

IHA and MAPS PSO Legal Webinar: Conducting Patient Safety Activities Across a Health System and Case Law Update

Wednesday, May 20, 2026

10:00 am - 11:00 am

Attendees are placed in listen-only mode

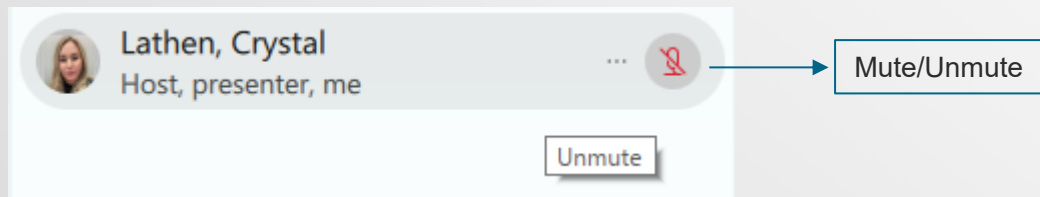
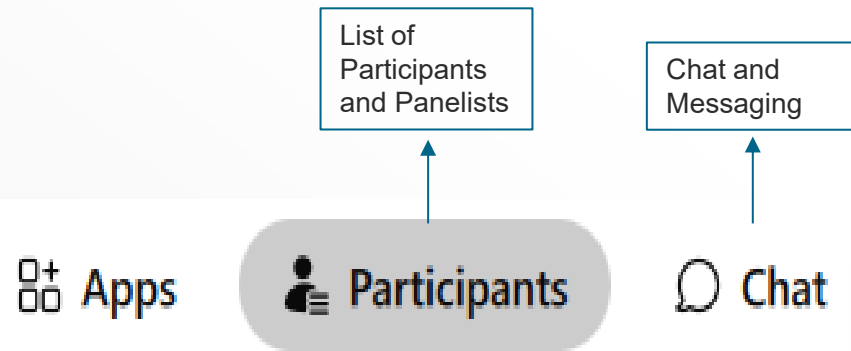
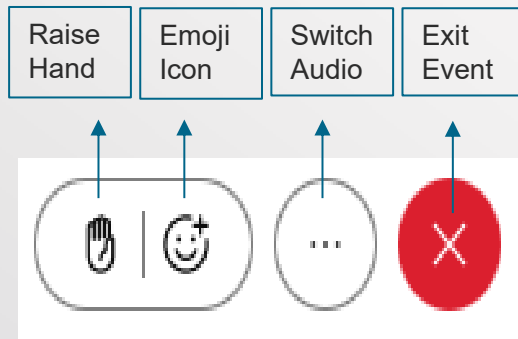
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Webinar Logistics

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Continuing Education Credits

This program will be offering CEs for nurses and MCLEs for attorneys.

CE Statement: The Illinois Health and Hospital Association (IHA) is authorized by the State of Illinois Department of Financial and Professional Regulation (license number 236.000109) to award up to 1.0 hour of nurse continuing education credit for this program.

IHA has obtained approval from the Illinois Minimum Continuing Legal Education (MCLE) Board to offer .75 hour of general Illinois MCLE credit.

- **For attorneys seeking IL MCLE – *You will need to submit the opening code on the evaluation. *Note that there is also a closing code at the end of today’s presentation.***
- Listening to the recording does not provide eligibility for earning credits.

Important Survey Tips:

- **Have your nursing license number and/or ARDC# ready to complete the evaluation.**
- **Note your time-in and time-out of the webinar. This will be asked in the evaluation.**
- **Attorneys will need to submit the opening code and closing code in the evaluation.**
- **Continuing education credits are only available for attending the “live event.”**

Webinar Agenda

Welcome and Introductions	Crystal Lathen, MAPS PSO Consultant, Midwest Alliance for Patient Safety PSO	10:00 to 10:05 am
Conducting Patient Safety Activities Across a Health System and Case Law Update	Wesley R. Butler, JD, Reed Health Law	10:05 to 10:55 am
Questions, Answers and Wrap-up	Carrie Pinasco, Senior Director, Midwest Alliance for Patient Safety PSO	10:55 to 11:00 am

Let's Get Started!

