

**Webinars Q&A Follow-up – PSO? PSES? PSWP? You Have Questions, We Have Questions –
October 2013**

QUESTION	ANSWER
<p>Q: By naming a voluntary adverse event and close call reporting system as a source for PSWP is there any risk of undermining state protection for information that may be used in litigation that also is found in the reporting system?</p>	<p>An organization can define its Patient Safety Evaluation System (PSES) to include as much or as little of its patient safety processes, including the reporting system, to best meet the organization’s needs for legal and confidentiality protections. A reporting system containing adverse events and near miss information can be defined as a part of the PSES in its entirety or in part. Remember, PSWP is developed for the purpose of patient safety improvement, is protected within the PSQIA from disclosure and includes the processes and documentation of evaluations performed for learning and improvement. Work product developed for the purpose of defending a claim or legal case would be considered “attorney/client privileged” and protected.</p> <p>Organizations should consider the purpose of the activity and what privileges are available to them as defined by their respective state law and recommended by legal counsel to best meet their individual needs for protection and confidentiality.</p>
<p>Q: How do you recommend organizations separate PSWP and claims/legal review information that is in the same electronic database of voluntary events and near misses?</p>	<p>See the answer to the question above. You can identify certain information as PSWP and other information--even in the same database or system--as non-PSWP, as long as you define each set of data.</p> <p>If an organization desires to include PSWP and non-PSWP within the PSES, this can be accomplished in a number of ways. You would do this if you wanted some of the information available for use outside of the PSES and workforce.</p> <p>I Demographic information and information obtained directly from the medical record entered into the database cannot be fully protected anyway and could be available for any purpose. However, other information contained in the database, such as documentation of causal factors and evaluation results may be protected, if desired.</p> <p>Desired exclusions from PSWP should be defined by organizational policy. This can be accomplished in a number of ways by defining certain data points, types of events or level of events that would be excluded from the PSES as PSWP, or by designating a committee to make a determination as to whether an event is considered PSWP or non-PSWP and appropriately documenting the decision.</p> <p>For example, if events categorized as Level 3 and Level 4 are automatically referred to legal counsel and PSQIA protections are not desired, Level 3 and Level 4 events could be defined by policy as being excluded from the PSES as PSWP. If a committee makes the determination, committee minutes should contain documentation as to the cases deemed to be non-PSWP.</p>

This information is provided for informational purposes only and should not be considered to be legal advice or to contain all-inclusive information to gain the most out of PSO participation. Organizations and healthcare professionals are encouraged to seek independent legal counsel.

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<p>Q: Are you saying it is optional to put peer review, HR, and legal into the PSES?</p>	<p>Organizations have the discretion to include as much or as little of their patient safety activities in their PSES. Peer review, HR and legal can be defined as part of the PSES as long as they serve a patient safety function. Work within these areas of the organization that are performed for a purpose other than patient safety should not be included in the PSES, otherwise the protections available for proper patient safety activities could be diluted.</p> <p>For example, patient safety events may result in a referral to HR, peer review or legal. Consider the purpose of the HR, peer review or legal activity. If the purpose is for patient safety, consider including them in the PSES. If the purpose is for individual performance evaluation (HR or peer review) or in anticipation of litigation (legal) consider excluding them from the PSES. If excluded from the PSES, the essential facts of a patient safety event that resulted in the referral can be shared outside the PSES with HR, peer review and legal. However, further evaluation and documentation for non-patient safety purposes such as individual performance evaluation or preparation of litigation/defense would not be protected by the PSQIA protections, although other protections may apply.</p> <p>The key is determining the purpose of the activity; if the purpose is for patient safety improvement the activity should be included in the PSES.</p>
<p>Q: If you define legal as part of your workforce does that really matter?</p>	<p>Defining legal as part of the workforce allows them to participate in patient safety activities that involve PSWP within the PSES and have the allowable protections within the PSQIA. Legal would also be able to use their knowledge gained from the PSWP but, in developing a defense for claims/legal action, would not be able to utilize the PSWP itself. Legal would need to develop their own documentation for purposes of defense and protections under attorney/client privilege.</p>
<p>Q: Have there been any cases where PSO did not provide the expected protection. I get lots of comments about the law not being tested yet.</p>	<p>A number of trial courts around the country have used the PSQIA to protect properly developed PSWP. The Illinois First District Court of Appeals has also upheld the validity and applicability of the PSQIA to protect patient safety work. More information is available on the CPS website at www.centerforpatientsafety.org/patient-safety-organization-psy/. To date, every court that has examined the issue has recognized the PSQIA and its pre-emption of less restrictive state laws.</p>

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