

**PSQIA Case Law Alert:
Thompson v. Southern Illinois Hospital Services**

Kathryn E. Brown, Staff Counsel
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In July 2020, the U.S. District Court for the Southern District of Illinois issued a decision in the case of *Thompson v. Southern Illinois Hospital Services d/b/a Memorial Hospital of Carbondale*, No. 18-CV01520-NJR, 2020 WL 3962270 (S.D. Ill. July 13, 2020).

In this case, plaintiffs sued Southern Illinois Hospital Services (“SIH”), alleging injuries due to negligence surrounding the delivery of P.J. Thompson. During discovery, plaintiffs requested three PSO Encounter Entry Reports and three Confidential Risk Management Worksheets.¹ SIH objected to the requests, claiming the documents were Patient Safety Work Product (“PSWP”)² privileged under the Patient Safety and Quality Improvement Act of 2006 (“PSQIA”).³

Confidential Risk Management Worksheets

Plaintiffs contested the privilege claim, arguing that the Confidential Risk Management Worksheets were not generated exclusively for reporting to a Patient Safety Organization (“PSO”) and thus were not PSWP protected by the PSQIA.⁴ In response, SIH seems to have dropped the PSQIA privilege claim for the Confidential Risk Management Worksheets, but claimed they were still privileged under the attorney client work product doctrine and the insurer-insured privilege.⁵ SIH won this discovery dispute, as the court found the documents were privileged under the work product doctrine as documents prepared in anticipation of litigation.⁶

PSO Encounter Entry Reports

SIH maintained that the PSO Encounter Entry Reports were protected as PSWP, alleging they were generated exclusively for reporting to a PSO and were in fact submitted to that PSO.⁷ To support its privilege claim, SIH submitted an affidavit attesting that the documents were sent to the PSO, the title of the documents, and a description of them.⁸ This suggested to the court that the reports were created specifically for submission to the PSO;⁹ thus, the court determined that SIH met its burden of showing the PSO Encounter Entry Reports were generated specifically for reporting to a PSO.¹⁰

The court rejected plaintiffs’ argument that the PSO Encounter Entry Reports were not protected as PSWP because they contained underlying information from a Remote Data Entry report that was not generated

¹ *Thompson v. Southern Illinois Hospital Services d/b/a Memorial Hospital of Carbondale*, No. 18-CV01520-NJR, 2020 WL 3962270, *1 (S.D. Ill. July 13, 2020).

² *Id.*

³ Patient Safety and Quality Improvement Act of 2005, Pub. L. No. 109-41, 119 Stat. 424 (codified as amended at 42 U.S.C. §§ 299b-21 to 299b-26).

⁴ *Thompson*, No. 18-CV01520-NJR, at *1.

⁵ *Id.*

⁶ *Id.* at *3

⁷ *Id.* at *4.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

for reporting to a PSO.¹¹ The court explained that the PSQIA privilege is not waived for a document generated specifically for reporting to a PSO merely because it references information that was generated elsewhere for other purposes.¹² The court points out that this decision is affirmed by the *Daley* case. The court there stated that “merely because information required to be in Jones’s medical record might also be contained in the documents at issue, this fact does not mean the documents themselves are no longer patient safety work product.”¹³

Key Takeaways

- This case demonstrates how a strong affidavit can help a provider meet its burden of establishing the PSQIA privilege applies.¹⁴ The case also identifies some of the key information that should be attested to in an affidavit supporting a PSQIA privilege claim:
 - Documents or information at issue were developed for reporting to a PSO;
 - The documents or information at issue were reported to a PSO;
 - The identity of the PSO;
 - The title of the documents or information at issue; and
 - Description of the documents or information at issue.

Providers may also consider attesting to the following:

- The date the provider entered into a contract with a federally certified PSO to conduct activities to improve the provider’s patient safety and quality of healthcare pursuant to the PSQIA;¹⁵
 - That the PSWP at issue is the type of document or information generally developed by the provider for reporting to its PSO;
 - Submission of the specific PSWP at issue adhered to the provider’s PSES Policies which say this type of document or information is of the type generally developed by the provider for reporting to its PSO;¹⁶
 - The date the PSWP at issue entered the PSES; and
 - If the PSWP has not yet been submitted to a PSO, the PSWP at issue is documented as within a PSES for reporting to a PSO including the date the PSWP entered the PSES.
- The privilege extends to information that is drawn from a non-protected, external source, and incorporated into PSWP. This means that otherwise discoverable information that is integrated into PSWP is not discoverable – though the original source likely will be.

For information about how to join a patient safety organization, contact the Midwest Alliance for Patient Safety (“MAPS”) at MAPSHelp@team-iha.org or 630-276-5657. MAPS is a federally certified patient safety organization and an IHA company.

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¹¹ *Thompson*, No. 18-CV01520-NJR, at *4.

¹² *Id.*

¹³ *Daley v. Teruel*, 107 N.E.3d 1028, 1041 (Ill. App. Ct. 2018).

¹⁴ In contrast, see *Penman v. Correct Care Solutions, LLC*, No. 5:18-CV-00058-TBR-LLK, 2020 WL 4253214, at *4 (W.D. Ky. July 24, 2020) in which case the defendant’s affidavit did not allege sufficient facts to establish the privilege applied.

¹⁵ See *Crook v. Dart*, 409 F. Supp. 3d 928, 929 (N.D. Ill. 2019); *Daley*, 107 N.E.3d 1028, 1033 (Ill. App. Ct. 2018).

¹⁶ See *Penman*, No. 5:18-CV-00058-TBR-LLK, at *4.