

IDAHO PEER REVIEW PRIVILEGE

Idaho Ass'n of
Medical Staff Services

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(9-22)



PRELIMINARIES

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WRITTEN MATERIALS

- Idaho Peer Review Privilege, IC 39-1392a *et seq.*
- Idaho Rule of Evidence 519
- Stanger, *Idaho Peer Review Privilege*, <https://www.hollandhart.com/idaho-peer-review-privilege>

IDAHO PEER REVIEW STATUTE



IDAHO PEER REVIEW PRIVILEGE

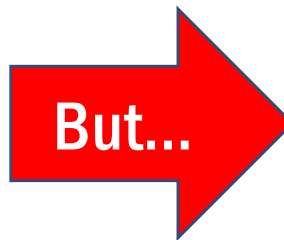
IC 39-1392A *et seq.*

- **“Statement of policy.** To encourage research, discipline and medical study by certain health care organizations for the purposes of reducing morbidity and mortality, enforcing and improving the standards of medical practice in the state of Idaho, certain records of such health care organizations shall be confidential and privileged as set forth in this chapter.”

(IC 39-1392)

PEER REVIEW PROTECTIONS: PURPOSE

- We want healthcare entities to engage in effective credentialing and peer review to evaluate qualifications, performance, and improve outcomes.
 - Full disclosure
 - Candid discussion
 - No fear of reprisal



- Entities may not engage in peer review activities if:
 - Info used against them in a lawsuit or administrative action.
 - Participants may be sued.
- Records may be unfairly prejudicial at trial.



PROS AND CONS OF PEER REVIEW PRIVILEGE

Disclosure

Privilege

**Enable claims
against facility**

**Full disclosure in
QA activities**

**Candid
evaluation and
discussion**

**Improved
healthcare**



PEER REVIEW: PRIVILEGE V. IMMUNITY

Peer Review Privilege

- Protects peer review info from disclosure or use in other proceedings.

(IC 39-1392b)

Peer Review Immunity

- Provides immunity to participants in peer review process.

(IC 39-1392c)

PEER REVIEW: COVERED “HEALTHCARE ORGANIZATIONS”

Applies to “healthcare organizations”, i.e.,

- **Hospital**
- **In-hospital medical staff committee**, i.e., “any individual doctor who is a hospital staff member, or any hospital employee, or any group of such doctors and/or ... employees, who are—
 - “duly designated a committee by hospital staff bylaws, by action of [the] hospital staff, or by action of the board of directors of a hospital, and
 - “which committee is authorized by said bylaws, staff or board of directors, to conduct research or study of hospital patient cases, or of medical questions or problems using data ... from hospital patient cases.”

(IC 39-1392a)

PEER REVIEW: COVERED “HEALTHCARE ORGANIZATIONS”

Also applies to following “healthcare organizations”:

- Skilled nursing facility
- Residential nursing facility
- Group medical practice
- Licensed emergency medical service,
- Managed care organization
- Medical society

(IC 39-1392a)

“PEER REVIEW”

“Peer review means the collection, interpretation and analysis of data by a health care organization for the purpose of bettering the system of delivery of health care, to improve the provision of health care, or to otherwise reduce patient morbidity and mortality and improve the quality of patient care,” including but not limited to:

- *“Credentialing, privileging or affiliating of health care providers* as members of, or providers for, a health care organization;
- *“Quality assurance and improvement, patient safety investigations and analysis, patient adverse outcome reviews, and root-cause analysis and investigation activities* by a health care organization; and
- *“Professional review action*, meaning an action or recommendation of a health care organization which is taken or made in the conduct of peer review, that is based on the competence or professional conduct of an individual physician.”

(IC 39-1392a)

PEER REVIEW IMMUNITY

Community Chest

**GET OUT
OF JAIL
FREE**



THIS CARD MAY BE KEPT UNTIL NEEDED, OR SOLD

PEER REVIEW IMMUNITY

“IMMUNITY FROM CIVIL LIABILITY. The furnishing of information or provision of opinions to any health care organization or the receiving and use of such information and opinions shall not subject any health care organization or other person to any liability or action for money damages or other legal or equitable relief.”

