# How Much Protection Does the Peer Review Protection Act Really Provide?

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A recent court ruling has significantly changed the scope of what is available in the discovery process of medical malpractice litigation, making it easier for plaintiffs to obtain materials related to physician performance and credentials.

These materials were previously thought to be protected from discovery by the Peer Review Protection Act (PRPA). The Pennsylvania legislature enacted the law in 1974 to give increased protection to medical professionals and organizations that formed review panels to evaluate physician performance and investigate possible malpractice incidences. The PRPA renders materials that are prepared as part of a peer review process privileged and protected from the discovery process during a lawsuit.

However, in Reginelli v. Boggs the Pennsylvania Supreme Court held that the PRPA does ***not*** extend protection from disclosure to a non-licensed third party entity, or committees or individuals reviewing physician credentials. In this case, the plaintiffs' medical malpractice lawsuit against Monongahela Valley Hospital (MVH), UPMC Emergency Medicine Inc. (ERMI) and Marcellus Boggs, M.D, (among other defendants) alleged that Dr. Boggs was negligent when he treated the plaintiff in MVH's emergency department. Dr. Boggs was an employee of ERMI, which was contracted by MVH to staff and provide administrative services for MVH's emergency room. The protective privilege of the PRPA was found to not apply to Dr. Bogg's "performance file," which was authored by his supervising doctor at ERMI. The court came to this conclusion because ERMI itself was not "approved, licensed or otherwise regulated to practice or operate in the health care field under the laws of the Commonwealth," and because the performance file was a review of Dr. Boggs's credentials, which does not fall within the PRPA's evidentiary privilege.

Notably, the dissent by Justice David Wecht, which was joined by two of the seven justices participating in the consideration of the case, pointed out that the "Majority's reading leaves the door open to precisely the same effect upon free and frank discussions aimed to ensure and improve an appropriate quality of care that the PRPA strives to vitiate."

Likewise, this holding has the potential to have widespread effects on the materials that are discoverable and likely opens the door for plaintiffs to seek additional reports and files during discovery. Health care entities are advised to closely review who is authoring all documents related to peer review activities as well as all the processes and procedures that involve peer review. Credentialing documentation processes also should be reviewed and revised with the new knowledge that these documents are possibly discoverable.

The court also implied that if the peer review documentation is generated by a non-licensed third party entity

pursuant to a contract with a licensed health care provider, then it may fall within the protections of the PRPA. Yet, the court found that there was no contractual obligation of peer review because the two contracting parties presented conflicting positions regarding the obligations of each party. Thus, all contracts between licensed and non-licensed entity health care providers should be reviewed to determine whether there are contractual obligations to provide peer reviews, and if so, ensure that both contracting parties are aware of this aspect of the contract and understand the obligations of this agreement.

Anyone that has questions about this latest court decision should contact me or any of the attorneys in Barley Snyder's Health Law Industry Group.

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