

# Confidentiality: Charts, Incident Reports Have Different Roles In Patients' Lawsuits.

The patient's lawsuit against the hospital raised allegations of sub-standard care by the nursing staff during her post-surgery recovery.

The patient claimed the nurses generally treated her in a rude, disrespectful and unprofessional manner and made derogatory references to her behind her back. She also claimed to have been treated roughly on one occasion while vital signs were taken.

The patient also insisted the nurses on one occasion injected an unknown substance into her IV line which caused her severe gastrointestinal distress.

The Court of Appeals of Michigan, while affirming a lower court's decision to dismiss the case, considered issues in this patient's case which have come up time and again in patients' lawsuits.

## **Medical Charts vs. Incident Reports**

The Court of Appeals ruled the patient's lawyer had no right to the hospital's internal incident reports that caregivers filled out when the patient complained to them while she was still hospitalized.

The patient or a representative is not allowed to see the internal incident reports, let alone use whatever happens to be in them as evidence in a lawsuit.

The patient's medical charts, on the other hand, as a rule are opened up in their entirety in malpractice cases.

The patient has the right to use everything in the patient's chart for what it may be worth in a lawsuit against caregivers.

Caregivers cannot assert the principle of medical confidentiality against the patient. The information in the chart belong to the patient, not the caregivers.

By the same token a patient suing caregivers cannot hide relevant portions of the patient's current, prior or later treatment records that may be detrimental to the patient's lawsuit, like the patient's psychiatric records in this case, under the guise of medical confidentiality. **Lindsey v. St. John Health System**, 2007 WL 397075 (Mich. App., February 6, 2007).

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***Healthcare facility incident and occurrence reports are protected by a principle sometimes called the peer-review or the quality-review privilege.***

***The facility can refuse to turn over incident or occurrence reports in response to a patient's request or a patient's attorney's demand and can even decline to honor a court subpoena.***

***This is true for records, data and knowledge collected by or for individuals or committees assigned an internal quality review function within a healthcare facility.***

***As to the patient's treatment records, the patient waives the right to medical confidentiality when the patient brings his or her own treatment records into the lawsuit as evidence.***

***Having waived medical confidentiality by bringing his or her records into the case, the patient cannot complain when current, prior or subsequent treatment records, not favorable to the outcome of the patient's lawsuit, are used against the patient by caregivers in a court of law.***

COURT OF APPEALS OF MICHIGAN  
February 6, 2007

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