(IC 39-1392c)

- Protects participants in peer review process.
- Does not protect hospital for its ultimate credentialing decision

(*Harrison v. Binnion*, 147 Idaho 645 (2009))

HARRISON V. BINNION, 147 IDAHO 645 (2009)



- Patient sued physician and St. Als in malpractice action. Patient sought to amend complaint to allege negligent credentialing claim against St. Als.
 - District court held that IC 39-1392c immunity barred the negligent credentialing claim.
 - Idaho Supreme Court held that IC 39-1392c:
 - Provides immunity to participants, but
 - Does not protect hospital for ultimate credentialing decision.
 - But physician failed to offer evidence to support causation.
- *Other statutes may apply (stay tuned)*

PEER REVIEW: POTENTIAL LIABILITY

To Patient

- Vicarious liability for malpractice of employees.
- Negligent credentialing
 - Failure to credential consistent with—
 - Standard of care for credentialing,
 - Statutes or regs,
 - Accreditation rules, or
 - Internal policies.
 - Caused damages

To Provider

- Breach of contract
- Bad faith
- Injunction for failure to follow bylaws
- Defamation
- Antitrust
- Emotional distress
- Interference with economic advantage
- Unfair competition
- Violation of due process (if public entity)
- Others?

PEER REVIEW: AVOIDING LIABILITY

To Patient

- Credential effectively.
 - Obtain and verify relevant info.
 - Follow up on concerns.
 - Take appropriate action.
- Consistent with:
 - Standard of care
 - Statutes and regs
 - Accreditation rules
 - Hospital policies

To Provider

- Follow process in bylaws and policies.
- If vary, get provider's agreement.
- Ensure decisions are reasonable and supported by legitimate concerns.
- NOT
 - Discriminatory (e.g., race, religion, ADA, age, sex, etc.)
 - Anti-competitive
 - Retaliation, etc.

MILLER V. ST. ALPHONSUS

139 IDAHO 825 (2004)



- St. Als denied medical staff privileges due to physician's alleged history of disruptive behavior.
- Court upheld St. Al's decision.
 - Med staff bylaws do not constitute a contract.
 - *Ensure your med staff bylaws confirm same.*
 - Hospital must comply with statutes and bylaws.
 - *Ensure your bylaws and policies comply with statute and regulations.*
 - Hospital gave the process due in statute and bylaws.
 - *Follow the process and document same.*



YOUR JOB



- Know the rules and process.
 - Idaho Code, regs, Medicare COPs
 - HCQIA, 45 CFR part 60
 - Accreditation standards
 - Facility bylaws and policies
 - Provider contracts
- Implement and follow process to ensure compliance.
- Monitor pending actions, deadlines, renewals, etc.
- Gather, verify, and provide info.
- Make sure the medical staff:
 - Stays on task
 - Focuses on right issues
 - Follows up
- Maintain documentation
- Other?

PEER REVIEW PRIVILEGE



PEER REVIEW PRIVILEGE

“RECORDS CONFIDENTIAL AND PRIVILEGED.
[A]ll peer review records shall be confidential and privileged, and shall not be directly or indirectly subject to subpoena or discovery proceedings or be admitted as evidence, nor shall testimony relating thereto be admitted in evidence, or in any action of any kind in any court or before any administrative body, agency or person for any purpose whatsoever.”

(IC 39-1392b)

PEER REVIEW RECORDS

- "*Peer review records* means all evidence of interviews, reports, statements, minutes, memoranda, notes, investigative graphs and compilations and the contents thereof, and all physical materials relating to peer review of any health care organization.
- "*Peer review records* does not mean or include patient care records..."

