

NJ Supreme Court Shields Hospital Memorandum Investigating a Birth Injury, Under the Confidentiality Provisions of the Patient Safety Act

In a closely watched decision, the New Jersey Supreme Court by a vote of 4-3, on September 29, reversed an Appellate Division decision requiring disclosure of an internal document created following a round table discussion as part of an investigation of the delivery and neonatal care of a newborn.

In *C.A. v. Eric Bentolila, M.D.* (A-32-12) (071702), the Supreme Court of New Jersey considered an “early application” of the Patient Safety Act, N.J.S.A. 26:2H-12.23 et seq. This legislation, enacted in 2004, imposed requirements for evaluating and reporting adverse events and created a statutory privilege shielding certain communications from discovery in litigation. The underlying litigation involved a birth injury claim. Shortly after the birth, a memorandum was prepared following a round table discussion among hospital staff as part of the hospital’s investigation of the incident. This document was at the heart of a subsequent discovery dispute.

The Trial Court determined that the memorandum was subject to the Patient Safety Act absolute privilege because the hospital had substantially complied with the Patient Safety Act in its investigation. The Appellate Division reversed, concluding that the memorandum did not meet the statute’s requirements to shield the document from discovery. In so ruling, the Appellate Division retroactively applied regulations that were adopted by the Department of Health & Senior Services after the preparation of the contested memo, See N.J.A.C. 8:43E-10.1-10.11.

These administrative regulations contain requirements for the Patient Safety Committee’s composition, goals and process.

In reversing, the Supreme Court recognized that this case did not arise in the setting of the detailed regulatory scheme that now exists. Accordingly, the discoverability of the document turned on whether the document was developed in the setting of a “process of self-critical analysis” and as part of a patient safety plan conducted in accordance with the Patient Safety Act. In this regard, the Supreme Court found that the hospital had demonstrated general compliance with the Act and shielded the document in question from discovery.

Analysis: The Supreme Court recognized that the Patient Safety Act continues to exist “to promote thorough and candid discussions of events occurring in healthcare facilities” for the safety of patients. While it is not anticipated that this ruling will have widespread application because the events in question occurred prior to the enactment of the implementing regulations, hospital systems may nonetheless continue to claim the statutory privilege when it can be shown that documents or materials at issue were “exclusively” prepared in the setting of a qualifying self-critical analysis process, and in accordance with the accompanying administrative regulations. Under the current regulatory framework, hospital administrators, medical professionals and staff must be acutely aware of the exact procedures that they must follow in order to ensure confidentiality of these materials.

For more information, please contact Jane Kelsey at jkelsey@wglaw.com or 973.854.1078 .