FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D22-1277

SHANDS TEACHING HOSPITAL
AND CLINICS, INC., d/b/a SHANDS
AT THE UNIVERSITY OF FLORIDA,

Petitioner,

v.

KIMBERLY BEYLOTTE,

Respondent.

Petition for Writ of Certiorari—Original Jurisdiction.

March 8, 2023

LONG, J.

Shands Teaching Hospital petitions for a Writ of Certiorari seeking review of an order compelling production of a report created under the Federal Patient Safety and Quality Improvement Act. 42 U.S.C. §§ 299b-21 to -26 (2005). Because the report is protected by the Act, we grant the petition and quash the trial court's order.

I.

The dispute between Shands and Kimberly Beylotte began as a slip-and-fall action. Beylotte was visiting a patient at Shands when she slipped and fell on a clear liquid while walking through a hallway near a nursing station. She sued Shands for injuries she

sustained in the fall. Beylotte sought to discover any "investigative report" prepared in response to her fall. Shands objected. Beylotte moved to compel.

Shands sought to protect a patient safety report related to Beylotte's fall that was prepared "solely for submission to [a] patient safety organization." The report was placed in a patient safety evaluation system and submitted to the patient safety organization. Shands also confirmed that the report was not a medical record, billing and discharge information, or an original patient or provider record.

The trial court granted Beylotte's motion to compel and ordered Shands to produce the report within five days. The trial court reasoned that the Federal Patient Safety and Quality Improvement Act only applied to records involving *patients* and did not apply to incidents involving staff or visitors. This petition followed.

II.

Certiorari is appropriate when the petitioning party establishes that a trial court order departed from the essential requirements of the law and the departure will result in a material injury that cannot be corrected on postjudgment appeal. *Emed Urgent & Primary Care, P.A. v. Rivas*, 335 So. 3d 766, 767 (Fla. 1st DCA 2022). "The correctability is a jurisdictional question" and must be considered first. *Jordan v. State*, 350 So. 3d 103, 105 (Fla. 1st DCA 2022); see also *CVS Caremark Corp. v. Latour*, 109 So. 3d 1232, 1234 (Fla. 1st DCA 2013) (explaining that the irreparable harm inquiry is jurisdictional). Ordering discovery of privileged and confidential material can cause irreparable harm because, once the information becomes public, its confidentiality is lost forever. Because the trial court's order compelled the disclosure of information over a claim of privilege, Shands demonstrated irreparable harm sufficient to invoke this Court's jurisdiction.

We determine next whether the trial court order departs from the essential requirements of the law. The dispute turns on whether the report is patient safety work product under the Act. The Act protects "any data, reports, records, memoranda, and

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.

42 U.S.C. § 299b-21(7)(A). The Act includes exemptions from this protection, but the report here does not fall within any of them. Shands submitted an uncontradicted affidavit certifying that the subject report was assembled for reporting to a patient safety organization under the Act and that the report was in fact submitted. It is undisputed that the report here was created under the confidential reporting pathway authorized by the Act. The Act also requires that the report "could result in improved patient safety, health care quality, or health care outcomes." Shands maintains that improving potential slip-and-fall conditions in patient-traversed corridors is necessarily related to improved patient safety. We agree.

The incident here occurred on a patient unit of the hospital where patients and visitors walk. It does not matter that Beylotte was not a patient at the time of her fall. Any person—staff, patients, and visitors alike—face similar slip-and-fall risks in a hospital's common areas.

Because the report here was "assembled . . . by a provider for reporting to a patient safety organization," was in fact "reported to

a patient safety organization," and "could result in improved patient safety" we conclude that it qualifies as patient safety work product. *See generally Tallahassee Mem'l Healthcare, Inc. v. Wiles*, 351 So. 3d 141 (Fla. 1st DCA 2022). It is therefore privileged and confidential under the Federal Patient Safety Quality and Improvement Act. The trial court departed from the essential requirements of the law in limiting the Act only to reports involving patients. Requiring Shands to produce the privileged document will result in irreparable harm that cannot be remedied on postjudgment appeal. We therefore grant the petition and quash the order requiring disclosure of the report.

LEWIS and B.L. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Christine R. Davis of Davis Appeals, PLLC, Tallahassee, for Petitioner.

Mary Sherris of Sherris Legal, P.A., Orlando, for Respondent.