(IC 39-1392a(12))

PEER REVIEW DISCUSSIONS AND PROCEEDINGS

- “[W]e believe that the legislature intended to establish a broad privilege for the records and proceedings of [facility] committees. The privilege extends to all discussions and proceedings by [facility] committees, conducted for the purpose of research, discipline or medical study.

(Murphy v. Wood, 105 Idaho 180 (Ct. App. 1983) (holding peer review privilege extended to letters to initiate peer review process)

- Interprets “records” broadly to include any discussions, documents, or other evidence concerning peer review actions.

PEER REVIEW PRIVILEGE

“RECORDS CONFIDENTIAL AND PRIVILEGED.

... No order of censure, suspension or revocation of licensure... or health care organization privilege of any physician licensed to practice medicine in Idaho shall be admissible in any civil proceeding seeking damages or other civil relief against the physician, emergency medical services personnel, or health care organization which may be a defendant in said cause.”

(IC 39-1392b)

PEER REVIEW PRIVILEGE

Idaho courts have consistently enforced the privilege.

- *Verska v. St. Alphonsus Reg. Med. Ctr*, 151 Idaho 889 (2011): Physician sued hospital for terminating privileges.
- *Montalbano v. St. Alphonsus Reg. Med. Ctr*, 151 Idaho 837 (2011): Physician sued hospital for suspending privileges for 90 days.
- *Nightengale v. Timmel*, 15 Idaho 347 (2011): In malpractice case, plaintiff wanted letters to peer review committee to show concerns by surgeon.
- *Murphy v. Wood*, 105 Idaho 180, 667 P.2d 859 (App. 1983): In malpractice case, physicians wanted to introduce records from tumor board to show they obtained second opinion.

MONTALBANO V. ST. ALS, 151 IDAHO 837 (2011)



- Physician sued hospital for suspending privileges for 90 days. Plaintiff sought peer review records.
- District court: 39-1392b “protects all peer review records from discovery of any type and bars any testimony about those peer review records.... [No] witness [may] be questioned about any information provided to the peer review committees [or] analysis of any evidence submitted as part of the process.”
- Idaho Supreme Court affirmed: no discovery or testimony about peer review proceedings.

PEER REVIEW PRIVILEGE

- Practical result: peer review privilege severely limits a plaintiff/practitioner from successfully suing based on actions taken in peer review proceeding.
 - Can't obtain discovery of relevant facts.
 - Can't introduce documents, witnesses or facts from peer review proceeding.
 - Maybe cannot include anything about peer review in complaint or other court documents.
- *Protect privilege by asserting appropriate:*
 - Motion to strike pleadings.
 - Motions for protective order and/or motion in limine.

PEER REVIEW PRIVILEGE



IMPORTANT

Maintain the privilege!

- Facilitates frank and effective peer review.
- Encourages participation in peer review.
- Protects the facility and participants from lawsuits and liability.

IDAHO PEER REVIEW CONFIDENTIALITY

- “Custodians of [peer review] records and persons becoming aware of such data and opinions shall not disclose the same except
 - “as authorized by rules adopted by the board of medicine, or
 - “as otherwise authorized by law.”

(IC 39-1392c)

- “Persons and entities receiving peer review records shall preserve the confidential privileged character thereof and such persons and entities shall not be subject to subpoena or order compelling production of peer review records.”

(IC 39-1392d)

PEER REVIEW PRIVILEGE: OWNERSHIP

Records

- “All peer review records of a health care organization shall be the property of the health care organization concerned which obtains or compiles the same.”

(IC 39-1392d)

Privilege

- Healthcare organization appears to own the privilege.*

(See IC 39-1392e(f))

- Not patient
- Not providers who are subject to peer review*

PEER REVIEW: USE WITHIN ORGANIZATION

- “A healthcare organization may provide peer review records to persons or entities that perform accreditation, certification or quality assurance review or evaluation of the health care organization.”
- “The provision of any peer review records to such persons or entities shall not be deemed to be a waiver by the health care organization of any peer review privilege.”

