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An Illinois appellate court recently upheld a lower court's decision ordering a nursing home to produce a report and witness statements concerning a resident's fall. The court's decision in *Lindsey v. Butterfield Health Care II, Inc., et al.* is the first by an Illinois appellate court interpreting the Long-Term Care Quality Assurance Act, 745 ILCS 55/1, *et seq.* ("Quality Assurance Act").

The Quality Assurance Act applies to long-term care facilities and provides that proceedings and communications of a peer-review or a quality-assessment-and-assurance committee at a long-term-care facility are privileged. The Quality Assurance Act contains language similar to that in the Medical Studies Act, 735 ILCS 5/8-2101, *et seq.*, which pertains to quality assurance committees at medical facilities such as hospitals. Documents generated specifically for the use of a peer-review committee are privileged under the Medical Studies Act. However, the Medical Studies Act does not protect documents created in the ordinary course of a medical facility's business before the peer-review process begins.

In *Lindsey*, the defendant nursing home, Meadowbrook Manor, argued that its quality assurance process required the completion of internal quality assurance investigation reports relating to incidents involving resident injuries. Meadowbrook Manor claimed that the report and the witness statements made after the resident's fall were privileged under the Quality Assurance Act because the report and statements would eventually be reviewed by its quality assurance committee.

The court interpreted the Quality Assurance Act the same way that courts have interpreted the Medical Studies Act and rejected Meadowbrook Manor's argument. The court explained that documents that are created in the ordinary course of a hospital's business or for later corrective action by hospital staff are not privileged under the Medical Studies Act. The court ruled that the same is true of the Quality Assurance Act. Meadowbrook could not invoke the Quality Assurance Act's protection by declaring in advance that the documents related to the resident's fall would later be reviewed as part of the peer-review process.

The court's decision leaves the possibility open that documents may be privileged under the Quality Assurance Act if they are created at the time of, or after, a quality assurance meeting.

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