

## PSQIA PRIVILEGE UPHELD IN NON-MED MAL CASE BY CONNECTICUT TRIAL COURT

May 1, 2023

On March 31, a Connecticut trial court upheld privilege afforded to Patient Safety Work Product (“PSWP”) in what is believed to be the state’s first reported opinion on the applicability of the Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b-21, *et seq.* (the “PSQIA”). The decision is a positive step forward for providers participating with a Patient Safety Organization (“PSO”) in Connecticut and elsewhere.

### BACKGROUND ON THE PSQIA

The PSQIA establishes a voluntary, confidential, and non-punitive system of data sharing of healthcare errors in order to improve patient safety and healthcare quality through the creation of PSOs. Providers participating with PSOs have an opportunity to collect, analyze, and create confidential and privileged PSWP within a protected space that can then be shared with PSOs to further their quality improvement efforts. PSOs collect PSWP from participating providers and develop best practices, recommendations, and shared learnings.

Understanding that providers would be hesitant to share data about real or potential errors, and that the candor of the data is necessary to maximize improvement opportunities, PSWP is subject to mandatory protections under the federal statute, including that the information is not subject to discovery, court order, or subpoena, and is not admissible in evidence (among other protections). 42 U.S.C. § 299b-22(a). Importantly, the confidentiality and privilege requirements under the PSQIA are “notwithstanding any other provision of state or local law.” 42 U.S.C. § 299b-22(a)-(b).

### FRANCO v. YALE NEW HAVEN HOSPITAL<sup>1</sup>

*Franco v. Yale New Haven Hospital* relates to an incident where Dean Franco was attempting to visit a patient in the emergency room at Yale New Haven Hospital (“Hospital”) on August 7, 2018. Mr. Franco had been asked to leave the emergency room because his girlfriend, due to her medical condition, was not permitted to have visitors. Following a request to leave, Mr. Franco attempted to enter the patient care area through the ambulance bay (where visitors are not allowed to preserve space for oncoming trauma patients). Mr. Franco then allegedly began yelling and acting in an aggressive manner towards Hospital staff. Hospital security’s attempts to direct Mr. Franco away from the ambulance

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<sup>1</sup> 2023 Conn. Super. LEXIS 413 (March 31, 2023).

bay were unsuccessful, and when security opened the doors to try to speak to Mr. Franco, he ran into the patient care area and attempted to grab a female patient's stretcher to remove her from the emergency department. Security did not know the female patient was Mr. Franco's girlfriend. Because of his aggressive behavior towards staff and the patient, the officers restrained and handcuffed Mr. Franco, and a knife and knife tool were confiscated. Mr. Franco was arrested on charges for assault on emergency personnel, trespass in the first degree, and breach of peace trespass in the second degree.

Following the event, the Patient Safety Coordinator completed an investigation within the Hospital's Patient Safety Evaluation System ("PSES") for patient safety purposes. She participated in a safety huddle to discuss the incident and interviewed involved personnel. She collected notes for submission to the Hospital's PSO and submitted them to the PSO. This work led to a subcommittee to work on an alert process designed to manage incoming aggressive behavior to better manage the care and safety of patients in the emergency room and elsewhere. The subcommittee notes were also submitted to the PSO.

Mr. Franco filed suit against the Hospital for assault/battery, negligence, negligent training/supervision, and unlawful and forcible detention. Mr. Franco noticed the deposition of the Patient Safety Coordinator and requested that she produce "[a]ny and all records (including any written reports, videos, email communications, interoffice memos concerning said incident, etc.) relative to the aforementioned 8-7-2018 wherein Mr. Dean Franco was injured and subsequently arrested by the New Haven Police Department that are within your exclusive possession, custody, control or knowledge or the exclusive possession, custody, control, or knowledge of Yale New Haven Hospital." The Hospital filed a motion for a protective order to preclude the plaintiff from deposing the Patient Safety Coordinator because her knowledge and the requested documents were privileged under state and federal law, including the PSQIA.

## **MATERIALS WERE PRIVILEGED PSWP**

The Court found the materials prepared by the Patient Safety Coordinator and submitted to the PSO met all conditions to be PSWP. The Hospital maintained a PSES for the purpose of improving the safety and quality of patient care and had developed a process for collecting, analyzing, and managing PSWP for submitting to the PSO. The Patient Safety Coordinator was one of the designated leaders responsible for the collection and submission of PSWP. The Patient Safety Coordinator's investigation was conducted within the PSES pursuant to the PSQIA, and all notes were maintained within the PSES for submission to the PSO. The Court found that the privilege and confidentiality provisions of the PSQIA and the relevant Connecticut state law precluded disclosure and that no exception applied.

## **NOT LIMITED TO MEDICAL MALPRACTICE**

The Plaintiff argued that the PSQIA and Connecticut state statute only applied to medical malpractice cases, but the Court disagreed. Nothing in the PSQIA limits the application of the statute to medical malpractice cases. The Court explained it had no authority to create any exception to the PSQIA's applicability when Congress did not do so. The Court ultimately granted the defendant Hospital's motion for the protective order regarding the requested deposition and production of documents. Note the case remains ongoing, and this advisory will be updated if there is any appeal or further substantive litigation on the issues discussed here.

## **IMPACT ELSEWHERE**

Our [Patient Safety and PSOs](#) Team continues to monitor cases regarding the PSQIA nationwide, including those similar to *Franco*, which was a first impression in the relevant jurisdiction. If you have questions relating to recent PSO litigation or other aspects of PSO development, strategy, implementation, and policies, please contact a member of Hancock Daniel's [Patient Safety and PSOs](#) Team.

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