



## Newsletters

### The Illinois Medical Studies Act: Preserving the Privilege under *Grosshuech*

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#### The Illinois Medical Studies Act: Preserving the Privilege under *Grosshuech*

Physician peer review and hospital quality control committees, which are primarily intended to improve the quality of patient care, have been a vital part of the health care industry for a number of years. The Illinois Medical Studies Act (the "Act") confers a privilege to peer review and quality control committees to ensure that any information generated by those committees remains privileged. Such protection ensures that members of the medical profession will effectively engage in frank evaluations of their colleagues in the interest of advancing the quality of healthcare, without reservation.

Over the past two decades, Illinois courts have gradually eroded the once broad privilege with judicially recognized exceptions. The Second District most recently weighed in on the issue of when a privileged peer review investigation commenced in *Grosshuesch v. Edward Hospital*, 2017 IL App (2d) 160972.

In *Grosshuech*, the Plaintiff gave birth to her daughter at Edward Hospital after a 30-week pregnancy. The baby suffered from numerous medical conditions and died 20 days later. Shortly thereafter, the Plaintiff contacted the hospital's patient advocate and expressed concern regarding the care and treatment given to her daughter. Her concern prompted a referral to the medical staff quality committee ("MSQC") for investigation, pursuant to hospital policy.

An MSQC liaison consulted with two expert peer reviewers, both members of the hospital's medical staff, regarding the obstetrical and neonatal care given to the Plaintiff and her baby. The liaison entered her own notes on each peer reviewer's input in February 2014, and the MSQC considered her notes at two subsequent peer review meetings in March and April 2014.

The Plaintiff filed suit against the hospital for wrongful death and survival, and sought production of all documentation regarding the baby's care and treatment. Relying on the Act, the hospital refused to disclose the liaison's notes and asserted that they were privileged as part of the peer review process.

The trial court found that the liaison's notes must be produced because the hospital could not establish when the MSQC requested the investigation to begin, or which member of the MSQC requested the investigation.

On appeal, the hospital relied on its peer review policy as its authorization to begin an MSQC investigation. The policy provided that if certain indicators are met (such as concerns raised over the death of a patient), then an investigation was to take place. The appellate court found that the hospital could not rely on a policy that was enacted years before an incident to support its claim for privilege, and reasoned that the hospital's argument was "contrary to over 20 years of precedent establishing that the Act cannot be used to conceal relevant evidence that was created before a quality-assurance committee or its designee authorized an investigation into a specific incident." [3]

#### The Hinshaw Health Care Bulletin Blog Highlights

Since the last edition of the Health Care Newsletter, our health care blog has published several posts, including:

- [EMR and E-Discovery Part Five: On Standard of Care and Final Thoughts](#)
- [Common Mistakes Physician Extenders Make in Their Practices](#)



- *Illinois Appeals Court Protects Hospital Counsel's Right to Speak with Former Agents of Hospital*
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735 ILCS 5/8-2101, *et seq.*

*Roach v. Springfield Clinic*, 157 Ill. 2d. 29, 41, 623 N.E. 2d 246 (1993).

*Grosshuesch v. Edward Hosp.*, 2017 IL App (2d) 160972, Para. 16.