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Congratulations to BSPH attorneys Jeffrey W. Van Wagner, Diane L. Feigi and Jay C. Rice for receiving a unanimous decision in the case of Sexton v. Health Care Facility Mgt., LLC, 2002-Ohio-963. In reversing the trial court, the Second District Court of Appeals held that the trial court erred in denying the defendants' motion for protective order and ordering the production of privileged and confidential incident reports and attendant investigatory materials, including witness statements, interview documentation, and medical information, relative to non-party residents of the defendants' long-term care facility. The Court based its decision on the application of Ohio's peer review and quality assurance privilege at R.C. 2305.24 et seq. as well as the protections of HIPAA and Ohio's physician-patient privilege statute at R.C. 2317.02(B)."

This appeal stemmed from a lengthy discovery dispute at the trial court level. The plaintiff had propounded extensive written discovery requests upon the defendants, including a request for production of "[a]ll documents related to or referring to complaints or allegations of abuse or assault of any resident" of the facility. The defendants objected to this request on various grounds, including the peer review and quality assurance privilege. After briefing and arguing the issue, the trial court ordered the defendants to present the documents at issue for an in-camera inspection. Upon review, the trial court held in a June 2021 order that the peer review and quality assurance privilege did not apply to the documents. However, rather than order the production of the documents, the trial court instructed the defendants to conduct additional briefing on the potential application of HIPAA or other laws. The defendants complied, citing to the protections of HIPAA and 2317.02(B) relative to the non-party residents' medical records attached to, and medical information cited within, the quality assurance incident reports, witness statements, and interview documents. In August 2021, the trial court denied defendants' motion for protective order and ordered the production of the incident reports, attendant investigatory materials, and medical records. The trial court also specifically referenced its June 2021 decision in its August 2021 order. Defendants timely appealed.

In reaching its decision to reverse the trial court's order, the Second District first addressed the plaintiff's arguments that the Court of Appeals did not have jurisdiction over the appeal because the defendants did not file a notice of appeal from the June 2021 order and attached the August 2021 order, but not the June 2021 order, to their Notice of Appeal. The Court disagreed with the plaintiff, holding that the June 2021 order "was interlocutory in nature, did not finally decide the privilege orders, and therefore was not immediately appealable." The Court further held that the August 2021 order was a final, appealable order because it denied the defendants' motion for a protective order, meaning that the defendants were required to produce documents that they alleged were privileged. Moreover, under the reasoning that an appeal includes all interlocutory orders, the Court held that the defendants' appeal from the August 2021 order allowed the Court to also consider the trial court's June 2021 order.

In addressing the merits of the appeal, the Court held that the trial court erred by ordering the production of the documents at issue. The Court reasoned that the defendants met their burden to invoke the peer review and quality assurance privilege by establishing, via the affidavits of the facility's Medical Director and Executive Director, that a quality assurance committee existed at the facility and that the facility investigated each of the non-party residents' allegations of abuse. Further, the Court noted that the incident reports contained language along the bottom of each page stating that they were prepared for the facility's quality assurance program. Also, the Court reasoned that the facility's Medical Director testified in her affidavit that the facility's quality assurance committee was required to meet, and in fact, did meet, to review the investigation materials related to each non-party resident's allegations of abuse, and those reviews included the incident reports and attendant investigatory documents. Thus, the Court of Appeals held that "[t]hese documents fit squarely within the peer-review privilege," and the trial court erred in ordering their production.

Regarding the non-party residents' medical documentation, the Court of Appeals reasoned that, in general, medical records are protected from disclosure under R.C. 2317.02(B)(1), also known as the physician-patient privileged communications statute. The Court also noted that HIPAA prohibits the knowing disclosure of an individual's identifiable health information. Accordingly, upon review of the non-party residents' medical documentation, the Court held that said documents "are medical records that should have been protected from disclosure." The Court also held, consistent with Ohio precedent, that "[a] simple redaction of the names on the medical records is not sufficient to provide the protection to which these medical records are entitled."

The Court of Appeals thus held that the trial court should have granted the defendants' motion for protective order and reversed the trial court's decision.

If you wish to read the entire decision, please read the link below.

https://law.justia.com/cases/ohio/second-district-court-of-appeals/2022/29262.html