2017 IL App (1st) 160109-U

FOURTH DIVISION
March 31, 2017

No. 1-16-0109

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

RACHEL PURPURA, individually, and as Special Administrator of the Estate of RICHARD PURPURA, Deceased, Plaintiff-Appellee, v. ADVOCATE HEALTH AND HOSPITALS CORPORATION d/b/a ADVOCATE SOUTH SUBURBAN HOSPITAL, DANIEL WEBER, M.D., S.C., d/b/a ADVOCATE SOUTH SUBURBAN PHYSICIAN PARTNERS; JEROME DALY, D.O.; FAMILY THOMAS KROLICK, M.D., Defendants (Advocate Health and Hospitals Corporation, d/b/a Advocate South Suburban Hospital, Defendant-Appellant).	)	Appeal from the Circuit Court of Cook County. No. 14L3917 Honorable John P. Callahan, Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Ellis and Justice McBride concurred in the judgment.

ORDER

Held: We reverse the trial court's discovery order and remand where the court erred by finding the disputed documents were not privileged. We vacate the contempt order and corresponding fine.

Defendant, Advocate Health and Hospitals Corporation d/b/a Advocate South Suburban Hospital (Advocate), appeals from the trial court's order holding it in contempt for refusing to produce certain documents requested in discovery. Advocate argues the documents were privileged under the portion of the Code of Civil Procedure (Code) commonly known as the Medical Studies Act (Act) (735 ILCS 5/8-2101 *et seq.* (West 2014)). Advocate also argues the court's contempt finding and corresponding fine should be vacated.

For the following reasons, we reverse the trial court's discovery order and remand for further proceedings. We also vacate the contempt finding and accompanying fine.

I. BACKGROUND

After undergoing a knee replacement surgery at Advocate on April 11, 2011, Richard Purpura allegedly suffered anoxic brain injury and died on April 19, 2011. Following his surgery, Advocate initiated an internal quality control process, referred to as a Root Cause Analysis (RCA).

Plaintiff, Rachel Purpura, individually and as special administrator of Richard's estate, filed suit against Advocate and other defendants, alleging, *inter alia*, that Advocate failed to properly evaluate Richard prior to surgery; failed to properly care for him before, during, and after surgery; and failed to inform him of the risks to his health and well-being.

As litigation progressed, plaintiff served interrogatories on Advocate. In interrogatory No. 5, plaintiff asked Advocate to state "whether any hearing dealing with mortality or morbidity was held regarding the care and treatment of the plaintiff alleged in the Complaint." In its amended answer, Advocate responded, "No." However, Advocate also objected to some of plaintiff's interrogatories on the basis of the Act.

Plaintiff also served Advocate with a request for production in which plaintiff sought various documents that Advocate claimed, in its amended responses, were privileged under the Act. For example, in request to produce No. 1, plaintiff sought “[a]ll oral or written statements of all parties given to or transferred to some other person or entity other than the attorney for the aforesaid parties.” Additionally, plaintiff sought, in request to produce No. 13, "[t]he protocols, policies and procedures pertaining to the reporting of issues such as those alleged in the complaint involving patients of Advocate Health and Hospitals Corporation d/b/a Advocate South Suburban Hospital, and Advocate South Suburban Health Partners d/b/a Advocate South Suburban Physician Partners." Advocate objected to request number 13 on the basis that the request was vague, overly broad, and sought "protocols, policies and procedures pertaining to the reporting of issues such as those alleged in the complaint without identifying any issues and without identifying reporting party."

On July 8, 2015, plaintiff filed a motion to compel Advocate to respond to its request for production and to supplement its discovery responses with a privilege log for any documents for which it was making any claim of privilege, including privilege under the Act. Plaintiff alleged that during various depositions, it had asked the physician defendants about the investigation, conversations, and/or changes in policy related to Richard's death, and the defense attorneys had objected to plaintiff’s questions based on the Act. Plaintiff indicated that she wished to depose various witnesses who were involved in Richard's case but she had been informed that the witnesses were involved in a "peer review" process and that if she asked questions similar to those that were asked at the physicians’ depositions, the same objections would likely be made. Plaintiff asserted that although Advocate referenced the Act in its responses to discovery, it also claimed it did not have any statements, incident reports, or

documents relating to morbidity or mortality or related proceedings. Plaintiff further claimed Advocate had declined to produce its policies describing the reporting procedures for incidents of this nature on the basis that it did not understand plaintiff's request. Based on the foregoing, plaintiff requested the court to compel Advocate to respond to request for production No. 13 and to provide a privilege log.

