Illinois Health and Hospital Association

PSQIA Case Law Alert: Rumsey v. Guthrie Medical Group

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In September 2019, the U.S. District Court for the Middle District of Pennsylvania issued its opinion in the case of Rumsey v. Guthrie Medical Group, P.C., No. 4:18-CV-01605 (M.D. Pa. Sept. 26, 2019). The case was heavily focused on the privileges afforded under the Patient Safety and Quality Improvement Act of 2006 ("PSQIA").[1]

Background

Richard Rumsey ("Rumsey") brought suit against Guthrie Medical Group, P.C. ("Guthrie"), alleging Guthrie was negligent in failing to test or treat him for a MRSA infection that escalated following an elective procedure."[2] During discovery Rumsey sought information related to Guthrie's infection prevention procedures. Guthrie objected to three discovery requests and a series of deposition questions on the basis that such information was privileged from discovery under the PSQIA.

Objected Discovery Requests

Before evaluating the discovery requests and the deposition questions to which Guthrie objected, the court noted that "the critical inquiry is the purpose of creating the information, and the information will only be considered patient safety work product ("PSWP") if it is created 'for the purpose of reporting' to a patient safety organization."[3] The court then evaluated each objection in turn:

Objected Request 1: "A copy of all infection prevention an infection control materials which Defendants received prior to May 1, 2017 from [Vizient] and/or any other company."

Vizient was the PSO with which Guthrie engaged in patient safety activities. Documents which could improve patient safety, health care quality, or health care outcome and are developed by a patient safety organization for the conduct of patient safety activities are PSWP.[4] The court found that the materials provided to Guthrie by Vizient fall under the definition of PSWP because they were documents that were "produced by the patient safety organization for the purpose of conducting patient safety activities."[5] Thus, the court held that these materials were privileged and protected from discovery under the PSQIA.

Objected Request 2: "A copy of Defendants' agendas, notes and any and all other written records of Defendants' monthly (or other than monthly) quality committee meetings from May 1, 2016 to May 1, 2017 insofar as they discuss infection prevention or infection control."

The Court stated that this is "quintessential example of the patient safety work product privilege."[6] Quality meetings are a core aspect of a patient safety evaluation system ("PSES") (i.e., the process for collecting,

[1] Patient Safety and Quality Improvement Act of 2005, Pub. L. No. 109-41, 119 Stat. 424 (codified as amended at 42 U.S.C. §§ 299b-21 to 299b-26).
[2] Rumsey v. Guthrie Medical Group, No. 4:18-CV-01605, *1 (M.D. Pa. Sept. 26, 2019).
[3] *Guthrie Medical Group*, No. 4:18-CV-01605, at *4 (quoting Crawford v. Corizon Health, Inc., 2018 WL 3361147, at *2 (W.D. Pa. July 10, 2018), quoting Patient Safety Act Guidance, 81 Fed. Reg. 32655, 32656).
[4] 42 C.F.R. § 3.20 (Patient Safety Work Product, Section 1(i)(B)).
[5] *Guthrie Medical Group*, No. 4:18-CV-01605, at *6.
[6] *Id.*

managing, and analyzing information for reporting to a PSO[7]). Consequently, data, reports, records, analyses, memoranda, and written or oral statements from quality meetings are PSWP. In this case, the court found that the requested agendas, notes, and written records from the quality meetings were PSWP and "'deliberations or analysis' of a patient safety evaluation system,"[8] and thus the court held that they were protected from discovery under the PSQIA.

Objected Request 3: "A copy of any and all correspondence and communication between Defendants and any federal, state, county or local governmental agency within the past 5 years on the subject of infection prevention, infection reporting, infection management and infection rates."

The court found that corresponding with government agencies is not a part of a PSES, nor is it part of the process of disclosing peer-review information to a PSO, and therefore "such correspondence would not have been generated for the purpose of reporting"[9] to a PSO. Consequently, the court held that the correspondence and communications with government agencies were not PSWP and thus not afforded the privilege protections under the PSQIA.

Objected Deposition Questions: Guthrie objected to a series of deposition questions asked of a witness relating to Guthrie's quality committee meetings, how the committee determined infection preparedness, the data used to reach preparedness conclusions, and why they collected certain data and not others.

The court explained that while the PSQIA "privilege is not so broad as to cover Guthrie's infection-prevention policies generally,"[10] it does "bar a witness from testifying to the proceedings of quality committee meetings or other knowledge he gained by virtue of participating in the patient safety evaluation system."[11] Recall that PSWP includes data, reports, memoranda, analyses, and written or oral statements which identify or constitute the deliberations or analysis of a PSES.[12] Given this, the court found that the information Rumsey sought through the series of deposition questions was "information generated by the patient safety evaluation system,"[13] and held that it was privileged and protected from discovery under the PSQIA.

Key Takeaways

- Materials received by a provider from its PSO are PSWP and thus protected by the PSQIA.

- Agendas, notes, written records, and oral statements made at a quality meeting are considered PSWP through the "deliberations or analysis" pathway and are thus protected by the PSQIA. This is significant because the *Guthrie* case is one of the first cases to recognize that PSWP can be created through the deliberations or analysis pathway and to uphold the privilege of such PSWP.

  See IHA's article Quality Improvement Privileges for Illinois Hospitals for more information on how privilege and confidentiality protections are obtained through the direct reporting and deliberation or analysis pathways.

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[7] 42 C.F.R. § 3.20 (Patient Safety Evaluation System).
[8] *Guthrie Medical Group*, No. 4:18-CV-01605, at *6.
[9] *Id.* at *7.
[10] *Id.*
[11] *Id.*
[12] 42 C.F.R. § 3.20 (Patient Safety Work Product, Section 1(ii)).
[13] *Guthrie Medical Group*, No. 4:18-CV-01605, at *7.

- Correspondence and communications with government agencies are not part of a PSES, not part of the process for reporting peer-review information to a PSO, and thus not created for the purpose of reporting to a PSO. Consequently, correspondence and communications with government agencies is not PSWP and are not protected by the PSQIA.

- Infection prevention policies themselves are not privileged under the PSQIA.

- Information on the proceedings of quality committee meetings or other knowledge gained by virtue of participating in the PSES is PSWP developed through the deliberations and analysis pathway, and thus privileged under the PSQIA.

State Privileges

Note that Guthrie also asserted the information was privileged under the Pennsylvania Medical Care Availability and Reduction of Error Act ("MCARE Act")[14] which was applicable through the Federal Rule of Evidence 501. For purposes of this article, only the PSQIA privilege is discussed. However, it is important to note that the Court found that some of the information was privileged under the MCARE Act. This finding reaffirms that information may be privileged under both state peer review laws and the federal PSQIA, and that these statutes are not mutually exclusive. Whether a certain privilege protection applies will depend upon the information in question, how PSES policies and procedures are structured, and how patient safety activities are organized.

For information about how to join a patient safety organization, contact the Midwest Alliance for Patient Safety ("MAPS") at MAPSHelp@team-iha.org or 630-276-5657. MAPS is a federally certified patient safety organization and an IHA company.

This document is intended to be a guide for IHA members and MAPS participants and does not constitute legal advice. For questions about this document, please contact the IHA Legal Department at legal@team-iha.org or 630-276-5506.

[14] 40 Pa. CSA § 1303.311(b).