



# Brugaletta v. Garcia, 190 A.3d 419 (N.J. 2018)

Topics Covered: Peer Review, Patient Safety Act

## **Outcome: Favorable**

### **Issue**

The issue in this case was whether the New Jersey Patient Safety Act, N.J.S.A. §§ 26:H-12:23 to -12.25 (NJ PSA), creates a privilege against legal discovery of a hospital's self-critical report of a patient's care.

### **AMA Interest**

The AMA supports the protection of peer review information from litigation discovery.

### **Case Summary**

The plaintiff, Janelle Brugaletta, alleged that she reported to the emergency room at Chilton Medical Center, complaining of persistent abdominal pain and a fever. She had also reported body aches, weakness, and a phlegmatic cough. She was incorrectly diagnosed with pneumonia. In fact, she had appendicitis and pelvic abscess.

Brugaletta sued Chilton for medical malpractice. She also sued Calixto Garcia, D.O., Steven D. Richman, M.D., and Patrick J. Hines, M.D., three of the physicians who had allegedly misdiagnosed her.

During pre-trial preparation, Brugaletta learned that Chilton had prepared an analysis of her care, entitled "Event Detail History with all Tasks" (Event Detail). She demanded production of the Event Detail. Chilton, however, refused to produce it, claiming the NJ PSA privileged it from discovery.

The trial court ordered production of a redacted version of the Event Detail. It found that Chilton had not reported Brugaletta's alleged misdiagnosis to the New Jersey Department of Health, and such reporting was a precondition to a claim of privilege under the NJ PSA.

Chilton appealed to the Appellate Division, the intermediate appellate court in New Jersey.

The Appellate Division found that the Event Detail included a "self-critical analysis" of Brugaletta's care. It held that such self-critical analyses are privileged from discovery under the NJ PSA. Further, although the NJ PSA requires that certain patient care events be reported to the New Jersey Department of Health, reporting was not a precondition to a privilege claim. The Appellate Division reversed the trial court production order.

Brugaletta then appealed to the New Jersey Supreme Court. In a split decision, the New Jersey Supreme Court affirmed the Appellate Division order shielding the Event Detail from discovery. However, it reversed on a separate issue relating to Chilton's disclosure obligations.

### **Litigation Center Involvement**

The Litigation Center and the Medical Society of New Jersey filed an amicus brief in the New Jersey Supreme Court to support Chilton's privilege claim under the NJ PSA.

Supreme Court of New Jersey brief