On July 9, 2015, the trial court ordered Advocate to produce summaries of conversations from and statements made by each current and former hospital employee who participated in the RCA so the court could conduct an *in camera* inspection and rule on whether the conversations and statements were privileged. The court further ordered Advocate to provide a privilege log itemizing the documents Advocate claimed to be privileged under the Act, along with the related documents, for the court to conduct an *in camera* inspection and rule on whether the documents were privileged.

On August 7, 2015, Advocate filed a motion to reconsider and for a protective order. Advocate did not dispute that an *in camera* review was the appropriate method by which to determine whether documents were privileged under the Act. Instead, Advocate argued that the conversations from and statements made by hospital employees and former employees who participated in the RCA constituted privileged attorney work product and were also privileged from discovery under the Act. Advocate also posited that any statement made to counsel by Advocate's employees who were involved in Richard's care and treatment were privileged attorney-client communications. Advocate sought an order barring plaintiff's counsel from asking questions during depositions about what was discussed during the RCA process.

On August 11, 2015, the trial court entered an order granting Advocate's motion to reconsider "to the extent stated on the record." However, the court continued to order Advocate to submit a privilege log with related documents for an *in camera* inspection.

On October 27, 2015, Advocate submitted its privilege log and the documents.[1]

On November 2, 2015, Advocate filed a memorandum in support of its claim of privilege under the Act, arguing that all of the documents it had submitted were initiated, created, prepared, and generated by and for the purpose of its RCA improvement/peer-review process.

On November 12, 2015, the trial court entered an order finding the documents at issue in this appeal were not privileged under the Act and directing Advocate to produce them. The documents in dispute will be referred to as follows, based on their bates-stamped numbers: documents 17 through 25; 43 through 89; 97 through 149; 153 through 213; and 221 through 248. The court's order does not specify its reasoning for finding the documents were not privileged.

On November 23, 2015, Advocate filed a motion to reconsider, arguing the trial court erred in its application of existing law. Advocate attached to its motion the affidavit of Amy Stern, who averred that she was the manager of patient safety for Advocate South Suburban Hospital and that she was a member of the RCA Committee that first convened on April 13, 2011. Stern's affidavit is described in greater detail later in this order. Plaintiff subsequently filed a response to Advocate's motion to reconsider, arguing, *inter alia*, that Stern's affidavit was untimely and conclusory and, even if it were considered, it provided insufficient facts to support a finding that the court had erred.

[1] The record contains the privilege log with the filing stamp of December 11, 2015. The notice of filing accompanying the privilege log indicates that the log had "previously been served on all parties of record on October 27, 2015."

On December 3, 2015, the trial court denied Advocate's motion to reconsider, ordering Advocate to produce all documents listed in its November 12, 2015 order by December 4, 2015. The court's order does not indicate why it denied Advocate's motion, nor does the record contain a transcript of the motion to reconsider hearing. The court set the case for a compliance hearing and case management conference on December 7, 2015.

On December 7, 2015, the trial court ordered Advocate to provide an amended privilege log with page numbers to correspond with the bates stamped numbers on the documents which the court had ruled upon in November 2015. On December 10, 2015, Advocate filed a motion to continue discovery pending resolution of any special proceeding collateral to and independent of the matter. On December 11, 2015, the court entered a case management order, entering and continuing Advocate's motion to continue discovery and ordering Advocate to file an amended privilege log specifying the dates that the documents were created or in effect.

On December 15, 2015, Advocate filed its amended privilege log, attaching Stern's affidavit as an exhibit. That day, the trial court entered an order indicating that Advocate had respectfully stated it would not comply with the court's November 12, 2015, order and that it had requested a finding of contempt for the purposes of taking an immediate appeal. Accordingly, the court found Advocate in contempt and imposed $100 in sanctions, staying payment of the sanctions pending resolution of any appeal by Advocate.

