

# SUBJECT TO RESOLUTION COMMITTEE REVIEW

## AMERICAN MEDICAL ASSOCIATION HOUSE OF DELEGATES

Resolution: 205  
(JUN-21)

Introduced by: South Carolina

Subject: Protection of Peer-Review Process

Referred to: Reference Committee B

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1 Whereas, Peer review is the task of self-monitoring and maintaining the administration of patient  
2 safety and quality of care, consistent with optimal standards of practice. It is the mechanism by  
3 which the medical profession fulfills its obligation to ensure that its members are able to provide  
4 safe and effective care; and  
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6 Whereas, It is the mechanism by which the medical profession fulfills its obligation to ensure  
7 that its members are able to provide safe and effective care; and  
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9 Whereas, It is a mechanism for assuring the quality, safety, and appropriateness of hospital  
10 services. The duties of peer review are: addressing the standard of care, preventing patient  
11 harm, evaluating patient safety and quality of care, and ensuring that the design of systems or  
12 settings of care support safety and high quality care; and  
13

14 Whereas, Proceedings include all of the activities and information and records of a peer review  
15 committee. Proceedings are not subject to discovery and no person who was in attendance at a  
16 meeting of a peer review organization shall be permitted or required to testify in any such civil  
17 action as to any evidence or other matters produced or presented during the proceedings of  
18 such organization or as to any findings, recommendations, evaluations, opinions, or other  
19 actions of such organization or any members thereof; and  
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21 Whereas, The proceedings, records, findings, and recommendations of a peer review  
22 organization are not subject to discovery. Information gathered by a committee is protected.  
23 Purely factual information, such as the time and dates of meetings and identities of any peer  
24 review committee attendees is protected. Peer review information otherwise discoverable from  
25 "original sources" cannot be obtained from the peer review committee itself; and  
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27 Whereas, A U.S. Senate Oversight Committee in investigating UNOS (United Network for  
28 Organ Sharing) has subpoenaed "all relevant materials to include peer-review related  
29 materials"; therefore be it  
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31 RESOLVED, That our American Medical Association use its full ability and influence to oppose  
32 any new attempt(s) to make Peer Review proceedings, regardless of the venue, discoverable,  
33 even if by the US Congress or other US Governmental entity. (Directive to Take Action)

Fiscal Note: Not yet determined

Received: 04/28/21

**AUTHOR'S STATEMENT OF PRIORITY**

This resolution should be considered by our AMA House of Delegates as an URGENT resolution because of the on-going attempts by Oversight Committees of the US Congress to obtain peer-reviewed data which would include information by transplant surgeons as well as other physicians involved in the life-saving task of organ transplantation. There can be no guarantee that protected information would not be released in violation of the spirit of peer-reviewed procedures.

**RELEVANT AMA POLICY****Legal Protections for Peer Review H-375.962****Definition and Purpose of Peer Review**

Peer review is the task of self-monitoring and maintaining the administration of patient safety and quality of care, consistent with optimal standards of practice. It is the mechanism by which the medical profession fulfills its obligation to ensure that its members are able to provide safe and effective care. The responsibility assigned to and scope of peer review is the practice of medicine; ie, professional services administered by a physician and the portion of care under a physician's direction. Therefore, elements of medical care, which describe the knowledge, skills, attitudes, and educational experiences of physicians and provide the foundation of physician activities, are subject to peer review and its protections. Those elements include, but are not limited to the following: patient care, medical knowledge, interpersonal and communication skills, practice-based learning and improvement, and systems-based practice. Activities that comprise medical care are subject to the scope and rigor of peer review and entitled to the protections and privileges afforded by peer review law.

Peer review goes beyond individual review of instances or events; it is a mechanism for assuring the quality, safety, and appropriateness of hospital services. The duties of peer review are: addressing the standard of care, preventing patient harm, evaluating patient safety and quality of care, and ensuring that the design of systems or settings of care support safety and high quality care. Accountability to patients and their care, to the medical profession and colleagues, and to the institution granting privileges is inherent to the peer review process.

**Composition of the Peer Review Committee**

Peer review is conducted in good faith by physicians who are within the same geographic area or jurisdiction and medical specialty of the physician subject to review to ensure that all physicians consistently maintain optimal standards of competency to practice medicine. Physicians outside of the organization that is convening peer review may participate in that organization's peer review of a physician if the reviewing physician is within the same geographic area or jurisdiction and medical specialty as the physician who is the subject of peer review.

