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Patient's Falls: Court Allows Internal Incident Reports To Come Out In Patient's Lawsuit.

The deceased patient's probate administrator sued the nursing home on behalf of the family.

The lawsuit alleged the patient was neglected, was permitted to fall and that a broken hip from a fall ultimately caused her death.

The Court of Appeals of North Carolina has not yet focused on the underlying questions whether the facility was guilty of negligence and, if so, whether that caused the patient's death.

The Court's attention is focused on the facility's internal occurrence reports filled out by staff nurses after three separate falls, that is, whether the family's legal counsel can have access those documents for use against the facility in answering the underlying questions of negligence and causation.

Peer-Review/Quality Assurance Privilege

By law, to promote candor and objectivity in the internal workings of medical review committees, documents that record the proceedings, deliberations or conclusions of such committees, and documents considered by them, are exempt from coming to light in patient's lawsuits.

This principle started with physicians' peer-review committees in hospitals.



The so-called peer review privilege only applies to documents actually used in the internal quality improvement process.

The facility was not able to provide the court with any evidence that the disputed incident reports were produced for or considered by the clinical quality improvement team.

COURT OF APPEALS
OF NORTH CAROLINA
February 20, 2007

Although still commonly referred to as the peer-review privilege, this principle of confidentiality is now widely applied to internal quality review committees monitoring various healthcare professionals in hospitals and nursing homes.

In some states confidentiality is mandated expressly by statutes and regulations, in others by judicial precedents.

Patients Entitled to Needed Information

Another fundamental principle, often at odds with the peer-review privilege, holds that the courts must protect patients' ability to obtain information needed to be able to hold their caregivers legally responsible for their errors and omissions.

"Incident Reports" Were Not Used For Internal Quality Review

The occurrence reports, labeled as "incident reports," apparently were just filled out by the nurse on duty and filed away. Simply labeling a piece of paper an "incident report," in and of itself, provides no legal protection, the court pointed out.

The facility had no proof the internal quality review committee ever actually considered the reports in an ongoing effort to improve the quality of care, the court said. Thus they were not privileged and had to be turned over to the family's attorneys for use in the lawsuit. ***Hayes v. Premier Living, Inc.***, __ S.E. 2d __, 2007 WL 505960 (N.C. App., February 20, 2007).

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