With leave of the trial court, on January 11, 2016, Advocate filed under seal the documents the trial court reviewed *in camera* and subsequently identified as discoverable. This appeal followed.

II. ANALYSIS

On appeal, Advocate argues (1) the trial court erred by finding the documents were not privileged under the Act, and (2) the contempt finding and corresponding fine should be vacated. We address Advocate's arguments in turn.

A. The Trial Court's Finding That the Documents Were Not Privileged

Advocate first claims the trial court should have found the disputed documents were privileged from disclosure under the Act because they were gathered, used, and/or generated during the RCA process.

Section 8-2101 of the Act provides, in relevant part, that

> "[a]ll information, interviews, reports, statements, memoranda, recommendations, letters of reference or other third party confidential assessments of a health care practitioner's professional competence, or other data of *** committees of licensed or accredited hospitals or their medical staffs *** or their designees (but not the medical records pertaining to the patient), used in the course of internal quality control or of medical study for the purpose of reducing morbidity or mortality, or for improving patient care *** shall be privileged." 735 ILCS 5/8-2101 (West 2014).

Section 8-2102 of The Act further provides that such privileged information "shall not be admissible as evidence, nor discoverable in any action of any kind in any court." 735 ILCS 5/8-2102 (West 2014). The burden of establishing the applicability of the Act's privilege is on the party seeking to invoke it. *Eid v. Loyola University Medical Center*, 2017 IL App (1st) 143967, ¶ 40. A party may meet its burden by submitting the allegedly privileged materials for an *in camera* inspection or by submitting affidavits setting forth facts sufficient to establish the

applicability of the privilege to the particular documents being withheld. *Anderson v. Rush-Copley Medical Center, Inc.*, 385 Ill. App. 3d 167, 174 (2008).

The Act's purpose is to ensure that medical professionals "will effectively engage in self-evaluation of their peers in the interest of advancing the quality of health care." *Roach v. Springfield Clinic*, 157 Ill. 2d 29, 40 (1993). The Act is premised on the belief that, absent the confidentiality privilege, health care practitioners would be reluctant to participate in peer-review committees and engage in frank evaluations of their colleagues. *Id*. The purpose of the Act is not, however, "to shield hospitals from potential liability" (*Eid*, 2017 IL App (1st) 143967, ¶ 45) or to facilitate the prosecution of malpractice cases (*Jenkins v. Wu*, 102 Ill. 2d 468, 479 (1984)).

Documents that are "initiated, created, prepared, or generated by a peer-review committee" are privileged, even if those documents are "later disseminated outside of the peer-review process." (Internal quotation marks omitted.) *Webb v. Mount Sinai Hospital and Medical Center of Chicago, Inc.*, 347 Ill. App. 3d 817, 825 (2004). On the other hand, the Act does not protect against disclosure of documents generated in the ordinary course of a hospital's medical business or to render legal opinions or weigh potential liability or for later corrective action, even if the documents are subsequently used by a committee in the peer-review process. *Id*. The supreme court has explained that "[i]f the simple act of furnishing a committee with earlier-acquired information were sufficient to cloak that information with the statutory privilege, a hospital could effectively insulate from disclosure virtually all adverse facts known to its medical staff, with the exception of those matters actually contained in a patient's records." *Roach*, 157 Ill. 2d at 41. The Act does, however, protect "against disclosure of the mechanisms of the peer review process, including information gathering and deliberations leading to the ultimate

decision rendered by a peer-review committee." *Pietro v. Marriott Senior Living Services, Inc.*, 348 Ill. App. 3d 541, 549 (2004).

