

Why peer review confidentiality is critical, must be protected

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Peer review—and, in turn, patient safety—is again in jeopardy in Pennsylvania.

Physicians are urging the Superior Court of Pennsylvania, Eastern District, to overturn a trial-court decision that would force Children’s Hospital of Philadelphia (CHOP) to hand over patient-safety investigation documents to three families suing the hospital after their premature, critically ill infants died in 2016. The documents are related to an investigation into an infectious disease outbreak at the hospital.

The materials the defendants are seeking are covered by peer review privilege under Pennsylvania’s Peer Review Protection Act (PRPA) and its Medical Care Availability and Reduction of Error Act (MCARE). That is a privilege the state’s top court upheld earlier this year, says an amicus brief filed with the appellate court by the Litigation Center of the American Medical Association and State Medical Societies, the Pennsylvania Medical Society (PAMED) and other physician organizations.

“Confidentiality is especially critical in the context of investigations, root cause analysis meetings, and morbidity and mortality conferences, which are oftentimes conducted not just to assess a particular physician’s competence, but also to prevent future harm,” the brief tells the court in the case, *Sanders v. Children’s Hospital of Philadelphia*.

“Upholding the trial court’s refusal to apply peer review protections to quintessentially peer review functions would acutely curtail the effectiveness of such efforts. Patient safety would be compromised,” the brief says.

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Peer review privilege clear

After CHOP's infection prevention and control (IP&C) department learned of an adenovirus outbreak in its neonatal intensive care unit in 2016, hospital officials, led by an infectious disease physician, investigated under Pennsylvania's PRPA and MCARE.

When a possible connection between adenovirus and noncontact ophthalmologic equipment became apparent from the patient safety investigation, "CHOP and its physicians urgently alerted the pediatric ophthalmologic community both at CHOP and across the world, of their novel findings," the brief says. "The decision to publish the novel findings was purely for altruistic purposes to save lives."

The three families sought access to records from the investigation. While their children were in CHOP's neonatal intensive care units they received several eye examinations, ventilator support, and treatment for a number of conditions. The infants tested positive for adenovirus; CHOP denies that caused their deaths. The families' actions were consolidated for the purposes of discovery.

The trial court sided with the families, saying that the documents weren't protected because the investigation started immediately rather than following a formal meeting. The AMA Litigation Center and PAMED strongly dispute the trial court's conclusion.

"In short, this was a textbook peer review conducted under the careful purview of the IP&C Department," the brief tells the court. "The trial court's ruling that CHOP's evaluation and review somehow eludes the protective umbrella of the IP&C Department simply because the medical director of the IP&C Department began her review immediately, rather than waiting for a formal meeting, is nothing short of shocking. It essentially advises hospitals to sit on their hands until meetings can convene, which flies in the face of both patient safety and common sense."

Precedent should be followed

In August, the Supreme Court of Pennsylvania ruled in *Leadbitter v. Keystone Anesthesia Consultants, Ltd.* and "again reiterated the fundamental reason for the existence of peer review privilege: patient safety," the brief tells the court. The AMA Litigation Center and PAMED also filed a brief in that case.

The AMA Litigation Center and PAMED brief in the current case notes that the trial court didn't have the *Leadbitter* decision when it ruled, and "if it had, there is no question that the documents protected by the PRPA would have been shielded from discovery."

The peer review framework collapses without confidentiality, the brief says.

“The trial court’s decision in the case prioritizes discovery in three medical malpractice lawsuits over sound public policy, intended to protect patients,” the brief says. “If affirmed at the statewide level, patient safety will be imperiled.”