Today's Objectives:

At the conclusion of this program, participants will be able to:

1. Address compliance standards and strategies to assure providers meet program integrity expectations:
 - Principles for sharing PSWP within a complex health system.
 - What it means to be a “provider” and its implications for health system organizations and joint venture arrangements.
 - Event reporting constructs and considerations.
2. Analyze a few select case opinions on the PSWP privilege to identify lessons and strategies for operations and litigation.
3. Understand the distinction between providing arguments and answers in court challenges.

Post event: Meeting materials and the recording will be sent to all program participants.



Reed Health Law

Conducting Patient Safety Activities Across a Health System and Case Law Update

Wes Butler | Reed Health Law | wes.butler@reedhl.com



Wes Butler



Wes Butler counsels hospitals across the country after serious patient events, preserving privileges for patient safety activities while assisting with the regulatory, accreditation, and litigation response.

Based in Lexington, Kentucky, with nearly three decades in health care law.

National Parks enthusiast, one trail at a time.



Reed
Health Law



Conflicts and Caveats

I have no conflicts to disclose

My presentation is educational and not legal advice

- Slides offer practical guidance and are not comprehensive statements of law
- Slides promote best practices, but situations require common sense and flexibility
- Privilege claims always involve case-by-case analysis

Love questions

Thanks for all you do to improve safety and quality



What's at stake?

Without privilege, patient safety activities (e.g., event reports, RCAs, peer review, etc.) are discoverable and routinely exploited in litigation

Discoverability chills patient safety activities – providers engage less candidly, or not at all, when their work product can be used against them

Courts do not presume privilege – the privilege must be affirmatively proved

A poorly presented privilege claim risks not just losing the case – it can produce adverse legal precedent that affects the entire field

Asserting privilege is a representation of program integrity – it implicates the credibility of both the provider and its counsel

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Learning Objectives

PSQIA Compliance standards

Case law analysis



Learning Objectives

Address compliance standards and strategies to ensure providers meet program integrity expectations and minimize privilege vulnerabilities

- * Principles for sharing PSWP within a complex health system
- * What is a “provider” and its implications for health systems
- * Event reporting constructs and considerations

Analyze select case opinions on the PSWP privilege to identify lessons and strategies for operations and litigation

Patient Safety Act Compliance

Sharing rules, disclosure permissions, and event reporting

Patient Safety Act Compliance

Competing principles in the PSQIA

Protects PSWP with strong privilege and confidentiality protections
Encourages the sharing of lessons learned

How are these principles balanced?

Can we internally share lessons learned from PSWP?

Can we share PSWP among affiliated providers? Parent entities?

When are we jeopardizing the PSWP privilege by sharing PSWP?



Patient Safety Act Compliance

Rules of thumb on sharing PSWP information

1. Sharing PSWP *internally* within the provider is a use and is allowed
2. Sharing PSWP *externally* from the provider is a disclosure and is generally prohibited – 42 USC § 299b-22(b)
3. Sharing PSWP externally may be allowed if it fits any one of ten (10) specific “Disclosure Permissions” listed in the Act

Patient Safety Act Compliance

Internal Sharing of PSWP – “Use”

Providers may use PSWP information internally with few restrictions

- Rule does not regulate uses of PSWP within a “single legal entity”
- Extends to workforce and providers holding privileges
- Free to discuss and share PSWP in identifiable form for educational, academic, or other professional purposes
- “Use” does not include adverse employment actions for PSO-reporting
- Apply practical, common-sense reasoning to all scenarios

Patient Safety Act Compliance

External Sharing of PSWP – “Disclosure”

Providers are prohibited from disclosing PSWP

- Disclosure means divulging PSWP held by one party to “another legally separate” party other than a workforce member or provider holding privileges – 42 CFR § 3.20
- Sharing PSWP with a legally separate person/entity is a disclosure
- Sharing with workforce and a provider holding privileges (even if they are “legally separate”) is not a disclosure – it is a use
- Apply practical, common-sense reasoning to all scenarios