In *Anderson*, the appellate court concluded that a peer review committee's obtaining of medical journal articles constituted "information gathering" related to the decedent's care and was part of the "mechanism" of the peer-review process. *Anderson*, 385 Ill. App. 3d at 176. The journal articles were not written specifically by or for the Committee or for its exclusive use; however, the peer-review committee obtained the articles as a result of assignments during the committee meetings and the articles were used in developing the committee's "Action Plan." *Id.* The *Anderson* court thus concluded the articles contributed to the committee's deliberations, as they were obtained as part of the information-gathering process and were considered prior to the development of the "Action Plan." *Id.* Based on the foregoing, the *Anderson* court found that disclosure of the articles would reveal the committee's "internal thought process." *Id.*

The *Anderson* court concluded that a close reading of *Roach* revealed its holding was not at odds with prior precedent holding that information generated before the peer-review process begins is discoverable. *Id.* In *Roach*, the supreme court explained that if information obtained before the commencement of the peer-review process could be transformed into privileged information by later reporting it to a peer-review committee, " 'a hospital could effectively insulate from disclosure virtually all adverse facts known to its medical staff,' thereby providing 'scant incentive for advancing the goal of improved patient care' and effectively subverting the purpose of the Act." *Id.* at 177 (quoting *Roach*, 157 Ill. 2d at 41-42). The *Anderson* court found the concerns outlined in *Roach* were not implicated because the journal articles did not reference the decedent's care. *Id.* Thus, applying the Act's privilege to the medical journal articles "would not frustrate the Act's goal of improved patient care, because

doing so would not conceal any 'adverse facts' known to [the] defendant's medical staff about [the] decedent's care." *Id.* In fact, the court stated, finding the articles were discoverable would actually frustrate the Act's goals because revealing aspects of the committee's thought process would discourage medical personnel from openly discussing their colleagues' actions. *Id.* at 177-78. The court distinguished the cases cited by the plaintiff on the basis that those cases involved "information generated by the defendant hospital's medical staff about the patient or personnel at issue." *Id.* at 177.

In a subsequent opinion, the Second District explained that "*Anderson* does not stand for the proposition that all 'information gathering' is privileged under the Act, only that earlier-created documents may sometimes be shielded from production when identifying them would reveal the thought processes of a committee already engaged in a specific review." *Kopolovic v. Shah*, 2012 IL App (2d) 110383, ¶ 30. The *Kopolovic* court noted that the *Anderson* court did not "find the contents of the articles privileged," as "the articles themselves were written prior to the start of the particular peer-review process at issue" and thus "were not themselves information generated by the committee during that process." *Id.* However, because the committee had asked that the articles be gathered for review, "the articles could be protected from disclosure because the manner in which they were used by the committee revealed the internal processes of the committee as it conducted its review and formulated its recommendations." *Id.*

Relying on *Anderson*, Advocate argues the journal articles and medical literature (documents 47-89, 111-149, and 162-213), hospital policies (documents 17-25, 43-44, 97-108, 109-110, and 153-160), and medical records (documents 45-46) were privileged because disclosure of the documents would reveal the thought processes of the Committee.

Without providing any reasoning or making specific findings, the trial court found the documents were not privileged. The court's failure to make specific findings has caused a disagreement between the parties regarding the appropriate standard of review. Advocate contends the court held as a matter of law that the Act did not apply to the documents listed in Advocate's privilege log and, accordingly, our review is *de novo*. See *Eid*, 2017 IL App (1st) 143967, ¶ 40 (the legal determination of whether the Act's privilege applies to certain types of information is a question of law that is reviewed *de novo*). Plaintiff, on the other hand, argues the court reviewed the documents and made a factual determination that they were not used solely for purposes of the peer-review process and therefore the manifest weight of the evidence standard applies. See *Webb*, 347 Ill. App. 3d at 825 ("the question of whether specific materials are part of an internal quality control is a factual question" (internal quotation marks omitted)).

We need not determine which standard of review applies because under either standard, we conclude the trial court's decision must be reversed.

At the time the trial court conducted its *in camera* review, Advocate had submitted its initial privilege log, which contained few details regarding the documents. The lack of detail in the initial privilege log arguably may have supported a finding that Advocate failed to meet its burden of establishing applicability of the Act's privilege. However, Advocate subsequently filed its amended privilege log, which contains additional information regarding the documents. In addition, Advocate also submitted Stern's affidavit as an attachment to its motion to reconsider.

