



A FIFTY-STATE SURVEY OF THE MEDICAL PEER REVIEW PRIVILEGE

THE MEDICAL PEER REVIEW PRIVILEGE safeguards the disclosure of information acquired or generated during an internal peer review of medical treatment and patient care from discovery and trial in civil litigation. The process of peer review may occur in hospitals, non-hospital institutional providers (such as freestanding surgery centers), medical practice groups, and third-party payers of healthcare expenses.¹ By keeping information privileged, the peer review process serves to provide “a safe forum in which medical professionals can review the quality of care and work to reduce medical errors.”²

The degree of protection afforded to information related to the peer review process depends on a variety of factors. For example, no recognized medical peer review privilege exists under federal law. In 1986, Congress passed the

Health Care Quality Improvement Act, which established federal guidelines for peer review.³ The Act provides immunity for participants under certain circumstances; however, it does not protect peer review documents or discussions from disclosure in litigation.⁴

With the exception of New Jersey, all states and the District of Columbia have enacted statutes affording some degree of protection of the disclosure of peer review information. State statutes differ widely in scope, and courts generally construe these statutory privileges narrowly because such privileges “contravene the fundamental principal that the public [...] has the right to every man’s evidence.”⁵ The following survey provides an overview of state statutes concerning the medical peer review privilege.⁶

Alabama: ALA. CODE §6-5-333(D) (2008) “All information, interviews, reports, statements, or memoranda furnished to any [medical peer review] committee as defined in this section, and any findings, conclusions, or recommendations resulting from the proceedings of such committee are declared to be privileged.”

Alaska: ALASKA STAT. §18.23.030(a) (2008) “All data and information acquired by a review organization in the exercise of its duties and functions shall be held in confidence and may not be disclosed to anyone except to the extent necessary to carry out the purposes of the review organization and is not subject to subpoena or discovery.”

Arizona: ARIZ. REV. STAT. §36-445.01 (2008) “All proceedings, records and materials prepared in connection with the reviews provided for in §36-445, including all peer reviews of individual healthcare providers practicing in and applying to practice in hospitals or outpatient surgical centers and the records of such reviews, are confidential and are not subject to discovery” unless expressly exempt.

Arkansas: ARK. CODE ANN. §20-9-503 (West 2008) “The proceedings and records of a peer review committee shall not be subject to discovery or introduction into evidence in any civil action against a provider of professional health services arising out of the matters which are subject to evaluation and review by the committee.”

California: CAL. EVID. CODE §1157 (West 2008) “Neither the proceedings nor the records of organized committees of medical, medical-dental, podiatric, registered dietitian, psychological, marriage and family therapist, licensed clinical social worker, or veterinary staffs in hospitals, or of a peer review body, as defined in Section 805 of the Business and Professions Code [...] shall be subject to discovery.”

Colorado: COLO. REV. STAT. §25-3-109 (2008) “The records, reports, and other information [...] shall not be subject to subpoena or discoverable or admissible as evidence in any civil or administrative proceeding.”

Connecticut: CONN. GEN. STAT. §19a-17b (2008) “The proceedings of a medical review committee conducting a peer review shall not be subject to discovery or

introduction into evidence in any civil action for or against a healthcare provider arising out of the matters which are subject to evaluation and review by such committee, and no person who was in attendance at a meeting of such committee shall be permitted or required to testify in any such civil action as to the content of such proceeding.”

Delaware: DEL. CODE ANN. tit. 24, §1768 (2008) “The records and proceedings of committees and organizations [...] are confidential and may only be used by those committees or organizations and the members thereof. The records and proceedings are not public records and are not available for court subpoena, nor are they subject to discovery. A person in attendance at a meeting of any such committee or organization is not required to testify as to what transpired at the meeting.”

District of Columbia: D.C. CODE §44-805 (2008) “The files, records, findings, opinions, recommendations, evaluations, and reports of a peer review body, information provided to or obtained by a peer review body, the identity of persons providing information to a peer review body [...] shall be confidential and shall be neither discoverable nor admissible into evidence in any civil, criminal, legislative, or administrative proceeding.”

