

New Jersey Supreme Court Confirms Courts Cannot Order Health Care Facilities To Release Documents Prepared During The Process Of Self-Critical Analysis

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In *Brugaletta v. Garcia*, the plaintiff filed a medical malpractice action against Chilton Memorial Hospital (“CMH”) and its staff alleging deviations from standards of medical care in their diagnosis and treatment of her during her three week stay at CMH. During pretrial discovery, the plaintiff requested that CMH provide information on any statements made “regarding this lawsuit.” In response, CMH advised that there were two incident reports pertaining to the matter but claimed that the reports were protected by the Public Safety Act’s self-critical analysis privilege. The Patient Safety Act (“PSA”) was enacted to reduce medical errors in health care facilities by encouraging internal reporting and evaluation of adverse events. Pursuant to the self-critical analysis privilege set forth in the PSA, documents, materials, or information developed by health care facilities exclusively during the process of self-critical analysis are not subject to discovery or admissible as evidence. Additionally, under the PSA, when a facility’s patient safety committee determines that a serious preventable adverse event (“SPAE”) occurred, the committee must report the SPAE to the Department of Health and to the affected patient. After the trial court heard oral argument on plaintiff’s motion to compel discovery and conducted an in camera review of the incident reports, the trial court determined that the incident report at issue (the other incident report was not a subject of the appeal) was the product of self-critical analysis conducted by CMH pursuant to the PSA. The trial court also found, contrary to CMH’s conclusion, that the plaintiff suffered a SPAE. Because the trial court determined that CMH erroneously failed to report a SPAE, it ordered CMH to report the event to the Department of Health and compelled CMH to release a redacted version of the incident report to the plaintiff.

The New Jersey Supreme Court held that the trial court exceeded its authority by declaring that a SPAE reportable event had occurred because there is nothing in the PSA that permits a court to review a patient safety committee’s SPAE determination. The Court further held that a finding that an event that is not reportable does not abrogate the self-critical analysis privilege as the only precondition to

the privilege is whether the facility conducted its self-critical analysis in compliance with the PSA's procedural requirements. Therefore, the Court concluded that the trial court abused its discretion when it determined that a SPAE occurred, and also erred when it ordered CMH to release the redacted document and report the event to the DOH.

However, the Supreme Court noted that on remand, the trial court should order CMH to produce a narrative that specifies where the information responsive to the plaintiff's discovery request can be found in the approximately 4,500 pages of medical records already provided to the plaintiff during discovery. The Supreme Court found that this response would appropriately balance the litigation interests of the parties while simultaneously not transgressing CMH's self-critical analysis privilege. Accordingly, health care facilities can continue fostering confidential environments in which adverse events can be reported and reviewed without fear that documents created during the self-critical analysis process will be disclosed.