Plaintiff challenges Advocate's submission of Stern's affidavit, characterizing the affidavit as untimely. However, we conclude that under the circumstances of this case, Advocate's inclusion of Stern's affidavit with its motion to reconsider was not improper. In *Ardisana*, the trial court directed a hospital to provide, for an *in camera* review, a privilege log, a

copy of the documents in dispute, and a copy of the complaint. *Ardisana*, 342 Ill. App. 3d 741, 744 (2003). The hospital filed the requested documents and, in addition, filed the affidavit of its risk manager. *Id.* The trial court subsequently ruled that all of the disputed documents were discoverable, in part because the hospital failed to establish when the peer-review process commenced and ended. *Id.* Thereafter, the hospital filed a motion to reconsider, attaching additional affidavits with information regarding the start and end dates of the internal review processes and information as to the steps taken to preserve the confidentiality of the documents generated during the process. *Id.* at 745.

On appeal, the *Ardisana* court found the hospital's submission of the additional affidavits with its motion to reconsider was not improper. *Id.* at 747. The *Ardisana* court observed that although the trial court rejected the hospital's claim of privilege in part because the hospital failed to provide evidence of the start and end dates of the peer-review process, the court did not initially request such documentation, asking only that the hospital provide a privilege log, the disputed documents for *in camera* inspection, and a copy of the complaint. *Id.* at 747-48. Nonetheless, the hospital also provided the affidavit of its risk manager, who averred the disputed documents were generated in the process of investigations by the review committees, were prepared solely for the two committees, and were used exclusively by those two committees (with the exception of one document). *Id.* The appellate court found "it was the trial court that *sua sponte* raised a challenge to the sufficiency of an affidavit that it did not require in the first place" and "[u]nder these circumstances, [the hospital] was entitled to submit and have considered additional affidavits along with its motion to reconsider." *Id.*

Unlike the trial court in *Ardisana*, the trial court here did not provide its rationale for finding the disputed documents were not privileged. However, to the extent the court only

initially ordered Advocate to file a privilege log and the disputed documents but it then found the documents were not privileged, we conclude it was not improper for Advocate to submit Stern's affidavit with its motion to reconsider in an attempt to provide more clarification regarding the disputed documents.

In considering Stern's affidavit and the amended privilege log in conjunction with our own *in camera* review of the disputed documents, we conclude the trial court should have found the journal articles were privileged. Stern averred in her affidavit that the RCA was convened on April 13, 2011. She further averred that the initial RCA meeting occurred on April 26, 2011, during which Committee members identified additional information needed and the steps required for the RCA process. Further, she averred, "the Committee members identified the subject matter of the RCA process, and Committee members were assigned to conduct research specific to [Purpura]'s course." Following the initial meeting, Stern averred, she and other members of the Committee researched and gathered information identified by the Committee to use during its deliberations. She averred that all of the articles "were researched at the behest of the Committee and gathered solely for the use of the Committee members" during the May 11, May 18, and May 19 deliberations.

The amended privilege log lists the specific dates on which the documents were gathered and used. All of the articles, except documents 162 through 213, were gathered on or after the April 26 meeting at which Committee members "were assigned to conduct research specific to this patient's course."[2] Further, while the log indicates documents 162 through 213

[2] At first glance, the amended privilege log appears somewhat inconsistent as to the date documents 162 through 213 were gathered. The log identifies documents 162 through 213 as having been "[g]athered between April 13, 2011, and May 19, 2011 (various print dates)." Yet, the log includes documents 162 through 213 in its list of documents comprising the Meeting 2, Subgroup 3 RCA Workbook, which was "created and gathered between April 26, 2011, and May 19, 2011, by an RCA Committee Member." However, this apparent inconsistency is not fatal, as this could

were gathered as early as April 13, before the initial RCA meeting, Stern did aver the RCA convened on April 13; that all of the disputed documents were initiated, created, prepared, and generated by her or other RCA members after the RCA convened; and that all of the articles were researched at the behest of the Committee.

To the extent plaintiff did not submit a counteraffidavit contradicting these facts in Stern's affidavit, they must be taken as true. See *Flannery v. Lin*, 176 Ill. App. 3d 652, 658 (1988). While plaintiff claims Stern's affidavit was conclusory and lacked sufficient factual detail to establish applicability of the Act's privilege, we conclude the affidavit was sufficient to establish the articles were researched at the behest of the Committee, after the RCA process convened, and gathered for use of the Committee members during their deliberations. Based on the foregoing, we conclude that, as in *Anderson*, forcing Advocate to disclose the journal articles would reveal the Committee's internal thought processes. See *Anderson*, 385 Ill. App. 3d at 176.

