

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

ROBERT D. TOLER

Plaintiff,

v.

Civil Action No. 19-C-196
Judge Gregory L. Howard

CORNERSTONE HOSPITAL OF
HUNTINGTON, LLC,

Defendant.

**ORDER DENYING PLAINTIFF'S MOTION TO COMPEL
CORNERSTONE HOSPITAL OF HUNTINGTON, LLC'S INCIDENT REPORT**

This matter came before the Court on January 22, 2020, for a hearing on the Plaintiff's Motion to Compel Responses to Plaintiff's Interrogatories and Requests for Production. The Plaintiff appeared by counsel, Steven L. Wolfe; and the Defendant appeared by counsel, Amy Humphreys.

The Court heard the arguments of the parties and ordered the Defendant's Incident Report in question and the Incident Event Reporting and Follow-up Policy be produced under seal for an *in-camera* review. The Court advised that it would conduct an *in-camera* review of the submitted materials and notify the parties of its decision.

Upon examination of the documents *in-camera*, and upon careful consideration of the motions, the arguments of the parties, and pertinent legal authorities, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On or about April 29, 2019, Robert Toler filed this lawsuit against Cornerstone, wherein it is alleged that on January 7, 2019, while visiting a patient at

Cornerstone, he slipped and fell on an item that had been left on the floor by employees of Cornerstone.

2. Plaintiff argues that the object was negligently left on the floor by employees of the Defendant and that he sustained injuries as a result of the fall. Plaintiff seeks compensation from the Defendant for the alleged injuries.

3. Thereafter, the parties engaged in discovery, including Plaintiff's Interrogatories and Requests for Production of Documents. Plaintiff requested production of every communication, memorandum, statement, investigation, note, email, or other written document referencing the incident alleged in plaintiff's complaint.

4. Cornerstone objected to the discovery request, arguing that the information was protected from disclosure by West Virginia's Peer Review Statute, W. Va. Code §30-3C-1, et seq.

5. Cornerstone also filed a Privilege Log and Supplemental Privilege Log identifying the Occurrence / Incident Report and asserted the Peer Review Privilege.

6. On the December 4, 2019, Plaintiff filed a Motion to Compel, seeking a copy of the Occurrence / Incident Report.

7. In the Motion, Plaintiff argues that Cornerstone, as the party asserting the Peer Review Privilege, has the burden of demonstrating that the privilege applies. Plaintiff argues that the privilege does not apply to the Occurrence / Incident Report in this case.

8. On December 9, 2019, Defendant filed its Response in Opposition to Plaintiff's Motion to Compel Responses to Plaintiff's Interrogatories, Requests for Production. Defendant argued that the Occurrence / Incident Report was protected from discovery by the Peer Review Privilege.

9. A hearing on the Motion to Compel was held on January 22, 2020. Following oral argument, the Court Ordered the Occurrence / Incident Report and Incident Event Reporting and Follow-up Policy be provided under seal to the Court for *in-camera* review. The Court indicated that it would review the documents *in-camera* and make a determination as to whether the Report was admissible in discovery.

10. The Court has received and reviewed the Occurrence / Incident Report in question as well as a copy of the Defendant's Incident Event Reporting and Follow-up Policy.

CONCLUSIONS OF LAW

1. The Health Care Peer Review Organization Protection Act ("Peer Review Statute"), Article 3C, Chapter 30 of the West Virginia Code, provides for Health Care Peer Review Organization Protection. Pursuant to the Statute, "peer review" is "the procedure for evaluation by health care providers of the quality, delivery, and efficiency of services ordered or performed by other health care professionals, including practice analysis, inpatient hospital and extended care facility utilization review, medical audit, ambulatory care review, claims review and patient safety review, preparation for or simulation of audits or surveys of any kind, and all forms of quality assurance/performance improvement whether or not required by any statute, rule, or regulation applicable to a health care facility or health care provider". W. Va. Code §30-3C-1.

2. The Peer Review Statute defines a "Review organization" as "any committee, organization, individual or group of individuals engaging in peer review . . . to gather and review information relating to the care and treatment of patients for purposes of: (i) Evaluating and improving the quality of health care rendered; (ii)

reducing morbidity or mortality; or (iii) establishing and enforcing guidelines designed to keep within reasonable bounds the costs of health care."

3. Finally, W. Va. Code §30-3C-3(c) provides that "All peer review proceedings, communications, and documents of a review organization and all records developed or obtained during an investigation conducted pursuant to §30-3-1 et seq., §30-3E-1 et seq., and/or §30-14-1 et seq. of this code shall be confidential and privileged and shall not be subject to discovery in any civil action or administrative proceeding. . . ."

4. In the instant case, the Court agrees with the Defendant's assertion that the Occurrence / Incident Report which was prepared by a nurse and reviewed by the Director of Quality Management falls squarely within the statutory requirements enumerated above.

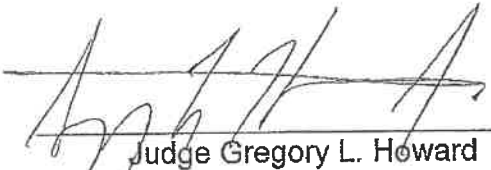
5. The Court finds that the Occurrence / Incident Report at issue was prepared to report a non-routine event that had some potential for injury to a patient or visitor and was intended to help ensure that quality health care is rendered at the hospital by identifying and correcting any problems related to non-routine occurrences.

6. The Court also finds that the Plaintiff's status of a non-patient is irrelevant with regard to the applicability of the peer review privilege in this instance. Therefore, based upon the evidence presented in this matter, and applying the above statutes, the Court finds that the Occurrence / Incident Report in question is not subject to subpoena or discovery proceedings and is precluded from admissibility in evidence pursuant to the Peer Review Statute.

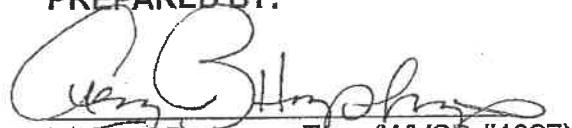
Based upon the foregoing, the Court hereby ORDERS: Plaintiff's Motion to Compel Responses to Plaintiff's Interrogatories, Requests for Production is hereby DENIED.

The Clerk is directed to send a certified copy of this Order to all counsel of record.

Entered this 20th day of March 2020.



Judge Gregory L. Howard

PREPARED BY:

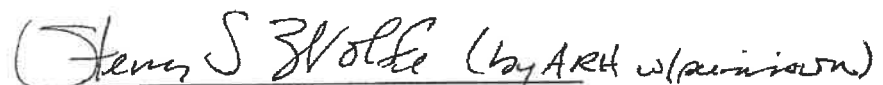

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STATE OF WEST VIRGINIA
COUNTY OF CABELL

I, JEFFREY E. HOOD, CLERK OF THE CIRCUIT COURT FOR THE COUNTY AND STATE AFORESAID DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY FROM THE RECORDS OF SAID COURT ENTERED ON MAR 20 2020

GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS MAR 20 2020

CLERK
CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

REVIEWED BY:


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