

## Three Important Hospital Actions Concerning Incident Report Discovery

In one of the few cases to discuss hospital incident report privilege protections in medical malpractice actions, the administrator of a deceased patient's estate brought this action against a hospital for the failure to adequately monitor and treat the blood glucose levels of the patient. During the litigation, the administrator filed a motion seeking production of reports prepared in connection with the incident alleged to have contributed to the patient's death. The hospital opposed the motion claiming the reports were privileged patient work product under the Patient Safety and Quality Improvement Act.

In one of the plaintiff's written interrogatories, the plaintiff asked the hospital to state whether the incident identified in the complaint was reported to, or investigated by, any hospital or governmental committee, agency, or body. The hospital objected on the basis that the interrogatory sought privileged information, and directed the plaintiff to an attached privilege log, in which it claimed privilege on six documents including incident reports.

The trial court ordered the hospital to produce three documents it had collected within its patient safety evaluation system (PSES), and reported to Clarity PSO, a federally certified patient safety organization.

The Appellate Court of Illinois noted that a party may meet its burden of proving the applicability of a privilege by submitting the allegedly privileged materials for an in camera review or by submitting affidavits setting forth facts sufficient to establish the applicability of the privilege to the particular documents being withheld.

The court determined the reports prepared by the hospital in connection with the incident that allegedly contributed to the patient's death satisfied the requirements for privileged patient work product under the Patient Safety and Quality Improvement Act (Act). The court determined the hospital had demonstrated through its policies, documents, and un rebutted affidavits that the reports qualified as privileged patient safety work product (PSWP) under the Patient Safety and Quality Improvement Act of 2005 (PSQIA) and, therefore, were not discoverable. The court found the reports contained data, discussions, and reflections, which was the sort of information the Act protected, they were prepared by the hospital solely for submission to a federally certified patient safety organization, and the information they contained had the ability to improve patient safety and the quality of health care.

Also, the reports did not lose their status as privileged patient work product under the Act based on the Act's medical records exception merely because the information required to be in the patient's medical record was also contained in the reports and did not mean that the reports were no longer patient work product, and nothing in the record demonstrated that the reports contained information that should have been, but was not, included in patient's original medical records. The reports did not lose their status as privileged patient work product under Act based on the Act's exception for information collected and prepared for purposes other than reporting to a patient safety evaluation system, where an affidavit of the hospital's associate general counsel averred that the reports were assembled solely for submission to a federally certified patient safety organization, and nothing in the record demonstrated otherwise. The reports did not lose their status as privileged patient work product under the Act based on the reporting requirements of the Illinois Adverse Events Law, where, as of the date of the medical malpractice action, the Illinois Department of Public Health had not yet established an adverse health events reporting system, so that the hospital had no reporting obligation.

# How To Report A Hospital

**Zhe Xu**



## How To Report A Hospital:

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**of HHS Evaluations and Relevant Other Studies**, 1990 **Hospitals** National Center for Health Statistics (U.S.), 1973

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