No. 17-0891
IN THE APPELLATE COURT OF ILLINOIS
FOR THE FIRST JUDICIAL DISTRICT

TERRI DALEY, Independent Administrator of the ESTATE OF ROSALIE GALMORE JONES, deceased Plaintiff-Appellee, v. INGALLS MEMORIAL HOSPITAL, Defendant-Appellant.	)	Appeal from Circuit Court, of Cook County First Judicial District Case No. 2015 L 011684 Hon. Moira S. Johnson Judge Presiding

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BRIEF OF THE
ILLINOIS HEALTH AND HOSPITAL ASSOCIATION
AMERICAN MEDICAL ASSOCIATION
ALLIANCE FOR QUALITY IMPROVEMENT AND PATIENT SAFETY
ILLINOIS STATE MEDICAL SOCIETY
CLARITY PSO
AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT,
INGALLS MEMORIAL HOSPITAL

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POINTS AND AUTHORITIES

BRIEF OF THE
ILLINOIS HEALTH AND HOSPITAL ASSOCIATION
AMERICAN MEDICAL ASSOCIATION
ALLIANCE FOR QUALITY IMPROVEMENT AND PATIENT SAFETY
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STATEMENT OF INTEREST OF *AMICI CURIAE*

Statement of Interest of the Illinois Health and Hospital Association

Illinois Health and Hospital Association ("IHA") is a statewide non-profit association of 212 Illinois hospital members—virtually every hospital in Illinois. For 90 years, IHA has served as representative and advocate for its members, addressing the social, economic, political, and legal issues affecting the delivery of high quality health care in Illinois. IHA also supports its members' activities around quality improvement, which allows Illinois hospitals to rise together in their efforts to improve patient care. IHA urges this Court to support hospital retrospective quality review conducted for the purpose of creating a safer, better health care delivery system focused on decreasing avoidable medical errors.

The main issues in this appeal are (1) whether the correct privilege was applied to the materials that Ingalls Memorial Hospital claimed are subject to the patient safety work product privilege created by the federal Patient Safety and Quality Improvement Act (or "Patient Safety Act")[1], and (2) whether these materials are protected by the

[1] Patient Safety and Quality Improvement Act of 2005 (the "Patient Safety Act"), Pub. L. No. 109-41, 119 Stat. 424 (codified as amended at 42 U.S.C. §§ 299b-21 to 299b-26).

federal Patient Safety Act patient safety work product privilege. Upholding the ruling of the lower court would ignore the plain meaning of the statute creating the patient safety work product privilege and frustrate the extensive patient safety activities that have grown out of the Patient Safety and Quality Improvement Act. Additionally, sustaining the decision would create substantial injustice to hospitals by negating a privilege that has been recognized in the State of Illinois for voluntarily created materials, materials that hospitals likely would not have created but for the application of the federal Patient Safety Act privilege by courts throughout this State. Removing this privilege and unwinding the patient safety system created by the federal Patient Safety Act will discourage participation in this national patient safety movement and will impede efforts to improve patient care and safe health care practices for the citizens of this State.

As the representative of nearly every hospital and health system in Illinois, IHA has a vital interest in the resolution of issues concerning the practice of medicine and the interpretation of the Patient Safety and Quality Improvement Act, and specifically the ability of similarly-situated hospitals to ensure their patient safety work product is privileged and non-discoverable as established by law. Given its long-standing involvement in improving patient safety and supporting its members with their patient safety efforts, IHA joins this brief *amici curiae* in the hope that it will provide helpful information that will allow this Court to understand the impact of this case on Illinois hospitals as well as the communities and individuals they serve.[2]

[2] IHA's subsidiary The Midwest Alliance for Patient Safety ("MAPS"), an I.R.C. § 501(c)(3) tax exempt corporation, is a Patient Safety Organization ("PSO") under the Patient Safety and Quality Improvement Act.

