

# Big Win for Arkansas Hospitals: Protecting the Quality Assurance Process

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The Arkansas Court of Appeals recently affirmed the critically important quality-assurance privilege in Arkansas, codified at Arkansas Code Annotated section 16-46-105. At issue was whether a hospital must convene a formal committee in order to trigger the protections of the privilege, or whether that privilege attaches to documents generated in connection with a hospital's global reporting policy and created as part of the administrative quality process.

In *Jefferson Hospital Association, Inc. v. Whitney Nicole Smith*, 2019 Ark. App. 27, the plaintiff sought a copy of a global report created in response to a patient incident. Although the global report had been generated in accordance with the hospital's global reporting system, no formal quality committee meeting occurred regarding the specific incident. The plaintiff argued to the trial court that the global report was akin to an incident report and was, therefore discoverable under Arkansas Code Annotated section 16-46-105(c).

In considering the plaintiff's motion to compel the global report, the trial court ordered the hospital to produce additional documents for in camera review, ultimately holding that none was covered by the privilege because there had not been a formal quality meeting regarding the incident in question. The court ordered the hospital to turn over the contested global report as well as all of the other quality documents that had been provided for in camera review.

The hospital sought interlocutory review of the order, and a three-judge panel of the Court of Appeals unanimously reversed, holding that "the circuit court misinterpreted the statute by finding that a committee proceeding is a prerequisite to applying the statutory privilege." The Court went on to explain that "[t]he statutory privilege encompasses records compiled by hospital administrative staff 'in connection with' its quality-review process, not just the records from those cases that are ultimately referred to a committee."

This opinion provides important precedent that is consistent with the plain language of the quality-assurance statute and is in keeping with the real-world application of the quality-assurance process in Arkansas Hospitals. The plaintiff has filed for review in the Arkansas Supreme Court, CV-19-114.