



Illinois Department of Financial and Professional Regulation v. Walgreen Co.

2012 Ill. App. LEXIS 423 (Ill. App. 2012)

Topics Covered: Peer Review, Patient Safety Act

Outcome: Very Favorable

Issue

The issue in this case was whether the privilege against non-disclosure set forth in the Federal Patient Safety and Quality Improvement Act of 2005 (“Patient Safety Act”) preempts Illinois state laws.

AMA Interest

The AMA supports federal legislation that will enhance protection of peer review information.

Case Summary

Under the Illinois Pharmacy Act, the Illinois Department of Financial and Professional Regulation (“IDFPR”) is charged with regulating and licensing pharmacists and pharmacies. It is authorized to conduct investigations and, where appropriate, discipline licensees for the protection of public health.

Following a report that three of its pharmacists may have violated the Pharmacy Practice Act, the IDFPR issued three administrative subpoenas to Walgreens. The subpoenas required that Walgreens produce “[a]ll incident reports of medication error” involving one of the pharmacists. In response, Walgreens indicated that the only documents it had which met that description were reports it had prepared under the Patient Safety Act, for purposes of submission to a Patient Safety Organization (“PSO”). Walgreens objected to production of the incident reports, arguing that they were privileged from discovery under the Patient Safety Act.

The IDFPR sought a court order to compel Walgreens to produce the incident reports, but the trial judge found that the incident reports were, indeed, privileged from discovery under the Patient Safety Act. It sustained Walgreens’ objection and dismissed the case. The IDFPR appealed, but the Illinois Appellate Court affirmed.

Litigation Center Involvement

The Litigation Center, along with the Illinois State Medical Society joined in an *amicus* brief in support of the Patient Safety Act privilege.

Illinois Appellate Court brief