Statement of Interest of the American Medical Association

The American Medical Association ("AMA") is an Illinois not-for-profit corporation headquartered in Chicago and the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all US physicians, residents, and medical students are represented in the AMA's policy making process. AMA members practice in every state and in every medical specialty. The objects of the AMA are to promote the science and art of medicine and the betterment of public health.

The AMA was one of the principal lobbyists before Congress for the Patient Safety and Quality Improvement Act, the statute which forms the basis of this appeal. The objective of Patient Safety Act is to encourage hospitals to share and analyze information in order to enhance patient care within hospitals. The AMA therefore takes an interest in making sure that Patient Safety Act is properly enforced.

Statement of Interest of the Alliance for Quality Improvement and Patient Safety

The Alliance for Quality Improvement and Patient Safety ("AQIPS") is a national, non-profit professional association composed of over 40 Patient Safety Organizations and their member providers, including hospitals and other providers in Illinois. The AQIPS mission is to foster the ability of Patient Safety Organizations and the their providers to improve patient safety, health care quality, and health care outcomes through the privilege and confidentiality protections afforded in the Patient Safety and Quality Improvement Act. AQIPS supports its member Patient Safety

Organizations and their providers in employing the privilege to create learning systems that permit the confidential collection, analysis, and sharing of patient safety event reports, lessons learned, and best practices for the purpose of helping hospitals identify and then reduce or eliminate preventable medical errors that harm patients. As an organization that fosters high reliability in health care through the collection and analysis of patient safety events, AQIPS has a great interest in ensuring that providers are able to collect and assess their patient safety analysis without fear that their data and analysis will be subject to discovery in a malpractice action.

Statement of Interest of the Illinois State Medical Society

The Illinois State Medical Society ("ISMS") is a non-profit, I.R.C. § 501(c)(6) professional society comprised of over 9,000 practicing physicians, medical residents, and medical students in Illinois. ISMS membership encompasses practicing physicians from a broad range of specialties, geographic locations, and types of practice.

As the most broadly based professional association representing Illinois physicians, ISMS has a profound interest in the case as a negative outcome will detrimentally impact the practice of medicine and the ability of Illinois physicians to improve the delivery of health care services to the citizens of this State.[3]

Statement of Interest of Clarity PSO

Clarity PSO is a division of Illinois-based Clarity Group, Inc., one of the nation's leading healthcare quality improvement organizations. Clarity PSO was one of the first

[3] The AMA and ISMS join this brief on their own behalves and as representatives of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition among the AMA and the medical societies of each state, plus the District of Columbia. Its purpose is to represent the viewpoint of organized medicine in the courts.

federally certified and listed Patient Safety Organizations in the country and has assisted its hospital, health system, physician group and association members in their continuing efforts to improve patient safety and reduce risks to their respective patient communities. Ingalls Memorial Hospital, the appellant in this appeal, is a member of Clarity PSO. The incident reports at issue in this case were collected and reported by the Hospital to Clarity PSO.

Collectively, the *Amici* represent the hospital and physician provider communities as well as Patient Safety Organizations – covering the spectrum of the collection, submission, and use of patient safety work product under the Patient Safety and Quality Improvement Act.

ARGUMENT

I. UPHOLDING THE RULING OF THE TRIAL COURT WOULD IMPEDE QUALITY IMPROVEMENT EFFORTS OF ILLINOIS HOSPITALS

The *Amici* believe that upholding the ruling of the trial court would (a) ignore the plain language of the federal Patient Safety and Quality Improvement Act, (b) blur the distinction between the federal Patient Safety and Quality Improvement Act and the Illinois Medical Studies Act,[4] and (c) impede the patient safety movement that has taken hold among Illinois hospitals that participate in Patient Safety Organizations. The *Amici* support those arguments offered by Ingalls.

[4] 735 ILCS 5/8-2101 et seq. (2010).

A. Congress Specifically Created a Statutory Protection From Discoverability Under the Patient Safety and Quality Improvement Act, which has been Recognized by Illinois Courts.

