

# Supreme Court Rules Objective Facts in Hospital Incident Reports Protected by Michigan's Statutory Peer-Review Privilege

April 24, 2015

The Michigan Supreme Court has ruled that objective facts contained in a hospital incident report, which were gathered contemporaneously with the event, are, in fact, protected by the state's statutory peer-review privilege, overruling a prior Michigan Court of Appeals opinion to the contrary.

The court's opinion in *Krusac v Covenant Medical Center, Inc*, Docket No. 149270 (April 21, 2015) upholds the broad scope of the privilege applying to all records, data and knowledge collected by a hospital's peer-review committee pursuant to MCL 333.20175(8) and MCL 333.21515.

The plaintiff in *Krusac* sought discovery of an incident report prepared by a nurse who was present when a patient rolled off of the operating table, following a cardiac catheterization procedure, and died shortly thereafter. The trial court, relying on the published opinion of the appellate court in *Harrison v Munson Healthcare, Inc*, 304 Mich App 1 (2014), ordered the hospital to produce the first page of the incident report containing objective facts that the *Harrison* court had ruled were not protected by the peer-review privilege.

The Supreme Court granted leave to consider whether *Harrison* had been correctly decided and held that the clear language of the statutes that create Michigan's peer-review privilege did not contain an exception for objective facts contained in an otherwise privileged incident report. The court noted that plaintiffs seeking relevant information contained in privileged incident reports have other means of discovering the information, including through eyewitness testimony and from the patient's medical record.

In overruling *Harrison*, the court cautioned that "mere submission" of information to a hospital's peer-review committee does not necessarily protect the information and that the structure and function of an asserted peer-review committee is subject to scrutiny in determining whether the privilege in fact applies.

Members of Plunkett Cooney's Medical Liability Practice Group are available to assist hospitals in reviewing the structure and function of their peer-review committees to ensure peer-review materials will be protected under the statute.