

Court should respect privilege tied to Quality Related Event report

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An Illinois court has ruled that the Quality Related Event (QRE) report—the document that triggered the process in place to improve patient safety—isn't privileged under the law and that a patient suing the hospital should have access to it.

That decision, physicians say, is misguided. If allowed to stand, it threatens the system that the federal Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) established nearly two decades ago to create a culture where physicians and health care workers feel safe reporting incidents and evaluating what happened so they can improve the system for everyone.

In an amicus brief, the Litigation Center of the American Medical Association and State Medical Societies, the Illinois State Medical Society (ISMS) and others interested in patient safety are urging the Appellate Court of Illinois Second Judicial District to reverse the trial court's decision and vacate the order that tells the hospital to hand over the QRE report.

Part of the lower court's rationale for not protecting the document was solely that it was created on the same day the incident occurred.

"If the trial court's analysis stands ... providers will be incentivized to delay the preparation of such reports," the AMA Litigation Center and ISMS brief tells the court in the case, *Washington v. Adventist GlenOaks Hospital*. "Such delay risks the loss of details and incomplete recollections of information that is crucial to developing improved patient care and to preventing future errors."

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QRE is key to patient safety

The plaintiff in the case, Deloris Washington, asked the court for a number of documents that were part of the hospital's peer review and quality assurance process. She is suing Adventist GlenOaks Hospital and others for medical malpractice as the guardian of Quenique Bennett, who had a seizure and went to the hospital's emergency department. There, a doctor read her CT scan as showing no signs of abnormality. Nine hours later, she had an MRI that showed a large vessel occlusion. Later, she was diagnosed as having had a massive stroke. Bennett is unable to walk and requires 24-hour care in a nursing home.

The court protected most of the documents that Washington sought, but said the QRE was not privileged because it was "just a standard incident report" not covered by the Medical Studies Act or the Patient Safety Act.

The AMA Litigation Center and ISMS brief explains that the Patient Safety Act's definition of Patient Safety Work Product (PSWP) is broad and "includes any information that 'could result in improved patient safety, health care quality or health care outcomes.' "

"Incident reports, like the QRE report, fall squarely within the scope of this definition," the brief says. "They are simply one initiating piece of the puzzle in a hospital's, physician group's or other health care provider's efforts to improve patient care. These initial reports trigger subsequent analyses, committee reviews, and other kinds of data, all of which are considered PSWP when collected within a provider's PSES [Patient Safety Evaluation System]."

Law clearly protects this QRE

The brief further tells the court that the Patient Safety Act and its implementing regulations don't require a document be created solely for submission to a patient safety organization and recognize that patient safety information can be used for many purposes. Rather, patient safety work product [PSWP] can be used within an organization for "educational, academic, or other professional purposes," or "credentialing, disciplinary, or peer review purposes."

Also critical to whether the QRE is protected is the question of whether it was maintained in the Patient Safety Evaluation System. The answer to that question here is also yes.

In an affidavit, the brief tells the court, the regional director of risk for the hospital system that oversees GlenOaks Hospital "stated in pertinent part that the QRE report was part of the Patient Safety Evaluation System and was 'submitted into [GlenOaks'] Patient Safety Evaluation with intention of

ultimately being submitted to a Patient Safety Organization.’ Plaintiff has offered no rebuttal to these averments, and therefore, the court should have accepted them as true.”