

NORTH CAROLINA COURT OF APPEALS

McGehee v. Farber

No. COA25-589 · No. No. COA25-589 · Decided March 4, 2026

SUMMARY

The North Carolina Court of Appeals reviews an interlocutory discovery order in a medical malpractice action involving the Patient Safety and Quality Improvement Act privilege, the medical review-committee privilege, and the physician-patient privilege. The court holds that the SAFE report and redacted patient-complaint spreadsheet were not protected by the asserted privileges, but that the trial court’s order was overbroad insofar as it compelled testimony concerning information learned solely through medical-review committee proceedings. The court affirms in part, vacates in part, and remands for clarification.

CASE DETAILS

COURT	North Carolina Court of Appeals
WRITING FOR THE COURT	Allegra Collins; Zachary; Carpenter
JURISDICTION	North Carolina Court of Appeals
DECIDED	March 4, 2026
DOCKET	No. COA25-589
DISPOSITION	other
PROCEDURAL POSTURE	Interlocutory appeal from an order denying motions to quash subpoenas, allowing a protective order, compelling production of documents, and permitting depositions concerning the care of the decedent and other incidents involving Dr. Farber.
STANDARD OF REVIEW	Discovery orders are ordinarily reviewed for abuse of discretion, but an order compelling disclosure of information claimed to be statutorily privileged presents a legal question reviewed de novo. The party asserting the privilege must establish its applicability with sufficient evidence and may not rely on conclusory assertions.
PRECEDENTIAL VALUE	published
PARTIES	Mark Adam Farber, M.D., Fernando Motta, M.D., Paul Brian Tessmann, M.D., UNC Health, Melina R. Kibbe, M.D., Harvey L. Lineberry II, Ph.D., David Gerber, M.D., Ron Falk, M.D., Elise Maggioncalda, M.D., Austin Flick, M.D., Justin Myers, D.O., Abhi

TOPICS

discovery dispute privilege appellate jurisdiction medical malpractice medical records privacy

PRACTICE AREAS

civil procedure medical malpractice health law evidence

QUESTIONS PRESENTED

1. Whether the Court of Appeals had jurisdiction to review the interlocutory discovery order because the asserted Patient Safety Act, medical review-committee, and physician-patient privileges affected a substantial right.
2. Whether the SAFE report was protected patient safety work product under the Patient Safety and Quality Improvement Act of 2005.
3. Whether the medical review-committee privilege barred deposition questions seeking information learned solely through medical review-committee proceedings.
4. Whether a spreadsheet of patient complaints concerning Dr. Farber was protected by the physician-patient privilege under N.C. Gen. Stat. § 8-53.

HOLDINGS

1. The Court of Appeals had jurisdiction because the nonfrivolous assertion of statutory privileges directly related to the information ordered disclosed and therefore implicated a substantial right that could be lost absent immediate review.
2. An order compelling disclosure of information claimed to be statutorily privileged is reviewed de novo, and the party asserting the privilege must provide sufficient evidence showing that the material falls within the statutory privilege.
3. The SAFE report was not shown to be privileged patient safety work product under the Patient Safety and Quality Improvement Act because UNC Health failed to demonstrate that it was created for reporting to a patient safety organization or that it identified or constituted deliberations or analysis of a patient safety evaluation system.
4. The trial court properly permitted inquiry into matters related to the decedent's care and other incidents involving Dr. Farber, but it erred to the extent its order required testimony about information learned solely through protected medical review-committee proceedings.
5. The spreadsheet of complaints submitted to UNC Health's patient-relations department was not protected by the physician-patient privilege under N.C. Gen. Stat. § 8-53, and the trial court properly ordered its production subject to redaction of protected health information and a protective order.

KEY QUOTATIONS

“Although UNC Health ultimately submitted the SAFE report to the Patient Safety Organization, UNC Health may not shield otherwise discoverable internal documents from disclosure merely by routing them through their patient safety evaluation system.” (8)

“We thus vacate this portion of the order and remand to the trial court for clarification of this provision consistent with the law.” (12)

“Accordingly, we affirm in part, vacate in part, and remand to the trial court to clarify in its order that UNC Health and its employees are not required to testify to information that is protected by the medical review privilege.” (14)

FACTUAL BACKGROUND

Tony Miller McGehee was treated at UNC Medical Center in August 2021 after imaging indicated a Stanford Type A aortic dissection. He was discharged on 13 August 2021 and died the following day after suffering cardiac arrest and being transferred to another hospital. His executrix sued the treating physicians for medical negligence and subpoenaed UNC Health and several physicians for a SAFE report, incident reports, complaints, disciplinary materials, and deposition testimony concerning Dr. Farber and other incidents.

PROCEDURAL HISTORY

Paula M. McGehee, as executrix of Tony Miller McGehee's estate, filed a medical malpractice action against Drs. Farber, Motta, and Tessmann. Plaintiff subpoenaed UNC Health and several non-party physicians for documents and deposition testimony concerning the decedent's care, complaints involving Dr. Farber, and Dr. Farber's training or discipline. The Harnett County Superior Court denied the motions to quash, allowed a protective order, compelled production, and authorized broad deposition questioning. The defendants and non-parties appealed, and the Court of Appeals held that the asserted privileges affected a substantial right permitting interlocutory review.

DISPOSITION

other

REMAND INSTRUCTIONS

Remand to the trial court to clarify that UNC Health and its employees are not required to produce documents or provide testimony concerning information protected by the medical review privilege, including information learned solely through protected medical review-committee proceedings.

CASES CITED

- Veazey v. Durham, 231 N.C. 357, 362 (1950)
- Woody v. Vickrey, 276 N.C. App. 427, 433 (2021)
- Cape Homeowners Ass’n, Inc. v. S. Destiny, LLC, 292 N.C. App. 374, 378 (2024)
- Sharpe v. Worland, 351 N.C. 159, 166 (1999)
- Midgett v. Crystal Dawn Corp., 58 N.C. App. 734, 737 (1982)

- Hammond v. Saini, 367 N.C. 607, 609-10 (2014)
- Brown v. Am. Partners Fed. Credit Union, 183 N.C. App. 529, 534-35 (2007)
- Daley v. Teruel, 107 N.E.3d 1028, 1037 (Ill. App. Ct. 2018)
- In re BayCare Med. Grp., Inc., 101 F.4th 1287, 1291 (11th Cir. 2024)
- Shelton v. Morehead Memorial Hospital, 318 N.C. 76, 83-84 (1986)
- Armstrong v. Barnes, 171 N.C. App. 287, 294 (2005)
- Cates v. Wilson, 321 N.C. 1, 14 (1987)
- Mosteller v. Stiltner, 221 N.C. App. 486, 487 (2012)

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