In 1999, the Institute of Medicine ("IOM") released a report entitled "To Err is Human: Building a Safer Health Care System," which estimated that between 44,000 and 98,000 people die every year due to preventable medical errors. The IOM concluded that these deaths were mostly attributable to human error and faulty systems. The report stunned the nation and motivated legislatures and agencies to find solutions.

In the years since "To Err is Human," Congress and federal agencies have adopted legislative and regulatory initiatives to encourage and incentivize hospitals in a variety of ways to take proactive steps to improve the quality of care, to reduce adverse events and medical errors, and to identify best practices in the delivery of health care. For example, the Centers for Medicare & Medicaid Services ("CMS"), the federal agency that operates Medicare, changed the way it pays for hospital care "by rewarding hospitals for delivering services of higher quality and higher value."[5]

Illinois hospitals have embraced the imperative to improve patient safety. This commitment to improve patient outcomes is evidenced in hospitals' participation in IHA's quality improvement activities, such as the Hospital Improvement Innovation Network funded by a multi-million dollar grant from CMS (129 Illinois hospitals participate), IHA Clinical Services (40 Illinois hospitals participate), including the state-wide emergency preparedness program funded by a grant for the Illinois Department of Public Health (35 Illinois hospitals are subawarded), IHA Quality Excellence

[5] *Linking Quality to Payment*, Medicare.gov, https://www.medicare.gov/hospitalcompare/linking-quality-to-payment.html (last visited Aug. 2, 2017). Programs implemented by CMS include the "hospital readmissions reduction program" and the "hospital-acquired condition reduction program." *Id.*

Achievement Awards submissions (42 Illinois hospitals participated in 2017), and Physician-Hospital Engagement initiatives including for example Medical Executives Forum (with 32 physician leaders of 30 Illinois hospitals). Hospitals in Illinois clearly strive to improve patient outcomes.

The specific patient safety process at issue in this case was created by the Patient Safety and Quality Improvement Act. Congress enacted the statute "to encourage the reporting and analysis of medical errors" and to establish "a voluntary reporting system designed to enhance the data available to assess and resolve patient safety and health care quality issues."[6] To encourage hospitals to submit patient safety outcomes, the federal government has taken efforts to safeguard the information from subsequent discovery pursuant to the "patient safety work product" privilege.[7] The confidential nature of the patient safety work product "creates an environment where providers may report and examine patient safety events without fear of increased liability risk."[8]

The process created by the Patient Safety and Quality Improvement Act is elegantly simple: incentivize the hospital that experienced a negative outcome to proactively review the situation, voluntarily document the self-review, and report this documentation to a federally certified third party that has resources available to analyze reports of many hospitals. The independent third party created by the statute is called a

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[6] *Patient Safety and Quality Improvement Act of 2005 Statute and Rule*, U.S. Dep't of Health and Human Servs., https://www.hhs.gov/hipaa/for-professionals/patient-safety/statute-and-rule/index.html (last visited Aug. 2, 2017).

[7] 42 U.S.C. § 299b-22.

[8] *Understanding Patient Safety Confidentiality*, U.S. Dep't of Health and Human Servs., https://www.hhs.gov/hipaa/for-professionals/patient-safety/index.html (last visited Aug. 1, 2017). See also *AMC PSO Background*, The Risk Management Foundation of the Harvard Medical Institutions, https://www.rmf.harvard.edu/About-CRICO/Our-Community/AMC-PSO-home-page/AMCPSO-Background (last visited Aug. 1, 2017).

"Patient Safety Organization" or "PSO."[9] The Patient Safety Organization uses this reported information from its participating hospitals to create studies that are shared with the participating hospitals; some studies are so significant that they are published for use by all hospitals. The hospital submitted report is protected as patient safety work product because it contains analyses about cause, evaluations, and other information that the hospitals voluntarily compile.

