

# State high court protects peer-review documents from discovery

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Patient safety prevailed in Pennsylvania thanks to a recent Supreme Court of Pennsylvania Western District decision on who can—and, more importantly, who cannot—have access to peer-review documents.

In mid-August the commonwealth’s highest court overturned a lower-court decision that said a hospital must allow plaintiffs in a medical liability lawsuit to have copies of documents that the hospital’s credentialing review committee analyzed. A key question in the case was whether documents in the credentialing file, although peer review in nature, were protected by state and federal law.

The Litigation Center of the American Medical Association and State Medical Societies joined the Pennsylvania Medical Society (PAMED) in filing an amicus brief that argued the documents were protected and urged the court to reverse the lower court’s 2020 decision in the case, *Leadbitter v. Keystone Anesthesia Consultants et al.* The brief argued that if the appellate court decision stood, the medical community’s efforts to use the peer review process to create a safer health care environment would be seriously undermined.

“To be effective, peer review requires open, frank and candid discussion between and among physicians about other physicians. However, to succeed, peer review also requires strict confidentiality,” the brief told the court. “Recognizing that the need for candor is inextricably intertwined with the need for confidentiality, all peer-review statutes, including Pennsylvania’s statute, provide assurance to physicians and hospitals who participate in the process that information generated during the peer review process will remain protected, confidential and out of public view.”

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## A question of semantics

The case stems from a medical negligence lawsuit patient James E. Leadbitter and his wife Tammy M. Leadbitter filed against multiple defendants after James suffered complications after a surgery at St. Clair Hospital in 2015.

In part, the Leadbitters claimed that the hospital’s credentialing-and-privileging process was inadequate and that St. Clair officials knew, or should have known, that orthopedic surgeon Carmen Petraglia, MD, lacked the expertise to perform the surgery. During discovery, the couple asked for documents the hospital’s credentialing committee reviewed when the surgeon applied for hospital privileges in 2014.

Hospital administrators objected to turning over five documents, arguing some were privileged under the Pennsylvania Peer Review Protection Act (PRPA) and others were undiscoverable under the Federal Healthcare Quality Improvement Act (HCQIA).

The documents were:

- | An Ongoing Professional Practice Evaluation Summary Report.
- | A Professional Peer Review Reference and Competency Evaluation, which contained evaluations that other physicians prepared on Dr. Petraglia’s performance.
- | Three documents described as “national Data Bank Practitioner Query Response,” based on queries submitted to the National Practitioner Data Bank (NPDB) in 2014 and 2017.

The trial court ruled that files relating to a doctor’s membership or continued membership on a hospital’s medical staff are credential-review files—as opposed to peer-review files—and consequently not protected under the PRPA. The court also said that because information requested from the NPDB was part of that same file, it was also unprotected.

## High court protects privilege

The appellate court affirmed the lower-court decision, but the Pennsylvania Supreme Court disagreed, ruling that the documents were protected under the PRPA and HCQIA.

“We agree with the hospital’s core position that a committee which performs a peer-review function, although it may not be specifically entitled a ‘peer review committee,’ constitutes a review committee whose proceedings and records are protected,” the court ruled.

When it comes to the NPDB information not being discoverable, the court said “nothing in the regulation contemplates disclosure to third parties” and that “regulation specifies that information which health care facilities receive from the NPDB may only be used for the purposes for which the NPDB provided it.”