



10 STEPS TO KEEP YOUR QUALITY ASSURANCE PROGRAM PRIVATE

by: Kippy L. Wroten, Esq.

In this age of business transparency there are few areas in which the long term care operator can maintain business privacy when responding to licensing demands and civil litigation. Quality assurance and peer review however, remain safe harbors wherein investigation designed to evaluate the quality of care can be shielded from review by both state surveyors and civil attorneys pursuing litigation against the long term care operator.¹ Assuring privacy in the quality assurance process is recognized as a critical element to foster an honest and effective internal review.

In civil litigation plaintiff attorneys routinely attack the protections afforded quality assurance programs as plaintiffs argue documents maintained by the committee provide evidence of a licensee's knowledge and ratification of employee misconduct. Failure to respect the formalities of the quality assurance program can expose your investigations to possible disclosure. Most long term care operators are familiar with the application of quality assurance regulations as they relate to the Department of Public Health survey process. When faced with civil litigation for personal injury however, the rules have a slightly different look. Here are 10 steps to assist you in providing your QA program the protection from disclosure it deserves while meeting the demands of regulatory compliance.

- **Designate a "Quality Assurance Committee":** affirmatively state the exclusive day of this committee is to evaluate and improve quality of care.
- **QA Committee must consist of the following personnel:**
 - a) Director of Nursing
 - b) Medical Director (or other facility designated physician)
 - c) Three other facility staff members. This may include the Administrator and key department chairs.
- **Create a Policy and Procedure that Identifies the QA Committee by Name and Purpose:** Identify the committee members by title. Update the titles of the committee members in your documented policy and procedure whenever changes occur. You will produce this document as evidence of your compliance with regulations and to support the existence of your privacy privilege.
- **Inform Individuals Assigned to Serve on the QA Committee of their Assignment:** Emphasize the importance of strict confidentiality regarding all aspects of committee work. To be effective, committee members must understand their role and respect the confidential nature of all QA committee investigations.

¹ Records and proceedings of organized committees within a health care facility having the responsibility of evaluation and improvement of the quality of care rendered are immune (California Evidence Code section 1157)

- **Outline a Simple but Formal Process for Bringing Forward Quality Concerns:** Educate staff on the QA process as part of their new employee orientation and review through in-service presentations. You will produce these documents as evidence of your regulatory compliance during licensing survey.²
- **Schedule Formal QA Meetings Every Quarter:** You may meet more often as necessary but should not meet less often. Keep a record of meeting dates. This will confirm regulatory compliance and support your privacy privilege.
- **Create and Agenda for Every QA Meeting the Identifies the Areas you will Review:** Your agenda should be general in content and can include sections for skin integrity, falls, staffing, and other areas monitored for potential trends. Create an agenda item called "Corrective Plan of Action". The agenda should not contain any information that is more specific than these general areas as again, this is a document that may be disclosed to validate your privacy privilege.
- **Maintain Meeting Minutes that identify:**
 - a) Specific quality issues addressed by the committee;
 - b) Planned corrective action;
 - c) Follow-up evaluation of the effectiveness of your corrective action; and
 - d) Directives to individuals who are routinely part of the QA Committee who will assist your QA investigation. This document should not be produced in either regulatory surveys or civil litigation.³ Note that surveyors may request evidence to establish your QA process is effective. If requested, disclose only the minutes relating to a successful intervention where there was no patient harm. It is not necessary that you produce records that coincide with deficiencies identified by the surveyor.⁴
- **Mark Every Document** including photographs, related to the QA Committee evaluation as "Confidential Quality Assurance Investigation." ALWAYS!
- **Maintain QA Committee documents** in a secure area for the current year and the prior 3 years. Secure means "locked".

Any documents or photographs gathered as part of a quality assurance investigation should be done specifically at the directive of the QA Committee. Documents and photographs gathered as part of the QA Committee investigation must be maintained by the QA Committee for their exclusive use and kept in a secured area separate from the patient chart.

It is important that the QA process be respected and followed in order to protect your privacy privilege. Lapses in the processes expose the long term care operator to potential piercing of the privilege and loss of privacy in your quality assurance program.

² 42 CFR section 483.75 (o)(3) provides that a state of the Secretary may not require disclosure of Quality Assurance Committee records except in so far as such disclosure evidences the existence of such a committee in accordance with regulatory requirements.

³ It is important to note there are additional state rules that apply to quality assurance audit logs that may be volunteered in the course of licensing reviews (California Health & Safety Code section 1424.1)

⁴ For more information regarding licensee surveys, see Survey Procedures for the Long Term Care Facilities, Sub-Task 5F-Quality Assessment and Assurance Review and further information available at www.wrotenlaw.com

About the Author:

Founder and Shareholder of Wroten & Associates, Kippy Wroten's experience covers a broad spectrum of complex litigation encompassing all areas of healthcare liability including high exposure and class action claims of elder abuse, fraud, and corporate unfair business practices. Ms. Wroten's experience includes the successful defense of individual healthcare providers, independent long term care facilities, ancillary service providers, as well as related corporate enterprises and their executives.

Ms. Wroten started her legal career as a Deputy District Attorney for Orange County where she prosecuted gang, child and spousal abuse cases. Thereafter, she spent 15 years as a litigator for a prestigious healthcare defense firm where she was a shareholder and lead her long term care practice area. Ms. Wroten founded Wroten & Associates in 2006 to better meet the growing challenges of the long term care industry. Wroten & Associates is designed to provide personal service at rational rates.

Ms. Wroten is a sought after speaker who is dedicated to the education of the healthcare industry and legal community. She has been an invited lecturer for the Defense Research Institute, Irvine Medical Center, Chapman University College of Law, and the Association of Southern California Defense Counsel.

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