

Peer-Review/Quality-Assurance Privilege: Court Reviews The Steps A Healthcare Facility Should Take Before A Lawsuit Has Materialized.

Taking proper steps ahead of time to keep internal peer-review and quality-assurance documents out of the hands of patients' lawyers is one element of solid strategy to defend lawsuits alleging malpractice.

The Court of Appeals of Texas recently handed down a ruling which summarizes the steps a healthcare facility can and should take. At this point the court has only ruled that the plaintiff's lawyers, in this case representing a nurse who was assaulted by a patient, are not entitled to a copy of the incident or occurrence report.

Committee Established

The first step is that the facility must establish one or more committees. Each committee must have a defined responsibility. That could include review of safety-related occurrences, occurrences related to physicians' credentials, occurrence related to patient-care quality review, etc. The bylaws or other pronouncement setting up the committee and defining its scope of responsibility must specify that the committee's deliberations and conclusions will be confidential.

This hospital had a safety committee responsible for developing and promoting safety standards and a safe environment for patients, visitors and employees.

One of the stated purposes of the safety committee was to review safety-related occurrence reports. The committee required an occurrence report for any unusual occurrence, accident, injury or harm or potential for injury or harm to a patient, visitor or employee.

The reports went to the risk manager, who presented summaries to the safety committee at its monthly meetings.

The reports were also identified by date and their general subject in the risk manager's privilege log as documents for which a legal privilege would be claimed if the matter went to court.

COURT OF APPEALS OF TEXAS
September 13, 2007

The committee must be mandated to meet and must actually meet on a regularly defined basis and must consider and make recommendations to hospital management within the scope of its responsibility.

Incident, Occurrence Reports

Incident or occurrence reports must be labeled as such and must be labeled as confidential. Merely labeling a document, however, does not ensure confidentiality.

A privilege log should be maintained by risk management or the legal department listing and identifying in general terms all incident or occurrence reports as they are received, for which the privilege of confidentiality might later be asserted.

To be confidential the incident or occurrence report, and others like it, must actually be transmitted to the appropriate committee, considered by the committee and acted upon by the committee in the regular course of its operation.

Medical records, personnel records, etc., which are prepared and maintained in the ordinary course of hospital business for a purpose other than peer review or quality assurance do not come under the peer-review or quality-assurance privilege just because they happen to be considered by one or more committees along with incident or occurrence reports that do come under the privilege.

A subpoena for documents must be honored and the judge allowed to make a decision. Ignoring a subpoena can open a Pandora's box of problems. [In re Intracare Hosp.](#), 2007 WL 2682268 (Tex. App., September 13, 2007).