



Agster v. Maricopa County, 422 F.3d 836 (9th Cir. 2005)

Topics Covered: Peer Review

Outcome: Unfavorable

Issue

The issue here was whether a county could properly claim a state peer review privilege as to a mortality review conducted by its correctional health services after the death of a prisoner while in the county's custody.

AMA Interest

The AMA believes that for peer review to be effective, the peer review data must be kept confidential. Accordingly, the AMA seeks to protect peer review records from discovery in judicial or administrative proceedings.

Case Summary

Charles J. Agster III was arrested and taken to the Maricopa County jail, where he was placed in a restraint chair. His respiration decreased, he developed an irregular heartbeat, and he became unconscious. He was then transported to a hospital, where he died. Per state and federal standards, the jail was required to and did undertake a confidential mortality review.

Agster's parents and estate sued Maricopa County and several of its employees in Arizona state court, but the defendants removed the case to federal court. The plaintiffs sought production of the mortality review from the county. The county objected to the request, citing Arizona law on peer review confidentiality. The district court denied the objection, finding that no federal peer review privilege was available in the Ninth Circuit. The county then appealed to the Ninth Circuit.

The Ninth Circuit acknowledged that it had never recognized a federal peer review privilege. It also noted that it might recognize that privilege in an appropriate case. This, however, was not the right case.

The appellate court noted that the defendants would have had the privilege available to them if they had remained in state court, but they had deliberately chosen a federal forum, where the privilege had never been honored. Furthermore, while the claim for a privilege might be greater between purely private litigants, this case involved a claim of public accountability. The court also noted that Congress had considered the grant of a peer review privilege when it passed and then amended the Health Care Quality Improvement Act of 1986 ("HCQIA") but had declined to do so.

The Ninth Circuit affirmed the district court's order to turn over the peer review report.

Litigation Center Involvement

The Litigation Center submitted an amicus brief to the United States Supreme Court, but the Supreme Court declined to hear the appeal.

United States Supreme Court brief