



[To view a web version of this message, click here](#)

Issue #7

QUALITY ASSURANCE DECISIONS

Area of Coverage - [Patient Safety and Quality](#)

Three recent Alberta Court of Queen's Bench decisions [*Forsberg v. Naidoo*, 2009 ABQB 369, *Dawe v. Evans*, 2009 ABQB 724, *Bruce Estate*, 2010 ABQB 21] illustrate judicial expectations about what kinds of activities and documents qualify for legal protection under section 9 *Alberta Evidence Act*, RSA 2000 A-18. To date, none of these decisions have been appealed. A definitive statement from the Alberta Court of Appeal is uncertain.

These cases involved different kinds of quality assurance activities or documents that were intended to have section 9 legal protection:

1. A report of a quality assurance review triggered by a patient complaint that was not shared with the patient;
2. A letter a physician authored to a family summarizing discussions and conclusions of a quality assurance review; and
3. A publicly released report of a Health Quality Council of Alberta quality assurance review.

In each matter Counsel for the Plaintiff applied for a Court Order compelling the disclosure and use of these quality assurance activities or documents as evidence in litigation. In all three decisions the Court denied the application.

The Court relied on similar principles in each case:

- The legislative purpose of section 9 gives priority to legal protection of confidentiality around quality assurance activities and documents over any litigation advantage from using the information;
- Section 9 expresses an absolute legal prohibition against using, or even seeking to use quality assurance information in an "action", which covers facts as well as opinions;
- Section 9 is a legislative prohibition that cannot voluntarily be waived; and
- "Action" means legal proceedings [interpreted broadly].

The decision on the HQCA report adds that the public disclosure of a quality assurance record in a forum outside of an "action" does not weaken the Section 9 prohibition against using it as evidence in an action, at least in circumstances where public disclosure is an appropriate part of the mandate of the disclosing party.

EDMONTON

2000 OXFORD TOWER
10235 - 101 STREET
EDMONTON AB T5J 3G1
PH 780 423 3003

CALGARY

400 THE LOUGHEED BUILDING
604 - 1 STREET SW
CALGARY AB T2P 1M7
PH 403 260 8500

YELLOWKNIFE

201, 5120 - 49 STREET
YELLOWKNIFE NT X1A 1P8
PH 867 920 4542

This E-Bulletin is a publication of Field LLP's Health Industry Services Group. For more information on our services and contacts, please see our [HISG Resume](#).

These principles potentially challenge evolving quality assurance practices and procedures. We would suggest that health care organizations and other bodies that rely on section 9 [or equivalent statutory provisions] protection for patient safety activities re-examine the alignment of current operational practices and procedures with legislated powers and obligations.

To subscribe/unsubscribe to Field Law Publications, please click the following link to submit your request:

http://www.fieldlaw.com/publications_subscriptions.asp

