Hospital Quality Assurance Meetings: Erosion of the Protections

New York State has long had a privilege that applies to hospital peer review and quality assurance programs prohibiting disclosure in state court proceedings to the proceedings and records of quality assurance committees. The peer review and quality assurance confidentiality protection is found in Education Law § 6527 and Public Health Law § 2805-m, which are similarly worded. Both statutes provide that the records and proceedings of the quality assurance process, including statements at meetings related to peer review, are protected from disclosure.

The purpose behind the confidentiality provisions is to to "enhance the objectivity of the review process and to assure that medical review committees may frankly and objectively analyze the quality of health services rendered by hospitals."[i] Further, by guaranteeing confidentiality to quality review and malpractice prevention procedures, it encourages thorough and candid peer review of physicians and thereby improves the quality of medical care.

Legislative history and the express language of the statute make clear that the protection was not intended to protect persons whose conduct is under review.[ii] Both statutes eliminate protection for a physician whose case and care are being reviewed.

> "The prohibition relating to discovery of testimony shall not apply to the statements made by any person in attendance at such meeting who is a party to an action or proceeding, the subject matter of which was reviewed at such meeting."[iii]

Verbal or written statements made by a physician who later becomes a defendant in a lawsuit are discoverable by a plaintiff in the course of litigation. Many physicians who are the subject of a quality assurance inquiry have turned to legal counsel to help guide them through the process, realizing that what they say during quality assurance meetings can be released to a plaintiff if they are later sued.

Attendees at quality assurance meetings, other than the physician whose conduct is being reviewed, have been comforted by the thought that their statements during the proceedings will be shielded from disclosure. However, to the dismay of physicians and hospitals, a recent New York State case has narrowed this protection. In *Siegel v. Snyder*,[iv] a physician's treatment of a brain trauma patient who died of his injuries was reviewed by the hospital quality assurance and medical malpractice prevention committee. The physician and the hospital were later sued for malpractice, and the plaintiff sought the records of the committee meeting. The minutes contained statements attributed to "the committee" and not any particular attendee at the meeting. In opposing the plaintiff's request, the defendants argued that the meeting minutes were privileged because it could not be shown that the statements were made by the defendant physician and, therefore, did not fall within the exception to the privilege. The court disagreed and found that it was the defendants' burden to demonstrate that the statements were **not** made by the defendant physician and, thus, were entitled to protection. Because the minutes failed to properly identify the speaker, the court concluded that the defendant failed to meet this burden, and, therefore, the court allowed disclosure of the minutes, save only for those portions that identified a named speaker.

Siegel v. Snyder provides important guidance to hospital quality assurance committees. We now know it is critical to maintain accurate and complete minutes, capture the identity of all speakers at these meetings, and attribute statements that are documented in the minutes to specific attendees. Failure to be precise will have the serious consequence of endangering the confidentiality of the records of the proceedings. If the minutes are not specific as to who said what, attendees may be very surprised to find that the things they say during a quality assurance meeting could be released to a plaintiff's attorney.

If you have any questions regarding the content of this article, please contact Fran Ciardullo, special counsel, at fciardullo@barclaydamon.com, or another member of Barclay Damon's Health & Human Services Providers Team.

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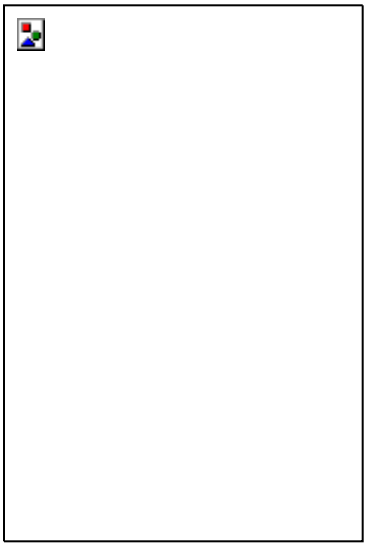

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As special counsel at Barclay Damon LLP, Fran concentrates her legal practice on health care and risk-management issues. She counsels physicians, physician groups, dentists, hospitals and health systems, nursing homes, and other health care providers on matters involving professional misconduct, professional liability, medical-staff issues, scope of practice, mandated reporting, peer review, and regulatory compliance. Fran also handles consent for treatment and surrogate decision making, patient care, EMTALA, and health-information privacy issues.

A former Town of Schroeppel town justice, Fran is also trained in alternative dispute resolution and has mediated and arbitrated a variety of civil actions and disputes. She routinely publishes industry articles and presents educational programs on legal matters to hospitals, medical and dental practices, and trade associations.

[i] *Logue v. Velez*, 92 NY 13 (1998).
[ii] *Swartzenberg v. Trivedi*, 594 N.Y.S. 2d 927, 928 (4th Dep't, 1993).
[iii] Education Law § 6527 (3), Public Health Law § 2805-m (2).
[iv] 2021 NY Slip Op 07264 (2d Dep't December 22, 2021).