DOCKET NO.	:	STATE OF CONNECTICUT
Plaintiff	:	SUPERIOR COURT
V.	:	
Hospital	:	
	:	MARCH 31, 2023

MEMORANDUM OF DECISION
MOTION FOR PROTECTIVE ORDER (#178)

STATEMEN OF CASE AND PROCEDURAL HISTORY

This action arises out of an incident that occurred after the plaintiff, (plaintiff), allegedly refused to follow directions from staff, behaved aggressively, and threatened staff. On August 7, 2018, the plaintiff attempted to visit his girlfriend in the Emergency Department by entering the ambulance bay doors. The plaintiff had been asked to leave the Emergency Department waiting area because his girlfriend, due to her medical condition, was not permitted by staff to have any visitors. Thereafter, he attempted to gain entrance to the patient care area through the ambulance bay, an area in which visitors are not allowed. This area is the main entrance for trauma patients requiring emergency medical care. Accordingly, felt it was important to remove the plaintiff from the ambulance bay area immediately. When attempts by staff to deescalate the situation failed, Protective Services Officers ("Officers"), who are trained to deescalate situations through conversation, were called to the scene. Upon arrival, the Officers observed the plaintiff yelling at staff and acting in an aggressive manner in an attempt to gain entrance through the ambulance bay doors. The Officers first attempted to speak with the plaintiff through the

ambulance bay doors to ask him to vacate the area. The Officers realized that the plaintiff needed to be removed from that area so that incoming trauma patients could readily be admitted to the Emergency Department without interference. When it was clear that the plaintiff was not going to leave the area, the Officers opened the ambulance bay doors in order to speak with him and attempt to diffuse the situation.

Once the doors were opened, the plaintiff rushed into the patient care area and attempted to grab a female patient's stretcher to remove her from the Emergency Department. At the time, Officers were unaware that the female patient on the stretcher was the plaintiff's girlfriend. Due to the plaintiff's aggressive and threatening behavior towards staff, Officers, and the female patient, the individual defendants physically restrained the plaintiff, which unfortunately resulted in physical injury to the plaintiff. While the plaintiff was restrained and handcuffed on the floor, he was reaching for his pants pocket. Officers found a pocket knife in his pants pocket. They also confiscated a multi tool with a knife blade on his key chain. The Police Department responded and arrested the plaintiff for assault on emergency personnel, trespass in the first degree, and breach of peace trespass in the second degree. The plaintiff commenced this lawsuit against and a number of personnel and staff. The plaintiff filed his original complaint on , and on , the plaintiff filed an amended complaint which is the operative complaint for purposes of this motion. Count one of the amended complaint alleges assault and battery, count two alleges negligence, count three alleges negligent training and supervision and count four alleges unlawful and forcible detention leading to false arrest.

According to the affidavit of filed in support of the present

motion for protective order, attests that in her role as the Patient Safety Coordinator, she conducted an investigation concerning the foregoing incident as part of patient safety evaluation system. (Affidavit of , at ¶ 15-17). As the Patient Safety Coordinator, was one of the designated leaders responsible for collecting, analyzing and managing patient safety work product for the purpose of submitting that information to a patient safety organization. (Affidavit of , at ¶ 3, 8, Ex. 1). created notes regarding her investigation, which notes were submitted to a patient safety organization pursuant to the Patient Safety and Quality Improvement Act (PSQIA), 42 U.S.C. § 299b-21, et seq. (Affidavit of , at ¶ 20-23). The notes were prepared and maintained as part of 's patient safety evaluation system and were not distributed or maintained outside of that system. (Affidavit of , at ¶ 20-21, 24). All of 's knowledge regarding the incident was obtained through her patient safety activities within 's patient safety evaluation system. (Affidavit of , ¶ 25).

On , the plaintiff noticed the deposition of and requested that she produce "[a]ny and all records (including any written reports, videos, email communications, interoffice memos concerning said incident, etc.) relative to the aforementioned 8-7-2018 wherein was injured and subsequently arrested by the Police Department that are within your exclusive possession, custody, control or knowledge or the exclusive possession, custody, control or knowledge of ." Ex. A, Def. Mem.

The defendant has filed a motion for protective order to preclude the plaintiff from deposing because her knowledge of the incident was obtained through

the investigation of the incident pursuant to 's patient safety evaluation system and is privileged under federal and state law. The defendant also moves to protect from disclosure the documents that submitted to the patient safety organization pursuant to the PSQIA and General Statutes § 19a-127o, the Connecticut counterpart to PSQIA.

The plaintiff has filed an objection to the motion on grounds that the statutes and cases cited by the defendants in support of the motion are wholly inapplicable to the present case and the plaintiff is otherwise entitled to take the deposition of . The plaintiff argues that the federal and state statutes cited by the defendants were designed and meant to protect the peer review process in medical malpractice cases and that they were never intended to frustrate legitimate discovery in a civil assault and battery action or a negligence case that did not involve medical malpractice. The court heard oral argument on the motion on

DISCUSSION

A.

Legal Standard of Review

Practice Book § 13-2 provides in relevant part that "[i]n any civil action . . . where the judicial authority finds it reasonably probable that evidence outside the record will be required, a party may obtain in accordance with the provisions of this chapter discovery of information or disclosure, production and inspection of papers, books, documents and electronically stored information material to the subject matter involved in the pending action, which are not privileged, whether the discovery or disclosure relates to the claim or defense of the party seeking

[1]On , the court issued an Edison order granting the defendants' motion for protective order and stated therein that a memorandum of decision would follow to further articulate the court's reasoning for granting the motion.

discovery or to the claim or defense of any other party, and which are within the knowledge, possession or power of the party or person to whom the discovery is addressed. Discovery shall be permitted if the disclosure sought would be of assistance in the prosecution or defense of the action and if it can be provided by the disclosing party or person with substantially greater facility than it could otherwise be obtained by the party seeking disclosure. It shall not be ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence ..."

