

Healthcare Law Alert: Quality Assurance Privilege

Recently, New York's Appellate Division, Second Department, issued a decision which expands the discovery of statements made during a hospital's quality assurance committee meeting. In *Siegal v. Snyder*, the court analyzed the scope and applicability of provisions under New York's Education Law and Public Health Law that otherwise shield from disclosure the proceedings and records related to performance of a medical or quality assurance review function or participation in a medical malpractice prevention program. Under the statutes, there is a party statement exception which does not extend the privilege to statements made "by any person in attendance at such a meeting who is a party to an action or proceeding the subject matter of which was reviewed at such meeting". NY Public Health Law § 2805-m. The Siegal court held that the peer review minutes were subject to disclosure because the defendant could not prove that statements in the minutes were made by someone other than the defendant.

The minutes in question attributed statements to the "committee" and at least one of the defendants in the lawsuit was present at the subject meeting. It was not clear in the minutes who was speaking during the meeting. The court noted that the party asserting the privilege, namely the defendant, has the burden of establishing entitlement to the privilege. Because in that case the minutes did not indicate that statements were not those of the defendant, they were discoverable.

A review of the decision indicates that the court was concerned that the minutes of the committee were kept in such a way as to circumvent the exception allowing statements of defendants to be discoverable in a lawsuit. A preferred approach is to inform providers that there is no way to circumvent the exception, though minutes detailing discussions of the committee's process rather than specific statements would arguably be protected. If it is necessary to include specific statements in the minutes, the minutes could identify whether the speaker was the involved provider and could also identify when involved providers have left the meeting.

If you have any questions about your current peer review process and how it may be affected by this decision, please give us a call.