We reach the same conclusion regarding the various hospital policies (documents 17-25, 43-44, 97-108, 109-110, 153-160) and medical records (documents 45 through 46). Stern averred documents 43 through 44 were "gathered based on this specific incident solely for use of the Committee members during the May 11, 2011 RCA deliberations." She averred that all of the other hospital policies "were gathered by Committee members based upon the specific incident and were discussed during the" May 11, May 18, and May 19 RCA meetings. The amended privilege log indicates the specific dates on which the documents were gathered and used. Similarly, Stern averred the medical records were gathered based on this specific incident, solely for use of the Committee members during the May 11 RCA deliberations. The amended privilege log identifies the records as having been gathered between April 26 and May 11. Based

simply mean one RCA member gathered the medical literature between April 13 and May 19, and another member gathered the documents from the first member or on his or her own after April 26 to create the Workbook.

on the foregoing, we conclude that disclosure of these hospital policies and medical records would reveal the Committee's internal thought processes. See *Anderson*, 385 Ill. App. 3d at 176; see also *Eid*, 2017 IL App (1st) 143967, ¶¶ 16-17, 52 (disclosure of documents generated by a designee of the peer-review committee, which were obtained as part of the information-gathering process and considered prior to the conclusion of the peer-review committee's review, would have improperly revealed the committee's internal review process).

To be clear, Advocate has not claimed, nor are we holding, that the hospital policies or medical records are privileged from disclosure in every context. Indeed, we note the Act explicitly provides that patients' medical records are *not* privileged. See 735 ILCS 5/8-1201 (West 2014) ("[a]ll information *** of *** committees of licensed or accredited hospitals or their medical staffs *** or their designees (*but not the medical records pertaining to the patient*), used in the course of internal quality control or of medical study for the purpose of reducing morbidity or mortality, or for improving patient care *** shall be privileged.") (Emphasis added). 735 ILCS 5/8-2101 (West 2014); see also *Jenkins*, 102 Ill. 2d at 479 ("the Act provides for the discovery of the patient's own records"). During oral arguments, counsel for Advocate agreed that plaintiff was otherwise entitled to Richard's medical records, and the parties indicate in their briefs that plaintiff has received complete medical records. Counsel for Advocate also acknowledged in oral arguments that plaintiff was not precluded from asking for a certain hospital policy as it existed prior to the incident and asking for the same policy as it later existed.

Advocate's more narrow claim in this case is that it should not be compelled to produce the documents that were gathered by the Committee because the identity of the documents and the manner in which they were used would reveal the Committee's internal thought process. Based on *Anderson*, we agree. See *Kopolovic*, 2012 IL App (2d) 110383, ¶ 30

(it was not the *contents* of the journal articles that were privileged in *Anderson*; instead, the court found the articles were protected from disclosure because, as the peer-review committee had asked that the articles be gathered for review, the manner in which the articles were used by the committee revealed the internal processes of the committee). We additionally note that because Advocate has provided plaintiff with Richard's medical records, Advocate is not using the Act's privilege to insulate itself from disclosure of adverse facts that may be in the medical records. See *Anderson*, 385 Ill. App. 3d at 177 (distinguishing *Roach* on the basis that the journal articles at issue did not reference the decedent's care and thus, applying the Act's privilege to the articles would not conceal any adverse facts).

We turn next to the index of orders (document 221) with related orders attached (documents 222 through 240). Stern averred that Committee members created documents 222 through 240 solely for use during the May 25 RCA meeting. These documents appear to be various physician's orders and hospital policies, many of which contain insertions or deletions of text, and the amended privilege log identifies the documents as containing notations made by RCA Committee members reflecting what was discussed throughout the Committee's deliberations. Based on *Anderson*, documents 222 through 240 are privileged from disclosure, as revealing them would reveal the Committee's internal thought process. See *Anderson*, 385 Ill. App. 3d at 176. Further, as Stern averred that she created document 221 (the index of orders) solely for use during the May 25 RCA meeting after the RCA was convened, that document is also privileged. See *Kopolovic*, 2012 IL App (2d) 110383, ¶ 19 (the Act protects information created by a peer-review or quality-control committee).