"Our rules of discovery are meant to serve the ends of justice by 'facilitating an intensive search for the truth through accuracy and fairness, provid[ing] procedural mechanisms designed to make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.' (Citations omitted.) *Picketts* v. *Int'l Playtex, Inc.*, 215 Conn. 490, 508, 576 A.2d 518 (1990)."

"Practice Book § 13-5 states in relevant part: 'Upon motion by a party from whom discovery is sought and for good cause shown, the judicial authority may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specific terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into or that the scope of discovery be limited to certain matters . . .' Under Practice Book § 13-5 the party seeking the protective order is required to show good cause. The courts have defined good cause as 'a sound basis or legitimate need to take judicial action.' *Welch* v. *Welch*, supra, 48 Conn.Sup. 19, 828

A.2d 707 [34 Conn. L. Rptr. 171] (2003). 'Good cause must be based upon a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements.' Id. at 20. 'Whether or not "good cause" exists for entry of a protective order must depend on the facts and circumstances of a particular case.' *Carrier Corp.* v. *Home Insurance Co.*, Superior Court, judicial district of Hartford New Britain at Hartford, Docket No. CV 88352383 S (February 11, 1992, *Schaller, J.*) [6 Conn. L. Rptr. 3]. 'To determine whether good cause exists, courts balance "the need for information against the injury that might result if uncontrolled disclosure is compelled ." ' *In re Zyprexa Injunction*, 474 F.Sup.2d 385, 413 16 (E.D.N.Y.2007) (quoting *Pansy* v. *Borough of Stroudsburg*, 23 F.3d 772, 787 (3d Cir.1994))." *Talbot* v. *Quinnipiac University*, Superior Court, judicial district of New Haven, Docket No. CV146048886S (November 28, 2014, *Wilson, J.*).

B.

The Patient Safety and Quality Improvement Act - 42 U.S.C. § 299b-21 et seq. and General Statutes § 19a-127o

The court's research did not find any Connecticut trial court or Appellate Court decisions that have addressed the application of PSQIA or General Statutes § 19a-127o. The court therefore looked to other jurisdictions in order to address the applicability of the PSQIA. *Daley* v. *Teruel*, 2018 IL App (1st) 170891, 107 N.E.3d 1028, 424 Ill.Dec. 309, an Illinois Appellate decision is instructive. *Daley* provides a thorough discussion on the creation of the PSQIA, its purpose and how the statutory scheme is applied.

"In 1999, the Institute of Medicine released a report titled 'To Err Is Human: Building a Safer Health System,' in which it estimated that as many as 98,000 Americans die every year as a

result of preventable medical errors. S. Rep. No. 108 196, at 2 (2003). The Institute of Medicine concluded that most errors were triggered by failures of the health care system and advocated for the creation of a reporting system 'through which medical error information can be identified, analyzed and utilized to prevent further medical errors.' Id. The Institute of Medicine, however, observed the difficulty of obtaining participation in such a system because 'the threat of malpractice litigation discourages health care professionals and organizations from disclosing, sharing, and discussing information about medical errors.' Id. Given this reluctance, the Institute of Medicine recommended that Congress pass legislation that encouraged the sharing of information but gave health care providers legal protection in return." *Daley* v. *Teruel*, supra, 107 N.E.3d 1036.

"In 2005, partially in response to the Institute of Medicine's report, Congress enacted the Patient Safety and Quality Improvement Act, 42 U.S.C. § 299b-21 et seq." Id. "The Patient Safety Act established a voluntary reporting system of patient safety information by health care providers designed to analyze and improve patient safety and the quality of health care. . . . In order to encourage the voluntary reporting, the law provides privilege and confidentiality protections for patient safety information . . . known as 'patient safety work product,' a broad set of information, such as data, reports, records, and written statements, that could help improve patient safety and the quality of health care. . . . Health care providers share this information with patient safety organizations, which are federally certified groups who collect and analyze patient safety work product and, in turn, recommend strategies to improve patient safety and the quality of health care. . . . Because the privilege and confidentiality protections are essential to the functioning of the system created by the Patient Safety Act, health care providers who disclose

patient safety work product can face monetary fines of up to $10,000 per disclosure. . . .

"Aware that health care providers would be reluctant to share such sensitive patient safety information, Congress included 'privilege and confidentiality protections' to encourage the sharing of 'data within a protected legal environment, both within and across states, without the threat that the information will be used against the subject providers.'. . . These protections were 'the foundation to furthering the overall goal of the statute to develop a national system for analyzing and learning from patient safety events.' Id. at 70,741." (Citations omitted.) *Daley v. Teruel*, supra, 107 N.E.3d 1032, 1036.

