

vital signs

DIAGNOSING THE CHANGING STATE OF MEDICAL MALPRACTICE & NURSING HOME LIABILITY

11.19.04

Statutes Protect Incident Reports

By Lisa Anstess

The Court of Appeals recently revisited the issue of whether Incident Reports must be turned over to a Plaintiff in litigation. In the unpublished *Maviglia* decision, the Appellate Court reversed the Trial Court which had ruled that the Nursing Home defendants must turn over their Incident reports.

The Court of Appeals held that “because the incident reports are data collected for the purposes of professional review, they should not be subject to discovery in a negligence/malpractice case.” Although this issue has been addressed numerous times, and several courts have required disclosure, this court relied on MCL 333.20175(8) which states:

The records, data, and knowledge collected for or by individuals or committees assigned a professional review function in a health facility or agency, or an institution of higher education in this state that has colleges of osteopathic and human medicine, are confidential, shall be used only for the purposes provided in this article, are not public records, and are not subject to court subpoena.

The court also referred to MCL 333.21515, which is applicable to hospitals, and provides:

The records, data and knowledge collected for or by individuals or committees assigned a review

SECRET WARDLE NOTES:

Nursing homes and related facilities should continue to maintain incident and accident reports separate from the resident’s chart and the fact that a report was made should not be documented in the chart. Incident reports should be completed and maintained for professional review by committees as designated by the facility, whether such committees are called Quality Assurance, Peer Review, or have a different title. In litigation with a private litigant, i.e., a resident and/or a resident’s family, the reports do not have to be turned over to the resident or the resident’s attorney, even if the attorney seeks to obtain them via court subpoena according to the statutory sections cited above.

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function described in this article are confidential and shall be used only for the purposes provided in this article, shall not be public records, and shall not be available for court subpoena.

The court held that the facts of an incident occurring are not what is being protected, but rather the discussions, deliberations, evaluations, and decisions rendered by the reviewing committee(s). In order to allow and encourage a candid review of an incident and determine an appropriate response, those deliberations must be kept confidential.

Plaintiff attempted to rely on regulation 1979 AACCS, R 325.21101, but the court held that this rule only addresses the fact that accident and incident reports are to be kept by nursing homes and made available to the director or his/her authorized representative, and that the director or representative can copy the records. It does not allow disclosure by or for anyone else.

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