

LEGAL EAGLE EYE NEWSLETTER

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Incident Reports: Court Points Out Exception To Quality-Review Confidentiality Rules.

The elderly patient was discharged from the hospital to an extended care nursing facility with pneumonia, anemia, confusion and depression.

He fell in his room ten days into his stay at the nursing facility, sustained a subdural hematoma and died the next day.

His next of kin sued the nursing facility for wrongful death, negligence, and violation of the nursing home residents' bill of rights. The court has not passed judgment on those allegations.

Family's Lawyers Want To See The Incident Report

The issue right now is whether the family's lawyers will get access to the facility's internal incident report to use against the facility in this lawsuit.

The Court of Appeals of Ohio has ruled the family's lawyers do have the right to a copy of the incident report.

Quality Review

Confidentiality Is The General Rule

State and Federal statutes say that all information, data, reports or records made available to or generated by a quality-assurance, utilization-review or peer-review committee in a hospital or nursing home are confidential and cannot be opened up during pre-trial discovery or used against the facility in a patient's malpractice lawsuit.



As a general rule the information in a quality-review incident report is confidential and it cannot be used in court against the facility.

However, if the event behind the incident report is not properly explained in the patient's medical record, the judge can open up the portions of the incident report which describe basically what happened.

COURT OF APPEALS OF OHIO
May 26, 2005

The rationale for confidentiality is to improve patient care by promoting full and candid investigation, examination, discussion and remedial measures after an adverse incident without legal liability considerations getting in the way. But the general rule of quality-review confidentiality is not absolute.

Facts Must Be Available To Patient Or Confidentiality Is Set Aside

Looking at it from the patient's or family's point of view, the patient's legal representative will insist upon full knowledge of the facts of the incident to be able to present a civil case to the judge or jury in the best light that all the evidence will allow.

If the basic facts are not fully set out in the patient's medical chart the court can order the facility to turn over the quality-review incident report for private inspection by the judge.

The judge can turn the incident report over to the lawyers if the report does not contain quality-review work-product. Or the judge can delete, in legal parlance redact, quality-review work product from the incident report, leaving only the basic facts, and turn it over, protecting the patient's right to sue as well as quality-review confidentiality. ***Brzozowski v. Univ. Hosp.*, 2005 WL 1245631 (Ohio App., May 26, 2005).**

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