

## Josh Gajer Discusses How Patient Care Could Become Discoverable

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Discussing a case as part of a peer review process is not entirely protected from discovery during litigation. Josh Gajer says that as a general rule, peer review protections are only going to apply if the state where the provider practices has a peer review statute on the books, the information at issue was exchanged in formal compliance with the technical requirements of the applicable statute, and the purpose of the discussion was to improve future outcomes (not to manage risk related to a prior bad outcome).

"Although the public policy rationale and general framework for peer review protection is largely similar among states that employ it, the technical details of how the protection operates can vary state to state," Josh said.

In a recent *ED Management* article, "Discussions on Patient Care Could Become Discoverable," Josh discusses how peer review protections must strike the right balance between the plaintiff's right to discover information and the need for providers to openly discuss care without fearing legal repercussions. Maintaining robust peer review protections are critical to ensuring hospital providers, including EPs, "can continue to engage in the type of unflinching self-criticism that promotes constant quality improvement in medicine for the betterment of all patients." (p.162)

### KEY ATTORNEYS

Joshua Gajer

### PRACTICE AREAS

Healthcare