The Patient Safety Act provides in relevant part:

"(a) Privilege

"Notwithstanding any other provision of Federal, State, or local law, and subject to subsection (c) of this section, patient safety work product shall be privileged and shall not be

"(1) subject to a Federal, State, or local civil, criminal, or administrative subpoena or order, including in a Federal, State, or local civil or administrative disciplinary proceeding against a provider;

"(2) subject to discovery in connection with a Federal, State, or local civil, criminal, or administrative proceeding, including in a Federal, State, or local civil or administrative disciplinary proceeding against a provider;

"(3) subject to disclosure pursuant to section 552 of Title 5 (commonly known as the Freedom of Information Act) or any other similar Federal, State, or local law;

"(4) admitted as evidence in any Federal, State, or local governmental civil proceeding,

criminal proceeding, administrative rulemaking proceeding, or administrative adjudicatory proceeding, including any such proceeding against a provider; or

"(5) admitted in a professional disciplinary proceeding of a professional disciplinary body established or specifically authorized under State law.

"(b) Confidentiality of patient safety work product

Notwithstanding any other provision of Federal, State, or local law, and subject to subsection (c), patient safety work product shall be confidential and shall not be disclosed."

42 U.S.C.A. § 299b-22 (a) (1)-(5), (b).

Pursuant to 42 U.S.C.A. § 299b-21 (7) (A), "Patient safety work product" means

"any data, reports, records, memoranda, analyses (such as root cause analyses), or written or oral statements

"(i) which

"(I) are assembled or developed by a provider for reporting to a patient safety organization and are reported to a patient safety organization; or

"(II) are developed by a patient safety organization for the conduct of patient safety activities; and which could result in improved patient safety, health care quality, or health care outcomes; or

"(ii) which identify or constitute the deliberations or analysis of, or identify the fact of reporting pursuant to, a patient safety evaluation system." Id. § 299b-21(7) (A).

Thus, the above definitions provide three distinct ways that information can become patient safety work product.

"The term 'provider' means (A) an individual or entity licensed or otherwise authorized under State law to provide health care services, including (i) a hospital, nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, renal dialysis facility, ambulatory surgical center, pharmacy, physician or health care practitioner's office, long term care facility, behavior health residential treatment facility, clinical laboratory, or health center; or (ii) a physician, physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, psychologist, certified social worker, registered dietitian or nutrition professional, physical or occupational therapist, pharmacist, or other individual health care practitioner; or (B) any other individual or entity specified in regulations promulgated by the Secretary." 42 USCA § 299-21(8).

A provider's overall process of collecting patient safety work product in order to report the information to a patient safety organization is considered a "patient safety evaluation system." § 299b 21(6). The Secretary of HHS compiles and maintains a list of the federally certified patient safety organizations, and providers face fines of up to $10,000 each time they knowingly or recklessly disclose certain patient safety work product. Id. §§ 299b 22(f)(1)[2]; 299b 24(d)[3].

The Connecticut counterpart to PSQIA is codified in General Statutes § 19a-127o and

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[2]42 USCA § 299b-22 (f) (1) provides in relevant part: "a person who discloses identifiable patient safety work product in knowing or reckless violation of subsection (b) shall be subject to a civil monetary penalty of not more than $10,000 for each act constituting such violation."

[3]42 USCA § 299b-24(d) provides: "Listing. The Secretary shall compile and maintain a listing of entities with respect to which there is an acceptance of a certification pursuant to subsection (c)(2)(A) that has not been revoked under subsection (e) or voluntarily relinquished."

provides: "(a) For purposes of this section: (1) 'Patient safety organization' means any public or private organization, or component of any such organization, whose primary activity is to improve patient safety and the quality of health care delivery for patients receiving care through the collection, aggregation, analysis or processing of medical or health care-related information submitted to it by health care providers; (2) 'Patient safety work product' means any information, documentation or communication, including, but not limited to, reports, records, memoranda, analyses, statements, root cause analyses, protocols or policies that (A) a health care provider prepares exclusively for the purpose of disclosing to a patient safety organization, (B) is created by a patient safety organization, or (C) contains the deliberations or analytical process of a patient safety organization or between a patient safety organization and health care providers participating in the evaluation of patient care; and (3) "Health care provider" or "provider" means any person, corporation, limited liability company, facility or institution operated, owned or licensed by this state to provide health care or professional services, or an officer, employee or agent thereof acting in the course and scope of his or her employment.

"(b) (1) Any private or public organization or a component of any private or public organization may apply to the Department of Public Health to be designated as a patient safety organization. (2) The department may designate as a patient safety organization each applicant that (A) has a mission statement indicating its primary purpose is to conduct activities to improve patient safety, (B) has qualified staff and professionals capable of reviewing and producing patient safety work product, (C) is not a component of a health insurer or other entity that provides health insurance to individuals or group health plans, and (D) certifies that its mission does not create a conflict of interest with the health care providers who will submit patient safety

work product to it. Each hospital or outpatient surgical facility shall seek to work with one or more patient safety organizations as they become available. The department shall assist hospitals and outpatient surgical facilities in developing working relationships with patient safety organizations.

"(c) A health care provider shall enter into a written contract with each patient safety organization to which it sends patient safety work product. Each contract shall require the provider to maintain a document log itemizing the types of documents submitted to patient safety organizations without indicating the content of such documents. Such document log shall be accessible to the department for the sole purpose of allowing the department to verify the type of information submitted to patient safety organizations. The department shall not have access to patient safety work product. Notwithstanding the provisions of sections 1-210, 1-211 and 1-213, such document log shall not be subject to disclosure to, or use by, any person or entity, other than the patient safety organization and the provider with which it has contracted, and by the department for the sole purpose provided in this subsection.[4]

"(d) A patient safety organization shall, as appropriate, disseminate to health care providers, the department, the Quality of Care Advisory Committee, as established by section 19a-127l, and the public, information or recommendations, including suggested policies, procedures or protocols, on best medical practices or potential system changes designed to improve patient safety and the overall quality of care.