The power of aggregating large amounts of information from multiple providers makes the Patient Safety Organization model unique. For example, Patient Safety Organizations aggregate data from all of the providers that submit reports; with larger numbers of events collected from multiple providers, the Patient Safety Organization can identify causes of adverse events by noting trends that may not be seen in just one provider institution. The Patient Safety Organization uses these studies to convene collaborative initiatives, learning, and sharing opportunities for its members as well as educational tools to improve patient safety.[10] The Patient Safety Organization serves as a contractor of the hospital. There are eight patient safety activities that are carried out, including "the collection and analysis of patient safety work product . . . ."[11] As a result of these activities, Patient Safety Organizations have been able to provide safety alerts, identify best practices, and feedback, which, collectively, have reduced adverse events

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[9] 42 U.S.C. § 299b-21(4).

[10] *How PSOs Help Health Care Organizations Improve Patient Safety Culture*, Agency for Healthcare Research and Quality 3 (Apr. 2016), https://www.pso.ahrq.gov/sites/default/files/wysiwyg/npsdpatient-safety-culture-brief.pdf.

[11] *Frequently Asked Questions: What Are "Patient Safety Activities"?*, Agency for Healthcare Research and Quality, https://www.pso.ahrq.gov/faq#WhatisaPSO (last visited Aug. 2, 2017).

and errors and improved medication safety and patient personal safety in a wide variety of areas.[12]

In a recent case, the Illinois Appellate Court, Second District, was clear in its articulation of the intent of the Patient Safety and Quality Improvement Act.[13]

> According to Senate Report No. 108-196 (2003), the purpose of the Patient Safety Act is to encourage a "culture of safety" and quality in the United States health care system by "providing for broad confidentiality and legal protections of information collected and reported voluntarily for the purposes of improving the quality of medical care and patient safety." S. Rep. No. 108-196, at 3 (2003). The Patient Safety Act provides that "patient safety work product shall be privileged and shall not be *** subject to discovery in connection with a Federal, State, or local civil, criminal, or administrative proceeding." 42 U.S.C. § 299b-22(a) (2006).[14]

In fact, the court referred to the federal law as providing "'more sweeping evidentiary protections for materials used therein.'"[15]

The Patient Safety and Quality Improvement Act provides protections for patient safety information, referred to as "patient safety work product" that are far broader than

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[12] Vizient® PSO has produced a number of "Applied Learnings" reports based on patient safety event data received from its participating providers. The purpose of these reports, which cover health IT-related patient safety events, surgical pathology specimen errors, patient violence, retained sponges and guidewires and an analysis of suicide-related events, is to identify specific safety events, conduct analyses, and make recommendations designed to improve the quality of patient care and reduce risk. See *Aggregate Analyses and Leading Safety Practices*, Vizient PSO (Dec. 2016), http://www.advansiv.net/clients/vizient/docs/2016-PSO-Summary-Analyses.pdf.
ECRI Institute PSO has identified concerned related to health information technology caused errors and challenges, pressure ulcers, medication safety, and other patient-care related issues. See *Press Release, , Partnership for Health IT Patient Safety Issues Recommendations for the Safe Use of Health IT for Patient Identification*, ECRI Institute PSO (Feb. 20, 2017), https://www.ecri.org/press/Pages/HITPS-Issues-Recommendations-for-Patient-Identification.aspx; *Key Learnings from ECRI Institute PSO*, ECRI Institute PSO, https://www.ecri.org/resource-center/Pages/Key-Learnings-from-ECRI-Institute-Patient-Safety-Organization.aspx (last visited June 14, 2017).
Clarity PSO has published materials on surgical errors, medication dosing omissions, fall prevention, health information technology, to name a few, which are available at *Patient Safety Learning Series*, Clarity PSO http://www.claritygrp.com/clarity-patient-safety-organization/learning-library/pso-learning-series (last visited June 28, 2017).

[13] *Department of Financial & Professional Regulation v. Walgreen Co.*, 2012 Il. App. (2d) 110452, 970 N.E.2d 552 (2012).