Florida: FLA. STAT. ANN. §395.0193(8) (West 2008) “The investigations, proceedings, and records of the peer review panel [...] shall not be subject to discovery or introduction into evidence in any civil or administrative [proceeding, ...] and a person who was in attendance at a meeting of such group or its agent may not be permitted or required to testify in any such civil or administrative action as to any evidence or other matters produced or presented during the proceedings of such group or its agent or as to any findings, recommendations, evaluations, opinions, or other actions of such group or its agent or any members thereof [...]” *See also id.* at §766.101.

Georgia: GA. CODE ANN. §31-7-133(a) (West 2008) “The proceedings and records of a review organization shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action; and no person who

was in attendance at a meeting of such organization shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings or activities of such organization or as to any findings, recommendations, evaluations, opinions, or other actions of such organization or any members thereof.”

Hawaii: HAW. REV. STAT. §624-25.5 (2008) “Neither the proceedings nor the records of peer review committees, quality assurance committees, or case review forums shall be subject to discovery [...]. Information protected shall not include incident reports, occurrence reports, or similar reports that state facts concerning a specific situation, or records made in the regular course of business by a hospital or other provider of healthcare.”

Idaho: IDAHO CODE ANN. §39-1392b (2008) “All peer review records shall be confidential and privileged, and shall not be directly or indirectly subject to subpoena or discovery proceedings or be admitted as evidence, nor shall testimony relating thereto be admitted in evidence, or in any action of any kind in any court or before any administrative body, agency, or person for any purpose whatsoever.” *See also id.* at §39-1392c (2008) (sets forth limited exceptions to privilege and confidentiality).

Illinois: 735 ILL. COMP. STAT. 5/8-2101 (2008) “All information, interviews, reports, statements, memoranda, or other data of committees of hospitals used in the course of internal quality control or medical study for the purpose of reducing morbidity or mortality, or for improving patient care, is privileged and neither admissible in evidence or discoverable.”

Indiana: IND. CODE §34-30-15-1 (2008) “Information and materials submitted or disclosed to the agency under this subsection are confidential and privileged from use as evidence in an administrative or judicial proceeding.”

Iowa: IOWA CODE ANN. §147.135(2) (West 2008) “Peer review records are privileged and confidential, are not subject to discovery, subpoena, or other means of legal compulsion for release to a person other than an affected licensee or a peer review committee, and are not admissible in evidence in a judicial or administrative proceeding other than a proceeding involving licensee discipline or a proceeding brought by a licensee who is the subject of a peer review record and whose competence is at issue.”

Kansas: KAN. STAT. ANN. §65-4915(B) (2008) “The reports, statements, memoranda, proceedings, findings, and other records submitted to or generated by peer review committees or officers shall be privileged and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person or entity or be admissible in evidence in any judicial or administrative proceeding.”

Kentucky: KY. REV. STAT. ANN. §311.377(2) (West 2008) “At all times in performing a designated professional review function, the proceedings, records, opinions, conclusions, and recommendations of any committee, board, commission, medical staff, professional standards review organization [...] shall be confidential and privileged and shall not be subject to discovery, subpoena, or introduction into evidence, in any civil action in any court or in any administrative proceeding before any board, body, or committee [...].”

Louisiana: LA. REV. STAT. ANN. §13:3715.3 (West 2008) “Any records of a medical peer review committees shall be confidential wherever located and shall be used

by such committee and the members thereof only in the exercise of the proper functions of the committee and shall not be available for discovery or court subpoena [...].”

Maine: ME. REV. STAT. ANN. TIT. 32, §2599 (2008) “All proceedings and records of proceedings concerning medical staff reviews and hospital reviews conducted by committees of physicians and other healthcare personnel on behalf of hospitals located within the State, when these reviews are required by state or federal law or regulations or as a condition of accreditation by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association Committee on Hospital Accreditation are confidential and are exempt from discovery without a showing of good cause.” *See also id.* at tit. 32, §3296.

Maryland: MD. CODE ANN., HEALTH OCC. §1-401 (2008) “The proceedings, records, and files of a medical review committee are not discoverable and are not admissible in evidence in any civil action.”

