Published on *The National Law Review* https://natlawreview.com

Florida Constitutional Provision Mandating Disclosure of Adverse Medical Incidents Preempted by Federal Patient Safety and Quality Improvement Act

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The First District Court of Appeal in *Florida* recently held in Baptist Hospital of Florida, Inc. v. Jean Charles, Jr., No. 1D15-0109, October 28, 2015, that a Florida constitutional provision mandating disclosure of adverse medical incidents is preempted by the federal Patient Safety and Quality Improvement Act. The decision was rendered in a medical malpractice action in which Jean Charles sued Southern Baptist Hospital of Florida, among others, for medical negligence related to a neurological injury suffered by his sister, Marie Charles. During the discovery phase of trial, the plaintiff sought documents related to adverse medical incidents that had occurred at the hospital during the three years prior to the injury at issue in the lawsuit.

Article X, section 25 of the Florida constitution was adopted in 2004 and is commonly referred to by its ballot designation of "Amendment 7." Amendment 7 allows any citizen of Florida to obtain information about adverse medical incidents that occur at health care facilities. Adverse medical incidents are broadly defined as "any other act, neglect, or default of a health care facility or health care provider that caused or could have caused injury to or death of a patient[.]" Art. X, §25(c)(3). Although Amendment 7 was intended to bring transparency to the world of medical errors, it has often been used by medical negligence litigants to obtain discovery beyond the specific situation at issue in a given lawsuit.

The hospital produced certain documents, including two occurrence reports specific to Marie Charles's care along with Annual Reports prepared pursuant to Florida Statute section 395.0197(6) and Code 15 Reports prepared pursuant to Florida Statute section 395.0197(7). But the hospital refused to produce other occurrence reports, which it claimed were privileged and confidential under the federal Patient Safety and Quality Improvement Act of 2005 (the Act). The Act encourages medical providers to collect data regarding health care errors. The data is then funneled to a patient safety organization for analysis and recommendations for improvements in patient care. The information collected is privileged under the Act until the health care provider decides to report the information to the State.

The trial court ordered production of all the requested occurrence reports based on the rationale that the reports were created with the dual purpose of satisfying Amendment 7 record keeping requirements as well as collecting patient safety data under the Act. The trial court reasoned that the

reports lost their privilege under the Act because they fell under the exception enumerated in 42 U.S.C. section 299b-21(7)(B)(iii) for compliance with state law record keeping obligations. Thus, the trial court held that only information collected solely for the purpose of reporting under the Act could be protected from disclosure in litigation.

First District Court Weighs In

The First DCA disagreed, holding that the Act does not provide for disclosure of documents maintained for a "dual purpose." The First DCA noted that while the hospital might be required to collect certain patient safety information under state law, that information remains privileged under the Act unless and until it is actually reported to the State. The First DCA held that the disclosure requirements of Amendment 7 were thus expressly and impliedly preempted by the Act.

Judge Roberts, who prepared the opinion, noted that the Act was intended to replace a "culture of blame" with a "culture of safety" by encouraging evaluation of errors without penalty to the health care providers. The decision is a victory for health care providers in Florida, who have faced repercussions in litigation as a result of Amendment 7 disclosures and who have spent significant time and money complying with Amendment 7 document requests in medical negligence actions.

The First District Court of Appeal's opinion is not final until the time to file a motion for rehearing expires. It is not yet known whether the decision will be appealed to the Florida Supreme Court. We will continue to monitor the case and report any further action.

National Law Review, Volume V, Number 303