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CLIENT ALERT

MICHIGAN SUPREME COURT AFFIRMS THE SANCTITY OF THE PEER REVIEW PRIVILEGE

On April 21, 2015, the Michigan Supreme Court issued its much-anticipated decision in *Krusac v Covenant Medical Center*. The Court held that the objective facts contained in a hospital's incident report are NOT discoverable. The Opinion, which was signed by all Justices who participated, carefully examined the statutory peer review privileges contained in MCL 333.20175(8) and MCL 333.21515 as well as multiple cases interpreting those statutes. After doing so, the Court determined that there is nothing in the language of either statute that would support parsing an incident report to permit litigants to discover the factual information contained in the report.

The Supreme Court recognized that that language of §§ 20175(8) and 21515 makes privileged all records, data, and knowledge collected for or by a peer review committee in furtherance of its statutorily mandated purpose of reducing morbidity and mortality and improving patient care. In fact, the Opinion specifically limited two Court of Appeals decisions that plaintiffs often rely upon in arguing for the discoverability of such reports. The Court held that *Centennial Healthcare Mgt Corp v Dep't of Consumer & Indus Servs*, 254 Mich App 275; 657 NW2d 746 (2002) is limited to its specific facts and should not be interpreted to permit private litigants to obtain the factual information in a nursing home's incident report. The Court also overruled in part *Harrison v Munson Healthcare, Inc*, 304 Mich App 1; 851 NW2d 549 (2014), which held, in part, that the peer review privilege does not protect objective facts gathered contemporaneously with an event. Moreover, in so holding, the Court recognized the distinction between a hospital's duty under MCL 333.21513(d) to create a peer review committee that collects and reviews information in an effort to reduce morbidity and mortality and improve patient care (to which incident reports created under §§ 20175(8) and 21515 pertain) and the "entirely distinct duty" of a hospital under §20175(1) to make a full and complete medical record concerning a patient's current care. In other words, any records, data, and knowledge collected for or by a committee assigned a review function under §§ 20175(8) and 21515 "for the purpose of reducing morbidity and mortality and improving the care provided in the hospital for patients," pursuant to §21513(d), are protected from discovery.

The *Krusac* decision affirms the sanctity of the peer review privilege. Hospitals and other health care facilities with committees that fall within §§ 20175(8) and 21515 no longer have to worry about whether the information contained in the incident report could be disclosed to a court or a litigant. *Krusac* permits peer review committees to once again obtain full, candid factual development of an incident without the threat that the statements contained in the incident report could later be used against the hospital or providers in litigation.