

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

CAMILLA BURKE, as Independent )  
Administrator of the Estate of Milphis )  
of the Estate of Milphis Durr, Jr., Deceased, )

Plaintiff )

-v- )

NO: 2023-L-006063

THE INGALLS MEMORIAL HOSPITAL, )  
An Illinois Not-for-profit Corporation, and )  
Deborah Dortch, R.N., )

Defendants )

MEMORANDUM OPINION AND ORDER ON  
PLAINTIFF'S MOTION TO COMPEL EVENT REPORT  
AND CLAIM OF PRIVILEGE OF DEFENDANTS

I. Factual Background

The lawsuit in question involves a fall suffered by the decedent during his admission to the defendant's acute rehab hospital. During discovery, defendant Ingalls produced a privilege log claiming that the eight-page incident report was privileged pursuant to the Illinois Medical Studies Act and the Patient Safety and Quality Improvement Act (PSQIA").

Following a letter sent from plaintiff to defense counsel regarding the insufficiencies of the first privilege log, on May 22, 2024, the defendants produced an amended privilege log, as well as amended discovery answers. The amended privilege log narrowed the claim of applicable privileges to the PSQIA only and the supporting case of *Daley v. Teruel*, 2018 IL App (1<sup>st</sup>) 170891. In addition, the amended privilege log identified 13 more pages of documents, but the plaintiff is not moving to compel production of these.

The plaintiff argues that the Event Report Number 71101 should be produced because the defendants have not satisfied the PSQIA requirements, specifically that the identity of the authors is not disclosed, when the reports were submitted, that the occurrence reports were created solely for patient safety reporting, that neither privilege log produced to date is

supported by an affidavit and without more, the defendants cannot prove that the strict requirements of the PS PSQIA are satisfied.

In their response, the defendants attach the amended privilege log, along with two affidavits, labeled exhibit B and exhibit C. The first affidavit is from the Vice President, Clinical Performance Excellence, for U of C Medicine, and the person responsible for Risk and Patient Safety Quality Performance Improvement, etc., for defendant, Ingalls Hospital. The second affidavit is from the President of Clarity Group, Inc. and Executive Director of Clarity Patient Safety Organization (“Clarity PSO”). These affidavits set forth a plethora of information as to the workings of the defendant hospital, its agreement with Clarity as its PSO, as well as the purposes and compliance with the requirements of the PSQIA.

The defense argues that the occurrence report was created and collected for the purpose of reporting to Clarity PSO, and to facilitate and support the continuing efforts of Ingalls Memorial Hospital and Clarity PSO to improve the quality of patient health care and patient safety. The same day as the fall involving the plaintiff’s decedent occurred, a patient safety investigation was launched, and a confidential nursing peer review was conducted. The occurrence and materials created pursuant to that investigation as well as peer review process were reported to clarity PSO on January 19, 2022.

On June 14, 2023, the plaintiff filed a lawsuit against the defendants, requesting damages for the injuries and wrongful death of the decedent, specifically alleging the defendants were negligent in failing to implement a comprehensive plan of care and fall measures, failing to adequately monitor the plaintiff’s decedent by providing a sitter, and otherwise failing to prevent the fall.

Through written discovery, the defendants identified the occurrence report and claimed it to be privileged. The defendants assert that the privilege log further establishes that the documents were assembled, developed, prepared, and submitted through the Ingalls Health Care safety zone portal. The defense argues that the occurrence report constitutes patient safety work product (“PSWP”) under the PSQIA.

The defendants argue that the privilege log does, in fact, comply with the Illinois Supreme Court Rule 201(n), and the requirements of the case of *Daley v. Teruel*, 2018 IL App (1<sup>st</sup>) 170891.

In that case, the appellate court upheld the privileged character of reports submitted by Ingalls, to Clarity PSO, and found that those reports constituted PSWP. The decision set forth the requirements necessary to hold this privilege applicable:

- 1) the information must be developed by a provider for the purpose of reporting to a patient safety organization;
- 2) the information must have the ability to improve patient safety and the quality of health care;
- 3) the information must be reported to the patient safety organization; and
- 4) the information contains the date it was entered into the patient safety evaluation system.

Based on those requirements, the defendants argue that the incident report in question consisting of multiple documents, satisfies all criteria and should be held to be privileged.

In response to the plaintiffs' argument that the documents claimed to be privileged must be created and/or generated for the "sole" purpose of reporting to a PSO, the defense argues this is not any stated requirement either under the statute itself, or the *Daley* case. The defendant argues that there is absolutely no language in the PSQIA that includes the term of "sole" purpose area and the defendant cites to a federal 11<sup>th</sup> Circuit Court of Appeals decision which expanded on this analysis (*In re Baycare Medical Group*, 101 F. 4<sup>th</sup> 1287 (11<sup>th</sup> Cir. 2024)).

In that case, the district court had determined the documents requested were collected within the medical facilities patient safety evaluation system and reported to a PSO, were not rendered privileged under the PSQIA if they had a "dual purpose," other than reporting to a PSO. The district court had stated because the information was used for other purposes such as internal safety analysis and peer review, that destroyed the privilege. The 11<sup>th</sup> circuit found that the district court had abused its discretion when it applied the wrong legal standard to assess the assertion of privilege, and because the district court had erroneously applied a sole purpose exception, the district court was directed to vacate its order and reconsider the assertion of privilege.

The defendants argue that the plaintiff's argument in the instant case is a mirror-image of the argument put forth by the plaintiff in the *Baycare* case, and should be rejected here as well.

The defendants also assert that if having a fall reduction policy, specifically for occurrences related to falls, which are consistent with standards of care and applicable laws, and documents generated in connection therewith are not to be treated as privileged, and merely to be "ordinary business documents," the protections afforded under the PSQIA

would be nullified.

The Court has read the briefs submitted by the parties and has considered the arguments raised therein, as well as the applicable provisions of the Patient Safety Quality Information Act (PSQIA).

II. Court's Discussion and Ruling

It finds as follows:

1) the amended privilege log as well as the affidavit submitted in conjunction with the response of the defendants render the privilege log sufficient under Supreme Court Rule 201(n);

2) the defendants have satisfactorily established the elements of the privilege from disclosure, contained in the PSQIA;


3) the requirements suggested by the plaintiff are beyond those required by the statute itself and will not be imposed in addition thereto in order for the privilege against disclosure to apply.

Based on the foregoing, the Court orders as follows:

A. The Motion of the Plaintiff, Camilla Burke, as Independent Administrator of the Estate of Milphis Durr, Jr., Deceased, To Compel Production of Ingalls Health System Occurrence Report-Event Number 71101 is denied.

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JUDGE NO.

September 4, 2024

**ENTER**

SEP - 4 2024

**KATHY M. FLANAGAN #267**