**Definitions**

**Good Faith Peer Review.** Peer review conducted with honest intentions that assess appropriateness and medical necessity to assure safe, high-quality medical care is good faith peer review. Misfeasance (i.e., abuse of authority) during the peer review process to achieve a desired result other than improved patient care), or misuse of the peer review process, or peer review that is politically motivated, manipulated to achieve economic gains, or due to personal vendetta is not considered a good faith peer review.

**Medical Peer Review Organizations.** Any panel, committee, or organization that is composed of physicians or formed from a medical staff or formed by statute, such as physician wellness peer review boards, which engages in or utilizes peer reviews concerning the care and treatment of patients for the purposes of self-monitoring and maintaining the administration of patient safety and quality of care consistent with optimal standards of practice is a medical peer review organization. The responsibility of a medical peer review organization is to ensure: (1) that all physicians consistently maintain optimal standards of competency to practice medicine; and (2) the quality, safety, and appropriateness of patient care services. The medical peer review committee's obligations include review of allegations of infirmity (e.g., fitness to practice medicine), negligent treatment, and intentional misconduct. Peer review protections and privilege should extend to investigation and subsequent correction of negligent treatment

## SUBJECT TO RESOLUTION COMMITTEE REVIEW

Resolution: 205 (JUN-21)

Page 3 of 3

and intentional misconduct.

**Proceedings.** Proceedings include all of the activities and information and records of a peer review committee. Proceedings are not subject to discovery and no person who was in attendance at a meeting of a peer review 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. However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil action merely because they were presented during proceedings of a peer review organization, nor should any person who testifies before a peer review organization or who is a member of a peer review organization be prevented from testifying as to matters within his/her knowledge; but such witness cannot be asked about his/her testimony before a peer review organization or about opinions formed by him/her as a result of the peer review organization hearings.

**Peer Review Activity.** Peer review activity means the procedure by which peer review committees or quality assessment and assurance committees monitor, evaluate, and recommend actions to improve and ensure the delivery and quality of services within the committees' respective facilities, agencies, and professions, including recommendations, consideration of recommendations, actions with regard to recommendations, and implementation of actions.

**Peer Review Records.** Peer review records mean all complaint files, investigation files, reports, and other investigative information relating to the monitoring, evaluation, and recommendation of actions to improve the delivery and quality of health care services, licensee discipline, or professional competence in the possession of a peer review committee or an employee of a peer review committee.

**Privilege.** The proceedings, records, findings, and recommendations of a peer review organization are not subject to discovery. Information gathered by a committee is protected. Purely factual information, such as the time and dates of meetings and identities of any peer review committee attendees is protected. Peer review information otherwise discoverable from "original sources" cannot be obtained from the peer review committee itself. In medical liability actions, the privilege protects reviews of the defendant physician's specific treatment of the plaintiff and extends to reviews of treatment the physician has provided to patients other than the plaintiff.

**Confidentiality.** Peer review records and deliberations are confidential and may not be disclosed outside of the judicial process.

**Peer Review Immunity and Protection from Retaliation.** To encourage physician participation and ensure effective peer review, entities and participants engaged in good faith peer review activities should be immune from civil damages, injunctive or equitable relief, and criminal liability, and should be afforded all available protections from any retaliatory actions that might be taken against such entities or participants because of their involvement in peer review activities.

Citation: BOT Rep. 10, A-09; Reaffirmed: BOT Rep. 13, I-11; Modified: BOT Rep. 05, I-17

### Reviewer Immunity D-375.997

Our AMA will: (1) recommend medical staffs adopt/implement staff by laws that are consistent with HCQIA and AMA policy by communicating the guidelines from AMA policy H-375.983 widely through appropriate media to the relevant organizations and institutions, including a direct mailing to all medical staff presidents in the United States, indicating that compliance is required to conform to HCQIA and related court decisions; (2) monitor legal and regulatory challenges to peer review immunity and non discoverability of peer review records/proceedings and continue to advocate for adherence to AMA policy, reporting challenges to peer review protections to the House of Delegates and produce an additional report with recommendations that will protect patients and physicians in the event of misdirected or negligent peer review at the local level while retaining peer review immunity for the process; and (3) continue to work to provide peer review protection under federal law.

Citation: (BOT Rep.8, I-01; Reaffirmation A-05; Modified: CCB/CLRPD Rep. 2, A-14)