

Florida Supreme Court Says External Peer Review Reports are Discoverable Under Amendment 7

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On October 26, in *Edwards v. Thomas, et al.* (SC15-1893) the Florida Supreme Court held that external peer review reports are discoverable under Amendment 7.

Amendment 7, as article X, Section 25 of the Florida Constitution is more commonly known, provides persons the “right to have 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.” That “right to access” is at odds with the confidentiality required for peer review and has resulted in numerous legal challenges.

This latest challenge arose from a medical negligence claim against Dr. Larry D. Thomas, and Bartow Regional Medical Center (“Bartow”) where Bartow objected to a request to produce certain peer review documents. Bartow argued that the records did not relate to an adverse medical incident, were not made or received in the course of business, and were protected by attorney-client privilege and as opinion work product. After the trial court ordered Bartow to produce the documents, Bartow petitioned the Second District for a writ of certiorari. The Second District quashed, in part, the trial court order holding that the external reports were not “made or received in the course of business” because they were made in anticipation of litigation, and that they did not relate to an “adverse medical incident” because they were not created by a “similar committee” as contemplated under Amendment 7.

The Supreme Court disagreed, quashed the Second District’s decision, and continued its unwavering support of patient access to “any records made or received in the course of business by a health care provider relating to any adverse medical incident.” (Emphasis in the original.)

The court’s key holdings include:

- Amendment 7 was aimed at eliminating all discovery restrictions on “any records ... relating to any adverse medical incident.” Art. X, § 25(a), Fla. Const. (Emphasis in the original).

The court stated that Amendment 7’s application was not intended to be limited only to those adverse medical incident records previously protected by statute. Instead “any record” under Amendment 7 relating to “any adverse medical incident” necessary includes but is not limited to, those adverse medical incident records required to be reported by state or federal law.

- An external peer review committee qualifies as a “similar committee” under the Amendment and therefore, an external peer review reports falls within the purview of Amendment 7.

The phrase “similar committees” applies to both risk management committees and to those beyond what is statutorily required of health facilities.

- The external peer review reports are the type that are “made or received in the course of business” by a health care facility or provider and therefore the reports fall within the purview of Amendment 7.

The court noted that the external peer reports contain similar information about the adverse medical incidents as those the hospital had an independent obligation to maintain. And, that records that were technically prepared in anticipation of litigation may also be kept in the ordinary course of business.

The court also disagreed with the dissent’s view, that all medical incident reports requested by an attorney should be protected, stating that such an opinion would render Amendment 7 a nullity.

- Reports containing “fact” work product are discoverable under Amendment 7.
- The court did not address the issue of opinion work product or the attorney-client privilege as they relate to Amendment 7 because it found it did not apply to the current case. Therefore, objections citing attorney opinion work product and attorney-client privilege remain valid objections to Amendment 7 document requests.

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