Patient Safety Act Compliance

External Sharing of PSWP – “Disclosure Permissions”

The Act identifies 10 circumstances where a provider may disclose PSWP externally, yet maintain protections

These are exceptions to the prohibition on disclosure

Sharing PSWP through a Disclosure Permission does not waive privilege or confidentiality – 42 USC §299b-22(d) and 42 CFR §3.208

Rule says even impermissible disclosures are still privileged

Patient Safety Act Compliance

External Sharing of PSWP – “Disclosure Permissions” (cont.)

Disclosure Permission “to carry out patient safety activities” – 42 USC § 299b-22(c)(2)(A)

Four scenarios under the “Patient Safety Activities” Disclosure Permission

- Provider-to-PSO disclosures

- Provider-to-Contractor disclosures

- Provider-to-Affiliated Provider disclosures

- Provider-to-Unaffiliated Provider disclosures (de-identification)

Patient Safety Act Compliance

Permissible Disclosures to Affiliated Providers

A provider can permissibly disclose PSWP to a legally separate provider if that entity is:

- The parent organization of the provider

- Under common ownership, management or control of the provider

- Owned, managed or controlled by the provider

In complex health care systems, care should be taken to consider which entities are (and are not) an affiliated provider

Patient Safety Act Compliance

Permissible Disclosures to Affiliated Providers (cont.)

The PSO Program is designed for providers

A “provider” is either:

- An individual or entity licensed under State law to provide health care service (Statutory Providers)

- A parent organization of a provider even if the parent organization is not licensed under State law to provide health care services (Deemed Provider)

Patient Safety Act Compliance

Permissible Disclosures to Affiliated Providers (cont.)

A “parent organization” is an entity that:

- Owns a controlling or majority interest in a component organization

- Has the authority to control or manage agenda setting, project management, or day-to-day operations

- Has the authority to review and override decisions of a component organization

Safe to follow a “one-step” rule on the organizational chart



Patient Safety Act Compliance

Permissible Disclosures to Affiliated Providers (cont.)

Can I share PSWP with this entity as an affiliated provider?

Does the entity qualify as a “provider” under the Statute?

If so, is the entity under common ownership, management or control with us?

If the entity is not a “provider” under the Statute, does it qualify as our “parent organization”?

Is the entity “one-step” away from us on the org chart?

Joint Venture relationships require special consideration

Patient Safety Act Compliance

Event Reporting

Should you separate unprotected and protected info in the event report?

Structuring event reports to exclude certain information from PSWP

- The above-the-line approach to event reporting

- Distinguishing factual information from opinions/analyses

- Clear signs to divide facts from analyses

Examples of dividing mechanisms: Pop-ups, access limitations, labels

The reporting “database” does not equal the “event report” itself

PSWP Case Opinions

Lessons from recent court decisions on the PSWP privilege



PSWP Case Opinions

Estate of Funkhouser v. Del. Cnty - ED of PA (Feb. 19, 2026)

Funkhouser was murdered by a fellow inmate. Wellpath, the prison's in-house medical provider, prepared an M&M report

Affidavit said the Report was prepared and reported "exclusively" to a PSO for improving patient safety and quality

Court denied Prison's PSWP claim for the Report:

Provider did not show the Report *could* improve safety & quality

On review in chambers, Judge could see nothing in the Report that could improve patient safety



PSWP Case Opinions

Estate of Funkhouser v. Del. Cnty (cont.) – From the opinion:

“Privileges serve an important function, but they also stand in the way of a truth-finding exercise. Thus, it’s important that courts confronted with privilege questions analyze the elements of a privilege carefully and hold the party invoking a privilege to its burden to prove each of the elements of the privilege.”

“In this instance, the medical provider's employees have failed to demonstrate that the information at issue could result in improved patient safety, so the PSQIA does not apply, and they must produce it.”