[14] *Id.* ¶ 16.

[15] *Id.* (quoting *KD ex rel. Dieffenbach v. United States*, 715 F. Supp. 2d 587, 595 (D. Del. 2010)).

those granted under most state statutes, including the Illinois Medical Studies Act. Congress, when drafting the Patient Safety and Quality Improvement Act, and the Department of Health and Human Services, when drafting the Patient Safety Rule, clearly understood that state confidentiality and privilege statutes are limited in scope with respect to the categories of health care providers covered, as well as the breadth of patient safety activities and information which can be protected from disclosure.

The importance of this Court's correction of the error below cannot be understated in light of the purpose of the federal law and the visionary approach created by the federal government in 2005. The Department of Health and Human Services echoed Congress's intent and recognized that there was a balance between this privilege and external accountability.

> The fact that information is collected, developed, or analyzed under the protections of the [Patient Safety Act] does not shield a provider from needing to undertake similar activities, if applicable, outside the ambit of the statute, so that the provider can meet its obligations with non-patient safety work product. The [Patient Safety Act], while precluding other organizations and entities from requiring providers to provide them with patient safety work product, recognizes that the original records underlying patient safety work product remain available in most instances for the providers to meet these other reporting requirements.[16]

The Department of Health and Human Services focused on the voluntary nature of the creation of the materials and the participation in the Patient Safety Organization. In other words, other sources of information that are available to litigants outside the patient safety work product remain discoverable.

The documents submitted to the Patient Safety Organization, the PSO's analysis, and the conversations of expert health care providers, which conversations involve multiple hospitals, are privileged from discovery; the Patient Safety and Quality

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[16] Patient Safety and Quality Improvement; Final Rule, 73 Fed. Reg. 70,731, 70,732 (Nov. 21, 2008).

Improvement Act creates this safe haven to analyze the past to create a safer future. The collective experiences of hospitals serves as a powerful catalyst for change. Approximately one-half of Illinois hospitals belong to a Patient Safety Organization, relying upon the application of the patient safety work product privilege for voluntarily created materials that they submit to their PSOs. These voluntarily created materials should be used for their intended purpose, not as a roadmap for litigation. If the trial court's order is upheld in this case – an order that the *Amici* believe is based upon the application of an incorrect statutory privilege – this Court will send a message to Illinois hospitals that they should not voluntarily document their self-examination of an adverse situation for the purpose of improving health care.

B. The Trial Court Conflated the Federal Privilege with a Different Illinois Statutory Privilege.

In reviewing the documents at issue in this case, the trial court appears to have applied the privilege created by the Illinois Medical Studies Act as opposed to the privilege created by the federal Patient Safety and Quality Improvement Act. The Medical Studies Act[17] is commonly referred to as a "peer review" privilege because it is intended "to ensure the effectiveness of professional self-evaluation, by members of the medical profession, in the interest of improving the quality of health care."[18]

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[17] Medical Studies Act, 735 ILCS 5/8-2101 to 8-2105 (2017).

[18] *Jenkins v. Wu*, 102 Ill. 2d 468, 480, 468 N.E.2d 1162, 1168 (1984) (emphasis added). The Medical Studies Act created a privilege protecting from discovery information "used in the course of internal quality control or of medical study for the purpose of reducing morbidity or mortality, or for improving patient care . . . ." *Roach v. Springfield Clinic*, 157 Ill. 2d 29, 37, 623 N.E.2d 246, 249 (1993) (citing 735 ILCS 5/8-2101 (1992)) (emphasis added). "The Act is premised on the belief that, absent the statutory peer-review privilege, physicians would be reluctant to sit on peer-review committees and engage in frank evaluations of their colleagues." *Wu*, 102 Ill. 2d at 480, 468 N.E.2d at 1168 (emphasis added).