Massachusetts: MASS. GEN. LAWS ANN. ch. 111, §204 (West 2008) “The proceedings, reports and records of a medical peer review committee shall be confidential and shall be exempt from the disclosure of public records [...] and no person who was in attendance at a meeting of a medical peer review committee shall be permitted or required to testify in any such judicial or administrative proceeding [...].”

Michigan: MICH. COMP. LAWS ANN. §331.533 (West 2008) “The identity of a person whose condition or treatment has been studied under this act is confidential and a review entity shall remove the person’s name and address from the record before the review entity releases or publishes a record of its proceedings or its reports, findings, and conclusions. [...] The record of a proceeding and the reports, findings, and conclusions of a review entity and data collected by or for a review entity under this act are confidential, are not public records, and are not discoverable and shall not be used as evidence in a civil action or administrative proceeding.”

Michigan: MICH. COMP. LAWS ANN. §331.20175 (West 2008) “The records, data, and knowledge collected for or by individuals or committees assigned a professional review function in a health facility or agency [...] are confidential [and] shall be used only for the purposes provided in this article, are not public records, and are not subject to court subpoena.”

Minnesota: MINN. STAT. §145.64(1) (2008) “Data and information acquired by a review organization, in the exercise of its duties and functions, or by an individual or other entity acting at the direction of a review organization, shall be held in confidence, shall not be disclosed to anyone except to the extent necessary to carry out one or more of the purposes of the review organization, and shall not be subject to subpoena or discovery.”

Mississippi: MISS. CODE ANN. §41-63-9(1) (2008) “The proceedings and records of any medical or dental review committee shall be confidential and shall not be subject to discovery or introduction into evidence in any civil action arising out of the matters which are the subject of evaluation and review by such committee.”

Missouri: MO. REV. STAT. §537.035(4) (2008) “The interviews, memoranda, proceedings, findings, deliberations, reports, and minutes of peer review committees, or the existence of the same, concerning the healthcare provided any patient are privileged and shall not be subject to discovery, subpoena, or other means of legal