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[4]General Statutes §§ 1-210, 1-211and 1-213 are provisions of the Freedom of Information Act which govern "Access to Public Records"; "Disclosure of Computer-Stored Public Records. Contracts. Acquisition of System, Equipment, Software to Store or Retrieve Nonexempt Public Records" and; "Agency Administration. Disclosure of personnel, birth and tax records. Disclosure of voice mails by public agencies. Judicial records and proceedings."

"(e) A patient safety organization shall have in place appropriate safeguards and security measures to ensure the technical integrity and physical safety of any patient safety work product. Patient safety work product shall be confidential, and shall not be subject to any discovery, access or use by any person or entity other than the patient safety organization and the provider with which the patient safety organization has contracted. Patient safety work product, if submitted to a public or governmental organization, shall not be subject to the provisions of section 1-210, 1-211 or 1-213. Nothing in this subsection shall prohibit a patient safety organization from choosing to disclose patient safety work product, or portions of patient safety work product, in conformity with its mission and within its contractual obligations to the provider submitting the information. No patient safety organization may release protected health information or patient identifying information without meeting the requirements of state laws and the federal Health Insurance Portability and Accountability Act of 1996,[5] as amended from time to time.

"(f) A provider's disclosure of patient safety work product to a patient safety organization shall not modify, limit or waive any existing privilege or confidentiality protection."

Here, there is no dispute that , as a hospital, is a statutorily defined provider, nor is there any dispute that [the PSO] to whom submits patient safety data, event reports and other PSWP, is one of 96 patient safety organizations listed by the Secretary of the Department of Health and Human Services under the PSQIA of 2005 and is a federally certified patient safety organization. Consequently, the issue before the court is whether the information gathered by constitutes patient safety work

[5]29 U.S.C.A. § 1181 et seq.

product.

As previously noted, "there are three distinct ways that information can become patient safety work product. See id. § 299b 21(7)(A). . . . [U]nder the first method, which is considered the "reporting pathway" . . . patient safety work product is 'any data, reports, records, memoranda, analyses (such as root cause analyses), or written or oral statements' that 'are assembled or developed by a provider for reporting to a patient safety organization and are reported to a patient safety organization' and 'which could result in improved patient safety, health care quality, or health care outcomes.' 42 U.S.C. § 299b 21(7)(A)(i)(I) (2012). The regulations substantially echo this formulation but add that the documentation must include the date the information is entered into the patient safety evaluation system. 42 C.F.R. § 3.20 (2016). Under the reporting pathway, the critical inquiry is the purpose of creating the information, and the information will only be considering patient safety work product if it is created *'for the purpose of reporting'* to a patient safety organization. (Emphasis in original.). . . .

"Based on the plain language of the statute and regulations, there are four requirements necessary for the broad class of information to be considered patient safety work product under the reporting pathway: (1) the information must be developed by a provider for the purpose of reporting to a patient safety organization; (2) that information must have the ability to improve patient safety and the quality of health care; (3) that information must be reported to the patient safety organization . . . and (4) the information contains the date it was entered into the patient safety evaluation system."[6] *Daley* v. *Teruel*, supra, 107 N.E.3d 1038.

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[6]The other two ways in which information can become PSWP are materials "developed by a patient safety organization for the conduct of patient safety activities; and which could result in improved patient safety, health care quality, or health care outcomes," 42 U.S.C. §

The defendant in the present case argues that the information gathered by in her investigation of the incident qualifies as PSWP under the reporting pathway and that all four of the requirements discussed above are met here. The court agrees.

maintains a PSES pursuant to the PSQIA for the purpose of improving the safety and quality of patient care. has developed a process for collecting, analyzing, and managing PSWP for the purpose of submission to a contracted PSO.

It is the goal of to ensure that the PSWP collected and analyzed remains privileged and confidential in accordance with the PSQIA. The collection of PSWP occurs through designated leaders in risk management and quality and safety. These leaders conduct analysis and deliberation within the established PSES to determine whether collected PSWP shall be submitted to the PSO. (Affidavit of , ¶ 4-8, Ex. 1). contracted with [the PSO] one of the 96 patient safety organizations listed by the Secretary of the Department of Health and Human Services under the PSQIA of 2005, and is a federally certified PSO pursuant to the PSQIA. initially contracted with [PSO] on , and was still under contract with [PSO] at the time of the incident at issue. (Affidavit of , at ¶ 9-11, Ex. 3). [PSO]'s federally

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299b-21(7)(A)(i)(II) (the "PSO-Developed Prong"), and materials that "identify or constitute the deliberations or analysis of, or identify the fact of reporting pursuant to, a patient safety evaluation system," 42 U.S.C. § 299b-21(7)(A)(ii) (the "Deliberations Prong"). See *Daley* v. *Teruel*, supra, 107 N.E. 1038; *Hyams* v. *CVS Health Corp.*, United States District Court, ND Cal. 18-cv-06271-PJH (LB) (December 11, 2019). In the present case the defendant relies on the reporting pathway to qualify collection of data and information relating to the as PSWP. Since the defendants argue that collection of data qualifies as PSWP under the reporting pathway, and since the court finds that the information obtained by [incident] pursuant to her investigation qualifies as PSWP under this prong, it is not necessary for the court to determine whether the information qualifies as PSWP under the other two categories.

compliant web-based Patient Safety Data Collection and Reporting System and Secure Communication Portal is maintained by ECRI and the Institute for Safe Medication Practices PSO ("ECRI"). In accordance with the PSQIA, submits patient safety data to [PSO] through ECRI. (Affidavit of , at ¶ 12-13).

