

SPECIAL COMMITTEE ON MEDICAL MALPRACTICE

A. 2943
S. 764

M. of A. Gottfried
Senator Hannon

AN ACT to amend the public health law and the education law, in relation to quality assurance and peer review activities.

THIS BILL IS APPROVED

The bill expands “Privileged Communications” at peer reviews and quality assurance reviews.

The purpose of this bill is to amend the Public Health Law and the Education Law with the goal of enhancing public safety by improving the accuracy and the amount of information received at medical peer review committee meetings, which are attempting to assess the quality of care being provided to patients.

The proposed legislation (modification of the Public Health Law, section 2805-m and of the Education Law, section 6527) will grant a privilege against discovery of the statements made by anyone in attendance at a peer review committee hearing, including an attendee who is a party to a legal action. The legislation will include an obligation on the part of participants to cooperate in good faith with a peer review investigation. Failure to cooperate can result in a charge of professional misconduct.

The official Memorandum in Support of the legislation advocates the position that by granting this extended privilege against discovery of statements, the peer review hearings are likely to obtain more complete and more accurate information when assessing a matter of medical care under investigation. It is the intent of this legislation to significantly improve peer review procedures, with the ultimate result of improved patient care.

Position:

Under the present discovery rules, it is generally accepted that a physician who is a party to an action, or is likely to become a party to an action, based on issues under investigation by a peer review committee, is not likely to participate in the hearings. If a statement made at a peer review hearing is discoverable and can be used against the physician at trial, the prudent course for the physician is not to participate. This conduct deprives the peer review committee of one of the best sources of information about how and why an adverse outcome occurred. Consequently, a peer review committee is sometimes compelled to make findings and recommendations without hearing all the relevant facts. Peer review is a critical part of medical education, and the improvement of medical care with better outcomes will be enhanced with more comprehensive fact gathering.

In view of the reality that generally defendant physicians do not, now, make statements at peer review hearings, there is nothing lost from the discovery process with the passage of this legislation. In view of the likely significant gains in information at peer review hearings with the concomitant improvement in patient care, we recommend supporting the proposed bill.

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