

## Confidentiality: Court Ruling Re Incident Reports.

The son who was probate administrator of the deceased nursing home resident's estate sued the nursing home alleging lack of proper care and supervision and violations of the state's Nursing Home Residents' Bill of Rights.

The court had to decide whether to allow the son's attorneys access to any existing records of accidents or unusual occurrences involving the resident.

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***The peer review / quality assurance privilege is not absolutely ironclad.***

***Whether a document has been labeled an incident report or labeled that it was prepared in anticipation of litigation or labeled confidential is not the issue.***

***Can the plaintiff get the information elsewhere without undue hardship?***

DISTRICT COURT OF APPEAL  
OF FLORIDA  
November 20, 2002

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The District Court of Appeal of Florida ruled if a document was in fact prepared by management in anticipation of litigation it is absolutely privileged.

If a document contains the deliberations, conclusions or recommendations of an internal quality review committee it is privileged, unless the plaintiff cannot get the basic factual data anywhere else.

If the basic facts of the incident that gave rise to the lawsuit are documented in the patient's medical records, which the personal representative has the right to see, there is no need for the personal representative to get access to confidential incident reports, the court ruled. 1620 Health Partners, L.C. v. Fluitt, \_\_ So.2d \_\_, 2002 WL 31557951 (November 20, 2002).

## Confidentiality: Court Ruling Re Incident Reports.

The daughter who was probate administrator of the deceased hospital patient's estate sued the hospital over an incident where her mother apparently was allowed to fall and strike her head on the floor in the radiology department where she had been taken for a scan to rule out a pulmonary embolus.

The court had to decide whether to allow the daughter's attorneys access to the incident report. The trial court ruled the incident report was not privileged and ordered the hospital to turn it over to the daughter's attorneys.

The hospital appealed that decision.

### ***In Camera Inspection Ordered***

The Court of Appeals of Ohio ruled the trial judge was not necessarily wrong, but should have been more thorough. The judge should have compared the incident report with the patient's medical records.

### ***Undue Hardship Is Exception To Peer Review / Quality Assurance Privilege***

If the basic facts of the incident were documented in the medical records, there would be no need for the daughter's attorneys to see the incident report.

If the basic facts of the incident were not documented in the medical records, there would be grounds to order the hospital to turn over the incident report.

### ***Basic Facts of the Incident Not Adequately Charted***

The physician, nurse and imaging technician each charted that the patient had a head laceration and was vomiting.

However, no one charted how the head laceration happened to occur or whether the vomiting started before or after the head laceration appeared.

The Court of Appeals seemed to think it would amount to undue hardship for the daughter in making her case to have to rely on charting that was left incomplete deliberately. Johnson v. University Hospitals of Cleveland, 2002 WL 31619030 (Ohio App., November 21, 2002).

## Catheterization: Nurse Followed The Standard Of Care.

Before starting surgery for amputation of a toe and for vascular reconstruction a young boy was to get a urinary catheter. The catheter was to be inserted by a registered nurse.

The nurse first tried to push a #16 French latex rubber Foley catheter through the urethra, which did not work.

Rather than push through the resistance the nurse tried again with a smaller-diameter #12, which still did not work.

Then the nurse deferred to the physician. He also could not get in through the urethra so he did a procedure above the pubic bone to go directly into the bladder.

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***The hospital provided affidavits from the nurse herself and from a physician showing the particular steps to be followed during a urinary catheterization and showing that the nurse followed those steps.***

***This evidence shows the nurse followed the legal standard of care. Her employer the hospital is entitled to have the case against it dismissed.***

COURT OF APPEALS OF TEXAS  
December 11, 2002

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The Court of Appeals of Texas approved a summary judgment of dismissal in favor of the hospital, leaving the physician as the only defendant against whom the case would go to jury trial for compensation for the boy's bladder fistula.

The court said there was no question the hospital correctly stated the legal standard of care for a nurse in this situation and proved she followed that standard. Spinks v. Brown, \_\_ S.W.3d \_\_, 2002 WL 31753580 (Tex. App., December 11, 2002).