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Court Scrutinizes Hospital Policy Finding Event Reports Discoverable

On July 17, 2013, Lackawanna County Judge Terrence Nealon held in Venosh v. Henzes, 11 CV 3058 that two event reports were not protected from discovery by the Peer Review Protection Act, the MCARE Act or the federal peer review privilege in the Patient Safety Quality Improvement Act ("PSQIA"), 42 U.S.C. 299(b)-22. Judge Nealon looked to the hospital's event reporting policy and the event reports themselves and determined that none of the privileges applied.

The policy in effect when the reports were prepared set forth the following goals: 1) to improve management of patient care and treatment; 2) to provide a data base for the facility so that trends can be identified; 3) to provide a record of the occurrence for legal purposes; and 4) to comply with state and/or federal laws and regulations. After the *Venosh* event reports were prepared, the hospital was acquired by another health care system and a different policy was implemented regarding the generation of event reports.

Significant to the Court's decision was that the initial policy required reports to be forwarded to an "investigative analyst," or the risk manager for review to track "trends" and to maintain a copy for legal purposes. The investigative analyst was also to decide whether the report needed to be sent to the patient safety officer. The subsequent policy was more stringent about what individuals and committees were entitled to receive the reports, the patient safety officer and committee played a much larger role in reviewing the reports, the reports were not "screened" by an investigative analyst and there were no other goals other than compliance with patient safety reporting. Because the subsequent policy was not in effect at the time the subject event reports were prepared, the court determined that the initial policy governed.

Judge Nealon determined that nothing suggested that the reports were generated by a peer review committee. Further, they were never submitted to a duly certified patient safety organization. Therefore, neither PRPA nor PSQIA applied. In addressing whether the MCARE Act confidentiality provisions applied, the court referred to three prior Lackawanna County rulings in which the court held that event reports prepared pursuant to the same hospital policy at issue in *Venosh* were not confidential under the MCARE Act. Judge Nealon stated that the reports were not prepared for the exclusive purpose of patient safety reporting and referred to the policy. Judge Nealon also decided the incidents did not arise out of matters reviewed by the hospital's patient safety committee because there was no evidence that such a committee reviewed the reports.

The ruling in *Venosh* is consistent with other rulings handed down in Lackawanna County regarding the discoverability of event reports and stresses the need for careful drafting of hospital event reporting policies. The policy must be clear that the exclusive purpose for preparing the event report is to comply with Act 13, and there should be no other goals stated. The policy must also limit transmission of the report to only patient safety officers and/or committees.

For a copy of this opinion, please contact Elizabeth A. Giannotti, Esquire at Elizabeth@theperrylawfirm.com.



Scranton Office
305 Linden Street
Scranton, PA 18503
Phone: (570) 344-6323
Fax: (570) 344-6326

Bethlehem Office
87 S. Commerce Way | Suite 740
Bethlehem, PA 18017
Phone: (610) 694-1100
Fax: (610) 694-1120