However, this "peer review privilege" under the state Medical Studies Act was ***not*** the basis of Ingalls' argument at rehearing. Rather, Ingalls focused its argument on its claim of and reliance upon the "patient safety work product privilege" afforded by the federal Patient Safety and Quality Improvement Act, which the Illinois appellate court has recognized as applicable in Illinois.[19] The purpose of the federal Patient Safety Act is to permit third party Patient Safety Organizations that collect and receive voluntarily created and documented information to synthesize the information of the many health care providers for the purpose of analyzing practices and improving care.[20] To the *Amici's* knowledge, numerous Illinois hospitals participate in the over one dozen Patient Safety Organizations based in Illinois (of the over 85 PSOs that are certified to provide these services in Illinois). All Illinois hospitals that belong to Patient Safety Organizations and submit voluntarily created patient safety materials, including Ingalls, should be able to rely upon the federal patient safety work product privilege related to PSO participation.

The Report of Proceedings of the November 28, 2016 hearing before the trial court demonstrates apparent confusion between the federal Patient Safety Act privilege and the state Medical Studies Act privilege. Ingalls claimed the federal patient safety work product privilege applied to Incident Review Number 25472, Incident Review

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[19] See *Walgreen Co.*, 2012 IL App (2d) 110452.

[20] "PSOs create a legally secure environment (conferring privilege and confidentiality) where clinicians and health care organizations can voluntarily report, aggregate, and analyze data, with the goal of reducing risks and hazards associated with patient care." *Patient Safety Organizations Program*, Agency for Healthcare Research and Quality, https://www.ahrq.gov/cpi/about/otherwebsites/pso.ahrq.gov/index.html (last visited July 31, 2017). The AHRQ is an agency of the U.S. Department of Health & Human Services. To become a PSO that is listed on the AHRQ website, the entity must have formal policies and procedures that comply with the PSQIA and submit a certification form seeking to be listed. Upon AHRQ approval, the PSO is then "listed" and hospitals may join the PSO. Information submitted by hospitals to certified PSOs is protected from discovery by the patient safety work product privilege.

Number 25753, and Complaint Number 5101. Under the Patient Safety and Quality Improvement Act,[21] the questions for the trial court to answer were (1) whether Ingalls, a health care provider, assembled or developed the reports for the purpose of reporting them to a Patient Safety Organization and (2) Ingalls in fact reported them to a PSO.

If so, then the federal privilege applied. The trial court would then determine if an exception to the privilege existed. The Record does not contain this analysis. Rather, the trial court stated that the content "was obtained prior to the peer review" (R.29:3–4 (emphasis added)) and that content "was put on there for peer review . . ." (R.29:6–7 (emphasis added)). See also references to "peer review" at R.31:18, R.31:22, R.31:24, and R.32:21. The court's reference to the "Medical Review Act" (R.34:6) (presumably meaning the Medical Studies Act) and its analysis signals that the court either conflated the two privileges or applied the Medical Studies Act rather than the Patient Safety and Quality Improvement Act.

The federal patient safety work product privilege is different from the state Medical Studies Act privilege. The Medical Studies Act created a privilege for information generated by or for internal reviewing bodies, such as a hospital medical staff committee, "used in the course of internal quality control or of medical study for the purpose of reducing morbidity or mortality, or for improving patient care...."[22] The purpose of the Medical Studies Act is to "ensure that members of the medical profession will effectively engage in self-evaluation of their peers" to reduce morbidity and mortality.[23] This purpose led to the shorthand reference to the "peer review" privilege.

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[21] 42 U.S.C. § 2996-21(7)(A)(i)(I).
[22] 735 ILCS 5/8-2101 (emphasis added).
[23] See *Springfield Clinic*, 157 Ill. 2d at 40, 623 N.E.2d at 251 (emphasis added).

This concept seems to be the basis of the trial court's ruling. The court's focus was not on the elements of or exceptions to the federal patient safety work product privilege; rather, the court's focus was on state peer review. The laws are not the same and the elements of the two privileges are not the same.

