

## The Importance of Safeguarding Confidentiality in the Peer Review Process

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By: Donald F. Ladd and Charles Eppolito III

The law in Pennsylvania and elsewhere has long protected the confidentiality of the medical peer review process. Morbidity and mortality meetings, root cause analysis, and credentialing committees are the vehicles through which the medical community asks, “looking at the past, can we do better next time?” The only way to have an open and candid process of peer review is to protect those communications and deliberations from public disclosure with a legal privilege. The vast majority of states protect peer review proceedings and records with the cloak of confidentiality. In 1974, the Pennsylvania Legislature passed the Peer Review Protection Act, which encourages the “increased use of peer review groups by giving protection to individuals and data reported to any review group.” It provides, in part, that the “proceedings and records of the review committee shall be held in confidence and shall not be subject to discovery or introduction into evidence.”

Since that time, medical malpractice litigators have fought many battles over this privilege and its exceptions. Medical malpractice plaintiffs’ attorneys persistently seek any files, records, conversations, reports, emails, notes, etc., that may exist regarding the retrospective evaluation of medical care. While the appellate courts have upheld the Pennsylvania Peer Review Protection Act, there is always a significant risk that an informal conversation or casual email communication might be the subject of discovery. Furthermore, the courts and attorneys have scrutinized the institutional policies and procedures for peer review. If communication and records do not fall within the definitions and procedures outlined in the Peer Review Protection Act and the institution’s own policies, they may be subject to discovery. The threat of disclosure will frustrate the goal of a free and open retrospective discussion of medical treatment for the purpose of improving morbidity and mortality within the health care setting. The best way of preventing a breach of privilege involves reviewing (and, if necessary, amending) institutional peer review policies and procedures, and implementing an education program for health care providers on the correct manner to protect candid communication.

It is vitally important that all health care providers understand the proper method of initiating a peer review proceeding. It is natural for a provider to question medical treatment after a complication or bad result occurs. Many health care workers will need to question openly whether the right thing was done in a given situation. This natural instinct is the heart of the proper purpose of peer review proceedings. Suppressing this natural questioning process only serves to hinder our ability to improve practices, policies, skills, and outcomes.

If the hospital policies and procedures are written broadly to include early conversations which are part of the peer review process, the protection of the peer review privilege will be enhanced. All communication for peer review should be done with the expectation of privacy and confidentiality. There should be no casual conversations with respect to matters being peer reviewed. Documents and records should be secured in confidential files and clearly marked. Health care

workers should be told to refrain from making any written documentation or comment regarding the quality of health care, other than formal submissions to a peer review committee. There should be no regular email commentary regarding the quality of care. It should be clearly understood that hallway discussions or informal consultations may be completely discoverable in litigation. The scope of protection of the peer review privilege may vary depending upon the local jurisdiction. An experienced legal review of the recent published decisions in connection with the venue of the institution is wise.

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