractor UPMC Emergency Medicine Inc.

The Litigation Center joined with the Pennsylvania Medical Society to file an amicus brief supporting protection of the file.

Similarly, in *Brugaletta v. Garcia*, a case that is being appealed to the New Jersey Supreme Court, the Litigation Center has joined with the Medical Society of New Jersey to protect from discovery an analysis of an alleged misdiagnosis. The analysis was produced in accordance with New Jersey’s Patient Safety Act, which was thought to shield the report from disclosure. A trial court disagreed, but was reversed by the state appellate court.

The Litigation Center and state medical society submitted an amicus brief to the state Supreme Court arguing that the “self-critical analysis,” which was produced following procedures called for in state and federal laws, was protected—and vital “if this process is to curb the recurrence of preventable adverse events.”