Documents 222 through 240 are additionally privileged because they contain the recommendations of the RCA Committee. Results of a peer-review committee are not privileged;

however, the recommendations and internal conclusions of peer-review committees, which may or may not lead to those results, are. *Ardisana*, 342 Ill. App. 3d at 747. "Results of a peer-review committee take the form of ultimate decisions made or actions taken by that committee *** and include *** the revision of rules, regulations, policies and procedures for medical staff." *Id.* Thus, "any actual changes, such as modifications to hospital policy or procedure, that are adopted as a direct result of the committee's recommendations and internal conclusions must be disclosed, as they constitute the 'ultimate decisions made or actions taken' as a result of the peer-review process." *Id.* However, "recommendations made and internal conclusions reached by a peer-review committee" are protected from disclosure, regardless of whether they are implemented. *Id.* Here, Stern averred that documents 222 through 240 consist of recommendations the Committee was considering and that they were created solely for use during the May 25 RCA meeting. Based on Stern's affidavit and the documents themselves, we conclude the documents are protected from disclosure.

We likewise find that documents 241 through 248 are privileged, as Stern averred that she created these documents solely for use during the final RCA meeting and that they summarize the items discussed during the RCA meetings and recommendations the Committee was considering. See *Kopolovic*, 2012 IL App (2d) 110383, ¶ 19 (the Act protects information created by a peer-review or quality-control committee). Further, our *in camera* review of the documents reveals that many of the documents explicitly bear the title "Recommendations" next to the names of the various workgroups. Thus, the documents themselves and Stern's affidavit establish they are additionally privileged because they contain the RCA's recommendations. See *Ardisana*, 342 Ill. App. 3d at 747.

In reaching our conclusion, we necessarily reject plaintiff's assertion that Advocate failed to meet its burden of establishing the Act's privilege applied. In this regard, plaintiff relies on *Chicago Trust Co. v. Cook County Hospital*, 298 Ill. App. 3d 396 (1998). However, in *Chicago Trust*, the affidavits submitted by the hospital suffered from numerous deficiencies not present here. For example, none of the affidavits indicated when the peer-review process commenced or ended, one affidavit indicated documents such as those in dispute were requested for the rendering of legal opinions, and some of the affidavits contradicted each other. *Id.* at 400, 403-404. Accordingly, *Chicago Trust* is distinguishable, as are the other cases on which plaintiff relies. See *Roach*, 157 Ill. 2d at 40 (there was no dispute the oral discussions at issue had nothing to do with any peer-review committee); see also *Webb*, 347 Ill. App. 3d at 822, 827 (affidavits were internally inconsistent and contradicted by the documentary evidence).

Based on the foregoing, we conclude the trial court erred by finding the disputed documents were privileged. Accordingly, we reverse the court's decision and remand for further proceedings.

B. Whether The Contempt Finding Should be Vacated

Finally, Advocate argues the trial court's contempt finding and the $100 fine should be vacated. Requesting the court to enter a contempt order is a proper procedure to seek immediate appeal of a discovery order. *Klaine v. Southern Illinois Hospital Services*, 2014 IL App (5th) 130356, ¶ 41. Where a party seeks a contempt order in good faith and was not contemptuous of the trial court's authority, we may vacate the contempt order even if we find the circuit court's discovery order was proper. *Id.* The record indicates the trial court entered its contempt order not because Advocate's conduct was contemptuous but because Advocate

requested a contempt finding for purposes of taking an immediate appeal. Advocate's refusal to tender the documents was in good faith and based on sound legal arguments. Accordingly, we vacate the trial court's contempt order and $100 fine.

III. CONCLUSION

For the reasons stated, we reverse the trial court's ruling on the discoverability of the disputed documents and remand for further proceedings. We also vacate the contempt order and accompanying fine.

Reversed in part and vacated in part; cause remanded.