

State Medical Peer Review: High Cost But No Benefit—Is It Time for a Change?

* Price: \$20.00

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* Journal: AJLM

* Vol: 25

* No: 1

* Year: 1999

* Description: The medical community and policy-makers have widely accepted peer review of physicians as essential to encouraging high quality medical practice. Peer review is a process by which members of a hospital's medical staff review the qualifications, medical outcomes and professional conduct of other physician members and medical staff applicants to determine whether the reviewed physicians may practice in the hospital and, if so, to determine the parameters of their practice.

To encourage peer review, almost all states have granted immunity to participants in the peer review process from certain actions and have made the deliberations and records of medical peer review privileged from judicial disclosure. These laws protect peer review participants from liability for their participation in the peer review process and keep medical peer review information privileged even if such information is relevant and probative to a judicial proceeding. In granting these protections, legislatures have determined that limiting the rights of physicians to seek damages for peer review actions and denying malpractice plaintiffs and other litigants information relevant to their lawsuits are justified in order to encourage effective peer review. Remarkably, these laws have flourished at a time when privilege and immunities in other contexts have eroded.

Because peer review protection laws are inconsistent with the general laws on privileges and immunities and these laws deprive individuals full access to the judicial process, they are only justified if they fulfill the stated purpose of encouraging peer review. However, strong evidence suggests that such laws are ineffective in accomplishing their public policy objective and should therefore be eliminated or reformed.

This Article, through analysis of data available from the National Practitioner Data Bank (NPDB), suggests that peer review protection statutes do not encourage peer review. As such, legislatures committed to enhancing the quality of health care through peer review must find additional means of promoting effective peer review. Without such additional mandates, peer review protection statutes risk being little more than special interest laws protecting physicians and hospitals. If legislatures keep their protection statutes in place, lawmakers should tailor such laws to minimize the laws' negative effect on the judicial process. Additionally, legislatures should guarantee that hospitals do not use these laws to protect themselves for failing to engage in effective peer review. Data from this study also reveal that the NPDB receives more adverse peer review actions in states that impose significant penalties on hospitals failing to report peer review

actions to state licensing boards. This indicates that hospitals are failing to report certain peer review actions that, under state law, must be transmitted to the appropriate government agencies, suggesting that stronger peer review statutes are needed.