- compulsion for their release to any person or entity or be admissible into evidence in any judicial or administrative action for failure to provide appropriate care.”
- Montana: MONT. CODE ANN. §37-2-201(2) (2008) “The proceedings and records of professional utilization, peer review, medical ethics review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding [...]”
- Nebraska: NEB. REV. STAT. §71-2048 (2008) “The proceedings, minutes, records, and reports of any medical staff committee or utilization review committee as defined in section 71-2046, together with all communications originating in such committees, are privileged communications which may not be disclosed or obtained by legal discovery proceedings unless (1) the privilege is waived by the patient and (2) a court of record, after a hearing and for good cause arising from extraordinary circumstances being shown, orders the disclosure of such proceedings, minutes, records, reports, or communications.”
- Nevada: NEV. REV. STAT. §49.265 (2008) “The proceedings and records of organized committees of hospitals, and organized committees of organizations that provide emergency medical services [...], having the responsibility of evaluation and improvement of the quality of care rendered by those hospitals or organizations [...] are not subject to discovery proceedings.”
- New Hampshire: N.H. REV. STAT. ANN. §151:13-a (2008) “Records of a hospital committee organized to evaluate matters relating to the care and treatment of patients or to reduce morbidity and mortality and testimony by hospital trustees, medical staff, employees, or other committee attendees relating to activities of the quality assurance committee shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena, or admission into evidence in any judicial or administrative proceeding”.
- New Mexico: N.M. STAT. ANN. §41-9-5 (West 2008) “All data and information acquired by a review organization in the exercise of its duties and functions shall be held in confidence and shall not be disclosed to anyone except to the extent necessary to carry out one or more of the purposes of the review organization or in a judicial appeal from the action of a review organization [...]”
- New York: N.Y. PUB. HEALTH LAW §2805-m (McKinney 2008) “None of the records, documentation, or committee actions or records required pursuant to sections twenty-eight hundred five-j and twenty-eight hundred five-k of this article, the reports required pursuant to section twenty-eight hundred five-l of this article nor any incident reporting requirements imposed upon diagnostic and treatment centers pursuant to the provisions of this chapter shall be subject to disclosure under article six of the public officers law or article thirty-one of the civil practice law and rules, except as hereinafter provided or as provided by any other provision of law.” *See also id.* at §6527 (3) “Neither the proceedings nor the records relating to performance of a medical or a quality assurance review function or participation in a medical and dental malpractice prevention program nor any report required by the department of health [...] shall be subject to disclosure [...]. The prohibition relating to discovery of testimony shall not apply to the statements made by any person in attendance at such a meeting who is a party to an action or proceeding the subject matter of which was reviewed at such meeting.”
- North Carolina: N.C. GEN. STAT. §131E-95(B) (2008) “The proceedings of a medical review committee, the records and materials it produces, and the materials it considers shall be confidential and not considered public records. ‘Public records’ shall not be subject to discovery or introduction into evidence in any civil action against a hospital, an ambulatory surgical facility licensed under Chapter 131E of the General Statutes, or a provider of professional health services which results from matters which are the subject of evaluation and review by the committee.”
- North Dakota: N.D. CENT. CODE §23-34-03 (2008) “Peer review records are privileged and are not subject to subpoena or discovery or introduction into evidence in any civil or administrative action.”
- Ohio: OHIO REV. CODE ANN. §2305.252 (West 2008) “Proceedings and records within the scope of a peer review committee of a healthcare entity shall be held in confidence and shall not be subject to discovery or introduction in evidence in any civil action against a healthcare entity or healthcare provider, including both individuals who provide healthcare and entities that provide healthcare, arising out of matters that are the subject of evaluation and review by the peer review committee.”
- Oklahoma: OKLA. ST. ANN. TIT. 63, §1-1709 (West 2008) “All information, interviews, reports, statements, memoranda, or other data furnished by reason of this section, and any findings or conclusions resulting from [peer review], are declared to be privileged communications which may not be used or offered or received in evidence in any legal proceeding of any kind or character, and any attempt to use or offer any such information, interviews, reports, statements, memoranda or other data, findings or conclusions, or any part thereof, unless waived by the interested parties, shall constitute prejudicial error in any such proceeding.”
- Oregon: OR. REV. STAT. §41.675(3) (2008) “All data shall be privileged and shall not be admissible in evidence in any judicial, administrative, arbitration, or mediation proceeding. This section shall not affect the admissibility in evidence of records dealing with a patient’s care and treatment, other than data or information obtained through service on, or as an agent for, a peer review body.”
- Pennsylvania: 63 PA. STAT. ANN. §425.4 (West 2008) “The proceedings and records of a review committee shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action against a professional healthcare provider arising out of the matters which are the subject of evaluation and review by such committee and no person who was in attendance at a meeting of such committee shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such committee or as to any findings, recommendations, evaluations, opinions, or other actions of such committee or any members thereof.”
- Rhode Island: R.I. GEN. LAWS §5-37.3-7 (2008) “The proceedings and records of medical peer review board shall not be subject to discovery or introduction into evidence.” *See also id.* at §23-17-25: “Neither the proceedings nor the records of peer review boards as defined in §5-37-1 shall be subject to discovery or be admissible in evidence in any case save litigation arising out of the imposition of sanctions upon a physician.”
- South Carolina: S.C. CODE ANN. §40-71-20 (2008) “All proceedings of and all data and information acquired by the committee [...] in the exercise of its duties are

confidential unless a respondent in the proceeding requests in writing that they be made public. These proceedings and documents are not subject to discovery, subpoena, or introduction into evidence in any civil action except upon appeal from the committee action.”

South Dakota: S.D. CODIFIED LAWS §36-4-26.1 (2008) “The proceedings, records, reports, statements, minutes, or any other data whatsoever [...] relating to peer review, are not subject to discovery or disclosure [...] and are not admissible as evidence in any action of any kind in any court or arbitration forum.”

Tennessee: TENN. CODE ANN. §63-6-219(e) (West 2008) “All information, interviews, incident or other reports, statements, memoranda or other data furnished to any committee as defined in this section, and any findings, conclusions, or recommendations resulting from the proceedings of such committee are declared to be privileged. All such information, in any form whatsoever, so furnished to, or generated by, a medical peer review committee, shall be privileged. The records and proceedings of any such committees are confidential and shall be used by such committee and the members thereof only in the exercise of the proper functions of the committee, and shall not be public records nor be available for court subpoena or for discovery proceedings.”

