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Protecting the Rights of Injured Workers

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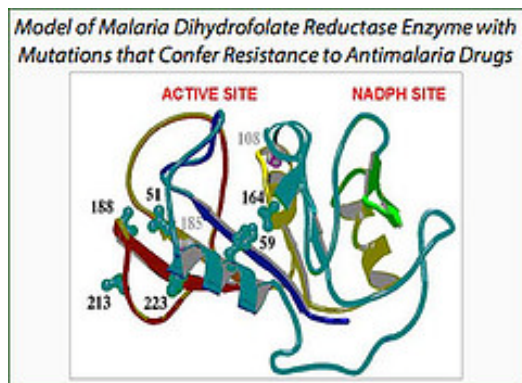
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Illinois Court: Can Medical Malpractice Plaintiff Can Access Hospital Records Before Filing Suit?

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In *Zangara v. Advocate Christ Medical Center*, 2011 WL 2342736, the Appellate Court of Illinois, First District, the plaintiffs contracted methicillin-resistant staphylococcus aureas (MRSA) while patients at Advocate. One person died and the other survived. The medical malpractice lawsuits filed on their behalves alleged that the defendant was negligent in its management of infection and infection-control procedures.

At issue on appeal was whether the trial court improperly concluded that certain information requested by the plaintiffs in support of their claim was privileged under the Medical Studies Act (735 ILCS 5/8–2101 (West 2008)) (Act) and thus did not have to be provided to the plaintiffs at that stage of litigation.

The information at issue consisted of hospital records regarding the rates of MRSA infections during a specific time frame. The defendant argued that the records did not have to be turned over because the records were privileged under the Act and because the request exceeded the scope of discovery available prior to filing a 2-622 affidavit (the affidavit filed on behalf of the plaintiffs by a physician wherein the physician states that there appears to be a meritorious cause of action). According to the defendant, discovery at that stage of the proceeding was limited to the plaintiffs' personal medical records.

The Appellate Court disagreed:

(W)e believe that discovery before filing a section 2–622 affidavit is not confined to the plaintiffs' personal records but is subject to the Act and the discretion of the trial court...(W)e also find...that the disclosure of the number of MRSA infections at Advocate between October 5, 2005, and January 13, 2006, does not conflict with the Act's purpose: to ensure members of the medical profession will engage in the effective self-evaluation of their peers in the interest of advancing quality health care...Advocate is not entitled to use the Act as a shield to protect it from potential liability by simply claiming that the MRSA data is privileged because it was later reviewed in a committee meeting.

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Accordingly, the [medical malpractice case](#) was remanded to the trial court for the release of the records at issue and for further proceedings.

Howard Ankin of Ankin Law Office LLC (www.ankinlaw.com) handles [workers' compensation](#) and [personal injury cases](#). Mr. Ankin can be reached at (312) 346-8780 and howard@ankinlaw.com.