As the Patient Safety Coordinator, was one of the designated leaders responsible for collecting PSWP and submitting PSWP to the PSO. (Affidavit of , at ¶ 3, 8). In that role, conducted an investigation of the incident underlying this action for the purpose of obtaining information for submission to a PSO in order to improve the safety and quality of patient care. (Affidavit of , ¶ 14-15). As part of that investigation, participated in a safety huddle on with several other employees of to discuss the incident involving the plaintiff. She also interviewed a nurse working in the emergency department at the time of the incident. (Affidavit of , ¶ 16-17). Both the safety huddle and the interview were conducted within and for the purpose of 's PSES pursuant to the PSQIA. The purpose of the safety huddle and interview was to obtain information for submission to a PSO in order to improve the safety and quality of patient care. The results of the investigation and interviews led to the creation of a subcommittee to work on an alert process designed to manage incoming aggressive behavior patients in order to better manage the care and safety of these patients. (Affidavit of , ¶ 18-19). created notes summarizing the safety huddle discussion and the interview of the emergency department nurse. The notes were prepared and maintained as part of PSES. The notes summarizing the safety huddle include the following notation: "This document is privileged and confidential Patient Safety

Work Product (PSWP) as provided by the Federal Patient Safety Quality Improvement Act of 2005. Do not disclose without authorization." (Affidavit of , ¶ 20-21). The notes generated from the interview and the safety huddle were submitted to the PSO , respectively,and were not distributed or maintained outside of 's PSES. (Affidavit of , ¶ 22-24). All of the information known by regarding the August 7, 2018 incident was obtained through her patient safety activities within 's PSES. (Affidavit of , ¶ 25).

This court concludes that the foregoing establishes that 's participation in the safety huddle, interview of the emergency room nurse, and creation of notes regarding those discussions is PSWP within the meaning of the PSQIA and Conn. Gen. Stat. § 19a-127o. The affidavit from , establishes that the documents were assembled and prepared by her solely for submission to [PSO] through ECRI and they were reported to [PSO] . See § 299b 21(7)(A)(i)(I); *University of Kentucky* v. *Bunnell*, 532 S.W.3d 658, 690 (finding that, where a report "was created for the sole purpose of submission" to a patient safety organization "in accordance with" the Patient Safety Act "and for no other use whatsoever," the report was patient safety work product). Furthermore, based on affidavit, the information contained in the documents had the ability to improve patient safety and the quality of health care, and the documents were submitted to the PSO in the third quarter of 2018, on August 17, 2018 and August 20, 2018. 's affidavit further suggests that the documents themselves bear the dates information was entered into the patient safety evaluation system. See 42 U.S.C §

299b 21(7)(A)(i)(I) (2012); 42 C.F.R. § 3.20 (2016)[7]. Therefore, the documents satisfied the requirements of patient safety work product.The information was obtained for the purpose of improving safety and quality of patient care and for submission to a PSO. The information was submitted to a PSO and was maintained within 's PSES.

Therefore, the privilege and confidentiality provisions of the PSQIA and General Statutes § 19a-127o preclude disclosure of the information obtained by through the safety huddle and interview, as well as the notes she created and submitted to the PSO. Moreover, the information collected does not fall within any of the exceptions enumerated under PSQIA [8]

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[7]42 CFR § 3.20 provides in relevant part: "Patient safety work product . . . means any data, reports, records, memoranda, analyses (such as root cause analyses), or written or oral statements (or copies of any of this material)

"(i) Which could improve patient safety, health care quality, or health care outcomes; and

"(A) Which are assembled or developed by a provider for reporting to a PSO and are reported to a PSO, which includes information that is *documented* as within a patient safety evaluation system for reporting to a PSO, and such documentation includes the date the information entered the patient safety evaluation system; or

"(B) Are developed by a PSO for the conduct of patient safety activities; or

"(ii) Which identify or constitute the deliberations or analysis of, or identify the fact of reporting pursuant to, a patient safety evaluation system.

[8]The court notes that "[a]lthough the Patient Safety Act provides protection for information constituting patient safety work product, Congress did not intend the law to provide absolute protection for all documents related to patient safety. See H.R. Rep. No. 109 197, at 9 (2005) (explaining that the disclosure protections only apply to 'certain categories of documents and communications'). In turn, the Patient Safety Act contains a 'Clarification' to the definition of patient safety work product and lists two exceptions. 42 U.S.C. § 299b 21(7)(B) (2012).

"Under the first exception, '[i]nformation described in [the general definition of patient safety work product] does not include a patient's medical record, billing and discharge information, or any other original patient or provider record.' Id. § 299b 21(7)(B)(i). The regulations do not expound on this exception. See 42 C.F.R. § 3.20 (2016). But the legislative history of the Patient Safety Act explains that 'there may be documents or communications that are part of traditional health care operations or record keeping' such as 'medical records, billing records, guidance on procedures, physician notes, hospital policies, logs of operations, records of drug deliveries, and primary information at the time of events.' H.R. Rep. No. 109 197, at 14 (2005). While 'these original documents and ordinary information about health care operations

may be relevant to a patient safety evaluation system,' they 'are not themselves patient safety work product.' Id.; see also Patient Safety Act Guidance, 81 Fed. Reg. 32,655, 32,658 (May 24, 2016) (to be codified at 42 C.F.R. pt. 3) (stating that 'original provider records' include '[o]riginal records (e.g., reports or documents) that are required of a provider to meet any Federal, state, or local public health or health oversight requirement regardless of whether such records are maintained inside or outside of the provider's [patient safety evaluation system]').

