

Quality Review / Confidentiality: Medical Peer-Review Privilege Extended To Nursing Homes.

The corporate parent of a nursing home in Florida was sued in civil court for the alleged wrongful death of a nursing-home resident.

At the present stage of the litigation the court has not as yet been asked to pass judgment one way or the other on the allegations of negligence filed against the nursing home.

Still in the pre-trial discovery stage of the litigation, the issue is whether the nursing home's corporate parent's internal quality review processes will be opened up to provide potential ammunition for the deceased resident's family's attorneys.

The local judge ruled in favor of the deceased's family. The District Court of Appeal of Florida, in an opinion that has not as yet been released for publication, ruled the local judge was in error.

The Court of Appeal ruled the material sought by the family's attorneys is protected by the state medical peer-review confidentiality statute.

The statute was meant to encourage critical self-analysis within the confines of internal quality assurance processes in healthcare facilities. Critical self-analysis will only occur if it is strictly kept out of the medical malpractice arena.

The law wants to encourage self-regulation by the medical profession through peer review and evaluation.

To make meaningful peer review possible, statutes have been enacted to guarantee the confidentiality of the peer-review process.

The investigation, proceedings and records of a medical-review committee are not subject to pre-trial discovery and cannot be introduced as evidence in a civil lawsuit against a provider of professional health services.

No person in attendance at a peer-review committee meeting can be permitted or required to testify about the findings, recommendations, evaluations, opinions or other actions of the committee or its members.

The policy behind the law should be interpreted to apply to nursing homes.

DISTRICT COURT OF APPEAL
OF FLORIDA
November 8, 2002

Peer-Review Privilege Extended To Nursing Homes

The courts have time and again reiterated that the proceedings of peer-review committees and boards inside hospitals are shielded from civil discovery and exempt from use as evidence in malpractice suits.

In this case the nursing home's parent corporation pointed out that the applicable state law does not define exactly what is meant by a peer-review committee or board and suggested that the definition is subject to interpretation by the courts.

In interpreting the definition of a peer-review committee or board, they argued, the courts should be guided by the clearly-articulated public policies behind the peer-review statutes. The policy for candid and accurate self-analysis should not just apply in hospitals, but should be extended to nursing homes, they said.

The Court of Appeal agreed the courts do have the discretion to apply a broad interpretation to the definition of a peer-review committee or board, and that the public policy behind the peer-review laws mandates that peer-review confidentiality should apply to internal quality review in nursing homes as well as other facilities.

The Court of Appeal pointed to what it termed the "chilling effect" that potential adverse use in litigation could have on the internal quality review process in nursing homes, optimal functioning of that process being essential to the public being afforded the best possible care in all healthcare settings, including nursing homes. **Beverly Enterprises-Florida, Inc. v. Ives, 2002 WL 31487165 (Fla. App., November 8, 2002).**

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