

Recent court cases

Florida court: Patients retroactively entitled to physician quality data

In reviewing several cases brought to demand physicians' peer review and quality records—actions permitted under a 2004 amendment to Florida's constitution and subsequent limiting legislation—the Supreme Court of Florida affirmed patients' rights to

the records and held that patients are entitled to all such records, even those generated before the 2004 amendment.

In 2004, Florida voters passed Amendment 7 to the Florida Constitution, titled "Patients' Right to Know about Adverse Medical Incidents," which gives patients access to "any records made or received in

the course of business by a health-care facility or provider relating to any adverse medical incident."

The amendment defines "adverse medical incident" as "medical negligence, intentional misconduct, and any other act, neglect, or default of a healthcare facility or healthcare provider that caused or could have

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caused injury to or death of a patient, including, but not limited to, those incidents that are required by law to be reported to any governmental agency or body, and incidents that are reported to or reviewed by any health facility peer review, risk management, quality assurance, credentials or similar committee, or any representative of such committees.”

In 2005 the Florida legislature passed a law, Florida Sec. 381.028, intended to implement the amendment, but which also contained provisions meant to preserve the immunity of peer reviewers from damages for the result of good faith peer review, and to continue to shield peer review records from discovery and admissibility in judicial proceedings.

Subsequent to the passage of Amendment 7 and Sec. 381.028, two medical malpractice cases were proceeding through the courts. In both, the plaintiffs in the lawsuits sought access to peer review records generated prior to the passage of Amendment 7. In one case, the plaintiff sought records relating to the incident that was the subject of the lawsuit. In the second case, the plaintiff sought peer review and quality data related to the hospital's selection, retention, and termination of the treating physician.

In both cases, the hospitals refused to provide the information because it was generated before Amendment 7 took effect. The hospitals claimed that the makers of the records generated

them with the understanding that they were confidential and privileged, and that they must remain so. Both trial courts held that the hospitals must produce the records; both hospitals appealed.

In one case, the lower appellate court held that Amendment 7 did not apply to records already in existence when the amendment passed. The other lower appellate court held that the amendment did apply to records already in existence at the time it passed, and the hospital must produce the records. Because of the importance of the question and the split among the lower courts, the Florida Supreme Court agreed to hear the appeals to both lower appellate courts' decisions.

In a split decision, the Florida Supreme Court ruled that the use of the words “any record” in the amendment indicated that records currently in existence were clearly within its purview. Thus all records pertaining to an adverse medical incident, as defined by Amendment 7, must be made available to patients upon request, even if the records had been generated with the understanding that they would remain confidential. Stating that “The amendment's language makes clear that it was intended to effect an immediate change in the law governing access to medical records without the need for legislative action,” the Florida Supreme Court also held that the amendment

was self-executing, so Sec. 381.028 was unnecessary. The court acknowledged that even in the case of a self-executing amendment, the legislature was free to create laws governing the same subject matter as the amendment, as long as the laws were not in conflict with it. However, the court found that several aspects of Sec. 381.028 attempted to limit Amendment 7 and were in conflict with it. The court declared these conflicting provisions unconstitutional. The court invalidated the following specific provisions:

- A provision limiting discovery only to “final” records
- A provision limiting patients' access to the records that concern the same or substantially similar condition, treatment, or diagnosis as the patient requesting access
- A provision preserving existing privileges, confidentiality, and immunity for peer reviewers, because the amendment was clearly meant to supercede such protections
- A provision limiting the patient only to the records of the provider or facility where the patient is receiving or has received treatment

Source: Supreme Court of Florida, Florida Hospital Waterman, Inc. v. Buster, No. SC-06-668 and Notami Hospital of Florida v. Bowen, No. SC06-912. March 6, 2008.