C. The Application of the Appropriate Privilege in This Case Will Provide Appropriate and Necessary Security to Hospitals Throughout Illinois.

In addition to the application of the wrong privilege, the trial court appears to believe that the voluntarily created information in the materials reported to Ingalls' Patient Safety Organization must be produced to the plaintiff. The court refused to protect the information in the three documents from discovery unless it was "tendered to the plaintiff" "somewhere else in discovery." R.30:6–7 & R.31:6–11. See also R.31:19–24, R.32:1, R.32:11–22, R.33:21–24, and R.34:1–8.

According to the sworn affidavits of Linda B. Conway, Associate General Counsel of Ingalls Memorial Hospital, Ingalls created the three documents at issue for the purpose of submitting them to Ingalls' Patient Safety Organization, which they in fact did, rendering them privileged patient safety work product under the Patient Safety and Quality Improvement Act.[24] See R.17. This information by its very nature is work product privileged from discovery, and thus would not be produced "somewhere else in discovery"—nor should it be produced. The fact that the court expressed the need for Ingalls to produce all of this information "somewhere" in discovery demonstrates that it

[24] We note that with regard to providers, the deliberations and analysis are *also* protected while they are occurring provided they are done within a Patient Safety Evaluation System ("PSES"). 42 U.S.C. § 299b-21(7)(A)(ii). "The term 'patient safety evaluation system' means the collection, management, or analysis of information for reporting to or by a patient safety organization." *Id.* § 299b-21(6). Linda Conway's statements in her affidavit at Sections 4, 6, and 7 confirm that this was the case for these documents.

did not appreciate that the patient safety work product privilege specifically excludes from discovery information *voluntarily* created for the purpose of submitting a report to a Patient Safety Organization for analysis. Information voluntarily created under the Patient Safety and Quality Improvement Act's requirements is privileged from discovery under the patient safety work product privilege. If it were not, hospitals would never voluntarily create this information only to be forced to hand it over to a litigant to be used against the hospital.

CONCLUSION

The over 200 hospitals providing care across the State of Illinois have implemented quality improvement processes relying on the proper application of discovery privileges, including the nearly half that have joined Patient Safety Organizations designated by the United States Department of Health and Human Services. Ingalls' relied on the federal patient safety work product privilege. The *Amici* request this Court clarify the differences between the state "peer review" privilege and the federal "patient safety work product" privilege for trial courts and Illinois hospitals. Illinois hospitals play a vital role in safeguarding the health, safety, and welfare of the people of this State. The federal government has taken efforts to safeguard the confidential nature of work product voluntarily assembled and reported to a Patient Safety Organization for the conduct of patient safety activities, which in turn promotes the sharing of lessons learned.

For the reasons stated, the *Amici* respectfully request the Illinois Court of Appeals overturn the decision of the trial court in this matter.

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set for in this motion and brief are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

By: _____

Mark D. Deaton

No. 17-0891
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FOR THE FIRST JUDICIAL DISTRICT

TERRI DALEY, Independent Administrator of the ESTATE OF ROSALIE GALMORE JONES, deceased Plaintiff-Appellee, v. INGALLS MEMORIAL HOSPITAL, Defendant-Appellant.	)	Appeal from Circuit Court, of Cook County First Judicial District Case No. 2015 L 011684 Hon. Moira S. Johnson Judge Presiding

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SUPREME COURT RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 16 pages.

Mark Deaton

One of the attorneys for the *Amici Curiae* for Illinois Health and Hospital Association

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v.	)	Hon. Moira S. Johnson Judge Presiding
INGALLS MEMORIAL HOSPITAL,	)	
Defendant-Appellant.	)	

ORDER

The Motion by the Illinois Health and Hospital Association, American Medical Association, Alliance for Quality Improvement and Patient Safety, Illinois State Medical Society, and Clarity PSO for leave to file, *instanter*, an *amici curiae* brief in support of Defendant-Appellant, Ingalls Memorial Hospital, is granted_____/denied_____.

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Dated:_____