Kentucky Supreme Court Orders Production Of Medical Malpractice Incident Report

In today's daily blog posting, MedicalMalpracticeLawyers.com discusses the recent decision of the Kentucky Supreme Court allowing the discovery of hospital incident reports by medical malpractice victims.

(PRWEB) August 25, 2014 -- MedicalMalpracticeLawyers.com is the premier free website that helps to connect medical malpractice victims with medical malpractice lawyers in their U.S. state. As part of its ongoing efforts to assist medical malpractice victims, MedicalMalpracticeLawyers.com publishes a daily blog discussing relevant and timely topics of interest to its readers. MedicalMalpracticeLawyers.com has posted nearly 1,300 consecutive daily blogs to date.

In today's blog posting, MedicalMalpracticeLawyers.com discusses the August 21, 2014 decision of the Supreme Court of Kentucky (“Kentucky Supreme Court”) in a case where the defendant hospital claimed a federal confidentiality privilege to refuse to provide the medical malpractice plaintiff with a copy of the incident report written by a surgical nurse at the defendant hospital concerning an elective surgery that resulted in the death of the patient.

As the Kentucky Supreme Court noted, the Patient Safety and Quality Improvement Act of 2005 (“the Act”) was enacted by the U.S. Congress to encourage health care providers to voluntarily associate and communicate privileged patient safety work product (“PSWP”) among themselves through in-house patient safety evaluation systems (“PSES”) and with and through affiliated patient safety organizations (“PSO”). In furtherance of the Act’s purpose, the Act provides a confidentiality provision establishing that “patient safety work product shall be confidential and shall not be disclosed,” except as authorized by the Act itself. 42 U.S.C.A. §299b-22(b); 42 C.F.R. § 3.206(b).

The Underlying Facts;

After a patient died as a result of complications from elective spinal surgery, her estate filed a medical malpractice and wrongful death case during which the estate sought to be provided a copy of the post-incident or event report generated by a surgical nurse at the defendant hospital concerning the surgery through the defendant hospital’s Patient Safety Evaluation System. The defendant hospital objected to producing the report, alleging that the only post-incident report that existed was a report created through its HealthCare’s Patient Safety Evaluation System and therefore was protected from discovery by the federal privilege for patient safety work product created by the Act.

The Act’s definition of “patient safety work product” expressly does not include information that is collected, maintained, or developed separately, or exists separately, from a patient safety evaluation system – such separate information reported to a patient safety organization is not by reason of its reporting considered to be patient safety work product.

The Kentucky Supreme Court stated that because Kentucky Administrative Regulations with regard to Kentucky hospitals provide that “administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure of productivity and reflect the programs of the facility” and these reports “shall include: . . . (5) [i]ncident investigation reports; and (6) [o]ther pertinent reports made in the
regular course of business” (which required documents also include peer review and credentialing records), these types of reports are required in the regular course of the hospital’s business, are hospital records, and, therefore, are generally discoverable under Kentucky law.

The Kentucky Supreme Court stated that the Act did not intend to supplant, or invalidate, traditional state monitoring or regulation of health providers. In this case, the Kentucky Supreme Court noted, the incident information reported by a hospital surgical nurse normally would be found in an incident report which is required by Kentucky regulations to be “established, maintained and utilized as necessary to guide the operation . . . of the facility,” but the information was not completed or maintained separately as a hospital record (in a normal incident report), but was filed and stored in a database ostensibly dedicated to the Hospital’s Patient Safety Evaluation System operated by its Risk Management Department and to which the hospital’s PSO had access.

The Kentucky Supreme Court held that while the incident information may be relevant to the defendant hospital’s endeavors under the Act, it is not, nor can it be, patient safety work product, since its collection, creation, maintenance, and utilization is mandated by Kentucky as part of its regulatory oversight of its healthcare facilities - Congress never intended the Act to deprive the states of state-mandated information relevant to their regulatory duties, as evidenced by its recognition of dual reporting requirements.

The Kentucky Supreme Court held that information normally contained in an incident report is not privileged under the Act and may be discovered, following an in camera review, and its information compelled.


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If you or a loved one suffered serious injuries (or worse) as a result of medical negligence in Kentucky or in another U.S. state, you should promptly seek the legal advice of a Kentucky medical malpractice attorney or a medical malpractice attorney in your state who may investigate your medical malpractice claim for you and represent you in a medical malpractice case, if appropriate.

Click here to visit our website or call us toll-free in the United States at 800-295-3959 to be connected with medical malpractice lawyers in Kentucky, or medical malpractice lawyers in your state, who may assist you.

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