"Under the second exception, '[i]nformation described in [the general definition of patient safety work product] does not include information that is collected, maintained, or developed separately, or exists separately, from a patient safety evaluation system. Such separate information or a copy thereof reported to a patient safety organization shall not by reason of its reporting be considered patient safety work product.' 42 U.S.C. § 299b 21(7)(B)(ii) (2012). In other words, if information was created for 'purposes other than reporting' to a patient safety organization, it is not considered patient safety work product. Patient Safety Act Guidance, 81 Fed. Reg. 32,655, 32,656 (May 24, 2016) (to be codified at 42 C.F.R. pt. 3). The Patient Safety Act created a protected system that does not replace, but rather resides alongside, external collection activities mandated by state and federal laws and regulations. Id. at 32,657. For example, '[i]nformation is not patient safety work product if it is collected to comply with external obligations' such as 'state incident reporting requirements,' 'adverse drug event information reporting to the Food and Drug Administration,' or 'certification or licensing records for compliance with health oversight agency requirements,' among other obligations. Patient Safety and Quality Improvement, 73 Fed. Reg. 70,732, 70,742 43 (Nov. 21, 2008) (to be codified at 42 C.F.R. pt. 3).

"Although there could be instances where documents fit both exceptions, the crux of the exceptions are that, where health care providers create records for more than one purpose, the records themselves do not qualify as patient safety work product because the intent of the Patient Safety Act 'is to protect the additional information created through voluntary patient safety activities, not to protect records created through providers' mandatory information collection activities.' Patient Safety Act Guidance, 81 Fed. Reg. 32,655, 32,655 (May 24, 2016) (to be codified at 42 C.F.R. pt. 3). Where other laws require the reporting of health care information, the burden is on providers to assemble separate and original information for purposes of meeting those reporting requirements and then create additional information as part of their voluntary participation under the Patient Safety Act. See Patient Safety and Quality Improvement, 73 Fed. Reg. 70,732, 70,743 (Nov. 21, 2008) (to be codified at 42 C.F.R. pt. 3) ('The final rule is clear that providers must comply with applicable regulatory requirements and that the protection of information as patient safety work product does not relieve a provider of any obligation to maintain information separately.'); see also *University of Kentucky* v. *Bunnell*, 532 S.W.3d 658, 668 (Ky. Ct. App. 2017) ('When a provider participates in this voluntary program, the data it generates for that program must be superfluous to the documentation necessary for patient care or regulatory compliance.'). Health care providers should not commingle information necessary to satisfy mandatory record keeping or reporting obligations with information used in their voluntary participation under the Patient Safety Act. See Patient Safety Act Guidance, 81 Fed. Reg. 32,655, 32,659 (May 24, 2016) (to be codified at 42 C.F.R. pt. 3) (recommending that a

The plaintiff in his objection argues that PSQIA and General Statutes § 19a-127o apply only to medical malpractice cases. The court disagrees. First, the plain language of PSQIA and § 19a-127o does not limit the application of these statutes to medical malpractice cases. In *Tinal* v. *Norton Healthcare, Inc.*, United States District Court, W.D. Kentucky, Civil Action No. 3:11-CV-596-S (July 15, 2014), a federal district court case, the court had to determine whether PSQIA applied to cases outside the context of a medical malpractice action. *Tinal* was a wrongful termination case. In applying the federal rules of statutory construction, the court reasoned: "Our task now is to examine the above language in the context of the full Act so as to

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provider maintain at least two separate systems, one where it maintains records necessary to satisfy external obligations and the other, its patient safety evaluation system, where it maintains patient safety work product). Lastly, the statutory 'Clarification' provides that "[n]othing in this part shall be construed to limit

"(I) the discovery of or admissibility of information described in this subparagraph in a criminal, civil, or administrative proceeding;

"(II) the reporting of information described in this subparagraph to a Federal, State, or local governmental agency for public health surveillance, investigation, or other public health purposes or health oversight purposes; or

"(III) a provider's recordkeeping obligation with respect to information described in this subparagraph under Federal, State, or local law." 42 U.S.C. § 299b 21(7)(B)(iii) (2012). The regulations explain that this language simply means that '[n]othing in this part shall be construed to limit information that is not patient safety work product from being' discovered in civil proceedings, reported to other government agencies for public health purposes, or maintained as part of a provider's record-keeping obligations under any other law. 42 C.F.R. § 3.20 (2016)." *Daley* v. *Teruel*, supra, 107 N.E.3d 1038-40.

has attested that she investigated the incident underlying this action for the sole purpose of obtaining information for submission to a PSO in order to improve the safety and quality of patient care. (Affidavit of , ¶ 14-15). In particular, sought to improve the safety and quality of patient care by ensuring that patients are not impacted by violent behavior in the hospital setting. Id. Ultimately, 's investigation led to the creation of a subcommittee to work on an alert process designed to manage aggressive individuals, such as the plaintiff, whose dangerous conduct would have a serious adverse impact on the health, wellbeing and safety of patients. Id. It also appears from 's affidavit, that the information and notes that were gathered as part of her investigation were separate and apart from any other mandatory record keeping or reporting obligations. See id. ¶¶ 15-25.

give effect to congressional intent. See *United States* v. *Amer. Trucking Assoc.*, 310 U.S. 534, 542 (1940) ('In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress.'). The first step in such statutory interpretation is always taken by examining the language of the statute in an effort to divine its plain meaning if possible. See *United States* v. *Parrett*, 530 F.3d 422, 429 (6th Cir. 2008) (citing *United States* v. *Wagner*, 382 F.3d 598, 606-07 (6th Cir. 2004)).