Texas: TEX. OCC. CODE ANN. §160.007 (Vernon 2008) “Unless disclosure is required or authorized by law, a record or determination of or a communication to a medical peer review committee is not subject to subpoena or discovery and is not admissible as evidence in any civil judicial or administrative proceeding without waiver of the privilege of confidentiality executed in writing by the committee.”

Utah: UTAH CODE ANN. §26-25-3 (West 2008) “All information, interviews, reports, statements, memoranda, or other data furnished [to medical review committee], and any finds or conclusions resulting from those studies are privileged communications and are not subject to discovery, use, or receipt in evidence in any legal proceeding of any kind or character.”

Vermont: VT. STAT. ANN. TIT. 26, §1443 (a) (2008) “The proceedings, reports, and records of review committees shall be confidential and privileged and shall not be subject to discovery or introduction into evidence in any civil action against a provider of professional health services arising out of the matters which are subject to evaluation and review by such committee.”

Virginia: VA. CODE ANN. §8.01-581.17 (West 2008) “The proceedings, minutes, records, and reports of any [review committee...] together with all communications, both oral and written, originating in or provided to such committees or entities, are privileged communications which may not be disclosed or obtained by legal discovery proceedings unless a circuit court, after a hearing and for good cause arising from extraordinary circumstances being shown, orders the disclosure of such proceedings, minutes, records, reports, or communications.”

Washington: WASH. REV. CODE ANN. §4.24.250 (West 2008) “The proceedings, reports, and written records of such committees or boards, or of a member, employee, staff person, or investigator of such a committee or board, are not subject to review or disclosure, or subpoena or discovery proceedings in any civil action, except actions arising out of the recommendations of such committees or

boards involving the restriction or revocation of the clinical or staff privileges of a healthcare provider.” *See also id.* at §70.41.200(3).

West Virginia: W. VA. CODE §30-3C-3 (2008) “The proceedings and records of a review organization shall be confidential and privileged and shall not be subject to subpoena or discovery proceedings or be admitted as evidence in any civil action arising out of the matters which are subject to evaluation and review by such organization, and no person who was in attendance at a meeting of such organization shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such organization or as to any findings, recommendations, evaluations, opinions, or other actions of such organization or any members thereof.”

Wisconsin: WIS. STAT. ANN. §146.38 (2008) “No person who participates in the review or evaluation of the services of healthcare providers or facilities or charges for such services may disclose any information acquired in connection with such review or evaluation [...]. No record may be used in any civil action for personal injuries against the healthcare provider or facility.”

Wyoming: WYO. STAT. ANN. §33-26-408 (2008) “Investigative notes, attorney’s notes and work product and reports, pleadings, correspondence, witness statements and deposition transcripts, and copies of original medical and prescription records in the possession of the board, whether acquired by the board, by any agent of the board, or by any agency that has cooperated with or provided information to the board regarding the investigation of a disciplinary docket, are not subject to disclosure by the board to any person or entity, nor are they subject to discovery in any civil or administrative action or admissible in any nonboard proceeding.” *See also id.* at 35-17-105.

¹ Susan O. Scheutzow, *State Medical Peer Review: High Cost But No Benefit — Is it Time for a Change?*, 25 Am. J.L. & Med. 7, 7 n. 1 (1999).

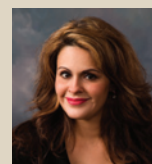
² Lisa M. Nijm, *Pitfalls of Peer Review: The Limited Protections of State and Federal Peer Review Law for Physicians*, 24 J. Legal Med. 541, 541 (2003) (“Nijm, Pitfalls of Peer Review”).

³ 42 U.S.C. §§11101-11152 (2002).

⁴ *Id.*

⁵ *Trammel v. United States*, 445 U.S. 40, 50 (1980).

⁶ This piece reports only stated portions of the various state statutes and gives an overview, rather than detailed analysis, of any particular statute.



WRITTEN by
ANITA MODAK-TRURAN