PSWP Case Opinions

Baptist Healthcare v. Kitchen – KY Sup. Ct. (Dec. 18, 2025)

Patient with an altered mental state fell while ambulating to the bathroom. Patient aide was the only witness. Fracture discovered the next day. The medical record contained few facts surrounding the fall.

Hospital prepared an event report and RCA and claimed PSWP privilege.

Trial Court ordered the event report to be produced in its entirety and most of RCA to be produced because MR *should* have contained more info on the fall.



PSWP Case Opinions

Baptist Healthcare v. Kitchen – (cont.)

C of A held the RCA was entirely PSWP, but event report was not PSWP

KY Sup. Ct. agreed – the RCA was entirely PSWP, but event report was “State mandated” and could not be PSWP per AHRQ Guidance

Submitting event report to a PSO is not conclusive of privilege

AHRQ recommends that info cannot be PSWP if made for “external reporting or record-keeping”

Hospital’s fall policy suggests event report was for regulatory compliance

Event report was prepared the same day as the fall



PSWP Case Opinions

Baptist Healthcare v. Kitchen – (cont.)

Regulatory language that Court said was a “State mandate”?

Hospital shall have written P&Ps governing operations and services, including: ***“effective procedures for tracking incidents, including transfusion reactions, drug reactions, and medication errors that may occur in the facility. A hospital shall have discretion as to its process, and the procedures shall encourage statistical analysis to inform process improvement activities.”***

KY law does not require submission of event reports to the State

PSWP Case Opinions

Boyle v. Main Line Health – PA Superior Ct. (Sept. 10, 2025)

Prison health care provider argued mortality reviews were PSWP

Court rejected PSWP privilege claim:

- Bare recitation of statute not sufficient to state PSWP claim

- Evidence suggested mortality reviews were conducted for contractual and accreditation purposes, not the PSO Program



PSWP Case Opinions

Est. of Devine v. Child.'s Hosp. of Phila. – PA Superior Ct. (Nov. 21, 2025)

Opinion captured the dialogue between judge and defense counsel:

COURT: *Counsel, you're playing word games with me here.*

[APPELLANT'S COUNSEL]: *The morbidity and mortality conference and any document that flows from that is protected by the Peer-Review Protection Act. And, this is indicated in the supplemental response.*

THE COURT: *Well, Counsel, as I said earlier, you're playing word games with me in terms of investigation versus peer review.*



Reed Health Law

Questions?

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Questions for our expert?

- Let's review chat
- Raise hands
- Now it's your turn!



What did You Learn today About Privilege Protections?

- As participants, what were key learnings that you received from today's event?
- Do you have any comments about case law or things you heard today?
- What are your biggest concerns about privilege?



Questions from MAPS?

- What concerns should Illinois healthcare providers have about any current case challenges?
- Illinois may institute state reporting in the coming years. What do you think would be needed in a PSES policy to make sure that PSO protections hold in light of mandatory reporting? Does another state have a strong model?
- How does an organization prepare for handling auditors challenges?
- Are there any case challenges to complaints, claims or grievances involving PSO protections?



Next Steps and Closing Remarks

- PSO membership is key to defending challenges to your patient safety investigations, internal event details and verbal discussions. Note that the CMS Patient Safety Structural Measures support PSO membership in Domain 4: Accountability & Transparency
- Including internal and external legal counsel in PSO education is crucial to understanding privileged patient safety work product (PSWP.)
- MAPS PSO membership provides the strongest legal protections along with collaborative learning opportunities among participating healthcare organizations.
- If you do not have a PSES, MAPS membership provides a template to begin writing your policy to add protection to your organization.

Final Prep for Credits

1. Please complete the survey to give MAPS feedback on your experience today.
2. Remember to record your CE/MCLE credit requests in the evaluation.
3. Put the opening and closing codes on your evaluation.
4. Complete this by Wednesday, May 27, 2026.

<https://www.surveymonkey.com/r/052026>

Many Thanks to our Speaker: Wes Butler

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