"As the U.S. Supreme Court has explained, 'There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation.' *Amer. Trucking Assoc.*, 310 U.S. at 543. See also, *Community for Creative Non-Violence* v. *Reid*, 490 U.S. 730, 739 (1989) ('The starting point for our interpretation of a statute is always its language.') (citing *Consumer Product Safety Commission* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980)). Only when the plain meaning cannot be determined from the language of the statute read in its context, or such plain meaning would lead to either absurd or futile results, does the court continue to the second step of the 3-step process for statutory interpretation. See *Dept. of Housing and Urban Dev.* v. *Rucker*, 535 US. 125, 134-35 (2002) ('To avoid a law's plain meaning in the absence of ambiguity "would trench upon the legislative powers vested in Congress by Art. I, § 1, of the Constitution."') (quoting *United States* v. *Albertini*, 472 U.S. 675, 680 (1985)). *Amer. Trucking Assoc.* 310 U.S. at 543 (court may look beyond the words to the purpose of the Act when their plain meaning would lead to absurd or futile results).

"Step 2 of the legislative interpretation framework requires the Court to go beyond the

natural meaning of the full text of a disputed statute to examine the common-law meaning of its statutory terms in an effort to resolve any ambiguity determined to be present. See gen., *Beaven* v. *U.S. Dept. of Justice*, 622 F.3d 540, 548 (6th Cir. 2010) (discussing the 3-step legislative-interpretation framework established by the Supreme Court); *Elgharib* v. *Napolitano*, 600 F.3d 597, 601 (6th Cir. 2010) (same). In the absence of such ambiguity, rules of statutory construction as an aid to ascertain the meaning of statutory terms not otherwise obscure or doubtful is not appropriate. See *Russell Motor Car Co.* v. *United States*, 261 U.S. 514, 519 (1923) (Rules of statutory construction 'have no place, as this court has many times explained, except in the domain of ambiguity.'). See also, *United States* v. *Denham*, 663 F. Supp.2d 561, 563 (E.D. Ky. 2009) ('If the meaning [of the statute] is plain, then the interpretation need go no further and has concluded.') (citing United States v. Goins, 516 F.3d 416, 420 (6th Cir. 2008)).

"Third and finally, if the intent of Congress cannot be ascertained from the plain language of the statute or from common law definition of its otherwise ambiguous terms, then and only then, the courts may consider the statutory and legislative history for their guidance. *Beaven*, 622 F.3d at 548 (citing *Lockhart* v. *Napolitano*, 573 F.3d 251, 255 (6th Cir. 2009)). See also, *Parrett*, 530 F.3d at 429 ('If the statutory language is not clear, we may examine the relevant legislative history.')." *Tinal* v. *Norton Healthcare, Inc.*, supra, Civil Action No. 3:11-CV-596-S.

In concluding that the PSQIA applies to cases outside the medical malpractice context, the court in *Tinal* went "no further than step 1 of the 3-step legislative-interpretation process. The plain language of the privilege provision set forth in § 299b-22(a) answers in full the question of whether Congress intended the patient safety work product privilege to apply outside the context of medical malpractice actions. With only limited the exception set forth in subsection (c) of §

299b-22, those items that qualify as patient safety work product shall be privileged **'notwithstanding any other provision of the federal, state or local law.'** 42 U.S.C. § 299b-22(a)(emphasis added). Further, the qualifying patient safety work product by operation of § 299b-22(a)(2) shall not **'be subject to discovery in connection with a federal, state, or local civil, criminal or administrative proceeding**. . . ." 42 U.S.C. § 299b-22(a)(2) (2014)(emphasis added).

"Nowhere in the quoted language is there any limitation or exception for federal civil rights or employment discrimination cases. To the contrary, the statute speaks in plain, unequivocal terms that encompass all federal, state or local civil or criminal proceedings. The same type of plainly-worded, absolute prohibition is found in subsection (a)(4) of the statute which states clearly that patient safety work product shall not be **'admitted as evidence in any federal, state, or local governmental civil proceedings. . . .'** 42 U.S.C. § 299b-22(a)(4). (2014)(emphasis added). No ambiguity can be read into the quoted provisions of subsection (a) of the privilege statute.

"The next portion of the statute, subsection (b), on confidentiality is likewise unambiguous in its plain language. Patient safety work product is to be treated as being confidential and is not to be disclosed 'notwithstanding any other provision of federal, state or local law' other than that found in subsection (c) of § 299b-22, the subsection on exceptions. Subsection (c) of the statute does appear to provide several very limited exceptions to the otherwise absolute privilege and confidentiality provisions of subsections (a) and (b), respectively.

"Under subsection (c) of § 299b-22, as noted above, the provisions of subsections (a) and

(b) of the statute do not apply to 'disclosure of relevant patient safety work product for use in a criminal proceeding, but only after a court makes an in camera determination that such patient safety work product contains evidence of a criminal act and . . . is material to the proceeding and not reasonably available from any other source.' 42 U.S.C. § 299b-22(c)(1)(A)(2014). In other words, Congress has determined in the context of a criminal proceeding that relevant patient safety work product may be non-privileged and non-confidential if the court after in camera review determines it to contain evidence of a criminal act that is both (1) material to the criminal proceeding and (2) not reasonably available from any other source. Id.

