



Alerts

Illinois Appellate Court Ruling Clarifies Extent of Privilege Under the Patient Safety and Quality Improvement Act

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Health Care Alert

On June 28, 2018, the Appellate Court of Illinois, First District, Fourth Division issued an opinion for the case *Daley v. Teruel*. The decision is only the second case in Illinois to examine the Patient Safety and Quality Improvement Act of 2005 (PSQIA, "the Act"), which establishes a system of patient safety organizations (PSOs) that collect, aggregate and analyze confidential information reported to them by health care providers. Certain information collected by PSOs—known as patient safety work product—is given federal privilege and confidentiality protections under the Act. The *Daley v. Teruel* ruling helps to clarify (1) which documents are considered patient safety work product, and (2) the parameters of the documents to which the Act protections apply. This increased clarity may provide greater comfort to health care providers who are considering a relationship with a PSO.

In *Daley*, the Appellate Court reversed a lower court's ruling on a motion to compel various documents for which the defendant hospital claimed a privilege under the Act. Plaintiff argued in its motion to compel that Illinois' broad discovery rules, even in the face of doubt, supported production. The lower court granted the motion in part, finding that some of the information at issue—three incident reports and a report detailing an in-person complaint made by a family member of the patient that documents contained "some of plaintiff's medical history" and conversations with the patient's family—was discoverable because, even though it was created for peer review, it was "obtained prior to the peer review."

On appeal, the Appellate Court reversed the circuit court's order, finding that the subject documents satisfied the requirements of patient safety work product and that plaintiff failed to demonstrate that the documents fell under an exception to such definition. Central to the Appellate Court's holding was an affidavit from defendant's associate general counsel stating that the information contained in the documents had the ability to improve patient safety and the quality of health care; that the information was assembled, developed and prepared *solely* for submission to Clarity Patient Safety Organization (a federally certified PSO); and that the documents themselves bore the dates the information was entered into the patient safety evaluation system. The averments in the affidavit, which went uncontested, greatly influenced the court. The Court also found that the Act contains an unambiguous express preemption clause which "clearly demonstrates Congress's intent to supersede any circuit court order requiring the production of documents that meet the definition of patient safety work product."

While this privilege does not extend to records, reports, or other documents that have been created for purposes other than reporting to a patient safety organization—such as records made in compliance with a regulation—the holding in *Daley* is significant. The protection provided by the Act has now been explicitly recognized by the First District and may provide Illinois health care providers a potential addition to the reporting and investigation protection already provided by Illinois statutes.

This alert was featured in the Third Quarter 2018 edition of our Health Care Newsletter.