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## Federal Court Decision Highlights Importance of Hospital Peer Review Committees

The Federal District Court in the Eastern District of Michigan recently applied Michigan's medical peer review privilege and found that materials prepared by a hospital anesthesia quality assurance director and provided to the hospital's patient safety officer were not protected from discovery.

In *William Beaumont Hospital v. Medtronic Inc.*, No.09-CV-11941 (E.D. Mich. May 17, 2010), defendant *Medtronic, Inc.* sought discovery of plaintiff *Beaumont's* hospital records, and *Beaumont* asserted that such records were protected from discovery under Michigan's medical peer review privilege. Under Michigan's Public Health Code, "[t]he records, data, and knowledge collected for or by individuals or committees assigned a [professional] review function are confidential and ... shall not be public records, and shall not be available for court subpoena." See MCL § 333.21515.

The *Beaumont* court evaluated the following three types of records to determine whether the peer review privilege would protect the records from discovery:

1. Food and Drug Administration (FDA) site visit summary – The court held that the FDA summary was protected by the peer review privilege because the document was prepared by a hospital administrator serving in her capacity as a member of the hospital's performance improvement steering committee, and the committee was considered a professional review committee by the court.
2. Physician credential files – The court also held that the credentialing files were protected by the peer review privilege because the files were collected and prepared by the hospital's credentials and qualifications committee, whose purpose was to conduct the professional review of physician applications for medical staff membership and clinical privileges, and to make recommendations to the medical review board.
3. Anesthesia department quality assurance review (ADQAR) – The court held that the ADQAR was not protected because although it was prepared by the anesthesia quality assurance director and was provided to the patient safety officer, it was not "collected for or by a peer review committee."

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The *Beaumont* case holds that the involvement of a peer review committee is essential for record and data protection under Michigan's peer review privilege. It is not sufficient to simply assert that records are privileged material because they were prepared by an individual working in a quality or safety position at a hospital, or that the records were given to the peer review committee. The peer review committee must participate in the peer review process.

**Click here** for a copy of the *Beaumont* opinion. For further information regarding the *Beaumont* decision or Michigan's peer review privilege, please contact any member of the Honigman Health Care Department.

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