"This exception of § 299(b)-22(c)(1)(A) is the sole explicit exception for litigation, albeit criminal in nature. The exception obviously has no application in the context of the present action, a civil suit that alleges the violation of the ADA, among other claims. Noteworthy is the fact that Congress did not include in § 299(b)-22(c) an exception for proceedings involving federal civil rights actions or employment discrimination claims. Indeed, Congress made no explicit reference whatsoever to civil claims at all in the exception provisions of subsection (c) outside the equitable remedies provisions of § 299b-22(f)(4)(A) incorporated by reference into § 299b-22(c)(1)(B). That reference by incorporation relates only to civil claims brought by employees of a provider who suffer an adverse employment action for their efforts to report patient safety information to a PSO. Only in this one, highly-limited context did Congress provide an exception to the privilege and confidentiality protections for civil litigation in an employment context." *Tinal* v. *Norton Healthcare, Inc.*, supra, United States District Court, WD Kentucky, Civil Action 3:11-CV-596-S.

The court in *Tinal* concluded that "[i]n the absence of any explicit exception to the plain

language of subsections (a) and (b) for federal civil rights actions, it is clear to the Court that the privilege created for patient safety work product is intended to apply *across-the-board to all other types of claims*. We certainly have no authority through the means of statutory construction to judicially create any exception that Congress did not provide for in the language of the statute. See *United States* v. *Johnson* 529 U.S. 53, 58 (2000) ('When Congress provides exceptions in a statute, it does not follow that the courts have authority to create others. The proper inference, and the one we adopt here, is that Congress considered the issue of exceptions and, in the end, limited the statute to the ones set forth.'). *N.L.R.B.* v *Ky River Community Care, Inc.*, 532 U.S. 706, 711 (2001) ('The general rule of statutory construction that the burden of proving justification or exemption under a special exception to the prohibitions of a statute generally rests on the one who claims its benefits.') (quoting *FTC* v. *Morton Salt co.*, 334 US. 37, 44-45 (1948)). Because Tinal bore the burden to establish an exception to the privilege for federal civil rights claims, and because the plain language of subsections (a) and (b) of § 299b-22 clearly establishes that Congress intended patient safety work product to be privileged and confidential in all federal, state and local civil, criminal and administrative proceedings, we are required by the above-cited authority, along with the plain language of the statute, to hold that the patient safety work product privilege applies to Tinal's ADA and other claims against Norton.

"We have no authority to go behind the plain meaning of the statute even though its application in the present case places substantial obstacles in Tinal's efforts to discover the potential disparate treatment of other similarly situated Norton pharmacy employees. See *Violette* v. *P.A. Days, Inc.*, 427 F.3d 1015, 1017 (6th Cir. 2005) ('The judiciary is not "licensed to attempt to soften the clear import of Congress's chosen words whenever a court believes those words

lead to a harsh result"') (quoting *United States v. Locke*, 471 U.S. 84, 95 (1985))." (Emphasis added.) *Tinal* v. *Norton Healthcare, Inc.*, supra, United States District Court, WD Kentucky, Civil Action 3:11-CV-596-S; see also *The Department of Financial and Professional Regulation* v. *Walgreen Company*, 2012 Ill. App. 2d 110452, 970 N.E.2d 552, 361 Ill.Dec. 186 (2012) (court decision upholding the privilege protections under the PSQIA, was not a medical malpractice action, but rather a case which involved administrative subpoenas which were served after a report surfaced indicating that three of Walgreen's pharmacists may have violated the Pharmacy Practice Act); *Payton* v. *Columbia St. Mary's Hospital, Milwaukee, Inc. ET AL.*, Circuit Court, Branch 18, Case No. 20CV1108 (January 20, 2020) (case arose from incident when the plaintiff was beaten and stabbed in defendant hospital's parking lot, was not a medical malpractice case, yet circuit court concluded that the PSQIA applied and shielded hospital's Safety Event Review Team meeting minutes from disclosure).

When applying similar Connecticut principles of statutory construction, as applied in *Tinal*, to § 19a-127o, this court likewise concludes that the application of § 19a-127o is not limited to medical malpractice cases. "'When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1 2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . .

. When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation.' . . . Significantly, 'our case law is clear that ambiguity exists only if the statutory language at issue is susceptible to more than one plausible interpretation.'" (Citations omitted.) *Tomick* v. *United Parcel Service, Inc.,* 324 Conn. 470, 477-78, 153 A.3d 615 (2016).

General Statutes § 19a-127o contains similar language as set forth in PSQIA. See pp. 11-13 of this memorandum. None of the provisions of § 19a-127o contains language which limits its application to only medical malpractice cases. Indeed, subsection (e) provides in pertinent part that, "[p]atient safety work product shall be confidential, and *shall not be subject to any discovery*, access or use by any person or entity other than the patient safety organization and the provider with which the patient safety organization has contracted." This language clearly does not limit application of the statute to medical malpractice cases, but rather suggests that PSWP shall not be subject to any discovery in any proceeding.

Thus, although the plaintiff strenuously contests the applicability of the PSQIA, he fails to argue or cite to any supporting case law to support his claim that § 19a-127o is limited to medical malpractice cases and not applicable to the present case. The plain language of the statute suggests the contrary. Therefore, a plain reading of § 19a-127o shields the information obtained by from disclosure.

CONCLUSION

For the foregoing reasons, the court finds good cause to grant the defendants' motion for protective order. The motion is therefore granted and the plaintiff's objection thereto is overruled.