



Krusac v. Covenant Medical Center, 865 N.W.2d 908 (Mich. 2015)

Topics Covered: Peer Review

Outcome: Very Favorable

Issue

The issue in this case was whether a portion of a hospital incident report which recounted the facts of an accident to a patient undergoing surgery should be shielded from discovery under the Michigan peer review confidentiality law.

AMA Interest

The AMA believes that all documents submitted for purposes of peer review should be protected from legal discovery.

Case Summary

Dorothy Krusac underwent a cardiac catheterization procedure at Covenant Medical Center. She was groggy with Valium and moved around on the table during the procedure. The procedure table was 21 inches wide and had no side rails.

At the conclusion of the procedure, Mrs. Krusac began to fall off the table. According to the hospital, the hospital employees intercepted Mrs. Krusac and cradled her to the ground. According to Mrs. Krusac's estate, however they did not.

Immediately after the event, one of the attending nurses completed an incident report immediately and gave it to her nursing supervisor.

After the fall, Mrs. Krusac developed neurogenic pulmonary edema which worsened her cardiac condition. About four weeks after the fall, she experience acute respiratory arrest and died. Mrs. Krusac's estate sued the hospital for medical malpractice.

The estate sought production of the incident report in discovery, but the hospital claimed the report was prepared for peer review purposes and was thus privileged. The trial court reviewed the incident report in chambers and found that the first page was a factual recitation of the fall, whereas the remainder of the report was analytical in nature. Based largely on the recent decision of the Michigan Court of Appeals in *Harrison v. Munson Health Care, Inc.*, the trial court ordered the production of the first page of the incident report and ruled that the remainder of the report was privileged.

The hospital sought an interlocutory review by the Michigan Court of Appeals of the trial court order requiring production of the first page of the incident report. The Court of Appeals denied this request. The hospital then appealed to the Michigan Supreme Court.

On April 21, 2015, the Michigan Supreme Court reversed and remanded. It found that the Michigan peer review law made all materials collected by a peer review committee privileged, including factual recitations. It also overruled that portion of the Harrison v. Munson Healthcare decision which had held otherwise.

Litigation Center Involvement

The Litigation Center, along with the Michigan State Medical Society, filed an amicus brief in the Michigan Supreme Court, which supported Covenant Medical Center and urged an expansive interpretation of the Michigan peer review privilege.

Michigan Supreme Court brief