



# Daley v. Teruel and Ingalls Memorial Hospital, 2018 Ill. App. LEXIS 440 (Ill. App. Ct. 2018)

Topics Covered: Patient Safety Act, Peer Review

## Outcome: Very Favorable

### Issue

The question in this case was whether the Federal Patient Safety and Quality Improvement Act of 2005, 42 USC §§ 299b1-21 et seq. (PSQIA), protects hospital incident reports from discovery in litigation.

### AMA interest

The AMA supports the protection of peer-review information from litigation discovery.

### Case summary

Terri Daley is the Independent Administrator of the Estate of Rosalie Jones. Daley alleges that Ms. Jones was admitted to Ingalls Memorial Hospital (Ingalls) for renal failure on November 6, 2013. Ingalls staff, including nurses Kevin Teruel and Victoria Hall, was responsible for monitoring Ms. Jones' blood glucose levels. On the night of November 17, 2013, her blood glucose level was 203. She was then given insulin.

At 3:32 am on November 18, 2013 a nurse drew Ms. Jones' blood for a comprehensive test. The results of this test showed a blood glucose level of 16, which generated a "panic low." However, Ms. Jones' treatment team was not made aware of this test result. At approximately 6:20-6:30 am on the same day, Ms. Jones was found to be unresponsive. She then suffered irreversible brain damaged due to prolonged hypoglycemia (hypoglycemic encephalopathy), and she later died from these injuries.

Ingalls had contracted with the Clarity Patient Safety Organization (Clarity PSO), a federally and state certified PSO, in 2009. Ingalls maintained a patient safety evaluation system—Healthcare SafetyZone Portal — to collect and report information to Clarity PSO. Ingalls personnel submitted incident reports to Clarity PSO through the Healthcare SafetyZone Portal in relation to Ms. Jones' treatment. Ingalls did not retain copies of these reports.

Daley sued Teruel, Hall, and Ingalls for medical malpractice. As part of discovery, Daley's attorneys requested the incident reports that had been submitted to Clarity PSO.

Ingalls objected to this request, citing PSQIA. After a hearing on Daley's motion to compel production of the incident reports, the trial judge deemed them discoverable under Illinois law and ordered their production.

Ingalls filed a motion to reconsider, which the trial judge denied. Ingalls refused to produce the incident reports and asked to be held in "friendly contempt," which would allow an interlocutory appeal. The trial court obliged.

Ingalls appealed the production and contempt orders to the Illinois Appellate Court, First District. On June 28, 2018, the Appellate Court reversed, finding that the incident reports were patient safety work product and thus privileged from discovery under PSQIA.

### **Litigation Center involvement**

The Litigation Center, along with the Illinois State Medical Society and the Illinois Health and Hospital Association, filed an *amicus* brief to support Ingalls.

Illinois Appellate Court brief