(IC 39-1392d)

PEER REVIEW: USE WITHIN SYSTEM

- “A health care organization may provide peer review records to persons or entities
 - “with whom the health care organization is affiliated through any common ownership interest or by contract, [and]
 - “which affiliation or contract includes the person's or entity's involvement in the peer review process or the provision of any management or administrative services to the health care organization.”

(IC 39-1392d)

PEER REVIEW: DISCLOSURE OUTSIDE

- May disclose peer review info to other healthcare organizations for their peer review activities.
 - “Any health care organization may receive such disclosures, subject to an obligation to preserve the confidential privileged character thereof and subject further to the requirement that such requests shall be made and such use shall be limited to aid the health care organization in conducting peer review.”

(IC 39-1392c)

- “Nothing in this section shall be deemed to require the health care organization to provide persons or entities with peer review records.”

(IC 39-1392d)

PEER REVIEW: DISCLOSURE OUTSIDE

- Must report certain adverse peer review actions to:
 - National Practitioners Data Bank (“NPDB”) (42 CFR 60.11)
 - Idaho Board of Medicine (IC 39-1393)
 - Response to interrogatory in malpractice case (IC 39-1392e)
 - See discussion below.
 - Others?
- Only disclose the info that is required to be reported.
 - Protect names of participants.
 - Protect names of patients.

HIPAA: USE OR DISCLOSURE

- HIPAA allows use or disclosure of protected health info (“PHI”) for “healthcare operations”, which includes:
 - “Conducting quality assessment and improvement activities, including outcomes evaluation ...
 - “Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, [and] accreditation, certification, licensing, or credentialing activities.”

(45 CFR 164.501 and .506)

- HIPAA requires that you limit access, use or disclosure to the minimum necessary for a permissible purpose.

(45 CFR 164.502(b))

HIPAA: USE OR DISCLOSURE

- HIPAA does not apply to:
 - Info that is not individually identifiable, i.e., no reason to think person could be identified through info provided; or
 - Info has been de-identified, i.e., remove specified identifiers, e.g., names, dates, addresses, medical record numbers, account numbers, geographic identifiers, dates, phone numbers, e-mails, identifying images, etc.

(45 CFR 160.103 and .514)

HIPAA: ACCESS BY PATIENT

- Patient has a right to access protected health info in their “designated record set”, i.e.,
 - Records used to make decisions about the patient.

(45 CFR 164.501 and .524)

- Patient generally does not have right to access peer review records, incident reports, QA/QI, etc.
 - Peer review records are usually not used to make healthcare decisions about the patient; thus, they are not part of the designated record set.
- Keep peer review records separate from records used to make decisions about patient.

PEER REVIEW PRIVILEGE LIMITS

- If a malpractice patient submits an interrogatory asking for the info, the provider must disclose:
 - Whether it conducted or has in progress an inquiry, proceeding or disciplinary matter regarding the quality or propriety of care involving the patient; and
 - Disposition of the proceeding.
 - Names of persons with direct knowledge of the care rendered, but not who gained knowledge second-hand.

(IC 39-1392e)

PEER REVIEW PRIVILEGE LIMITS

- Peer review privilege does not apply to:
 - Underlying medical records. (IC 39-1392b)
 - Underlying facts giving rise to the peer review actions.
 - Bylaws, rules, policies or documents that generally describe the peer review process.
- Peer review privilege may not apply to claims in federal court, e.g.,
 - Suit between citizens of different states.
 - Suit involving federal claims, e.g., discrimination, antitrust, EMTALA, due process, etc.
- *Assume info may be disclosed; ensure info is appropriate.*

PEER REVIEW PRIVILEGE: LIMITS

- If any person who is the subject of peer review brings a claim based on the peer review:
 - The person is deemed to have waived the privilege as to himself, and
 - Healthcare organization may introduce peer review evidence to defend itself.

(IC 39-1392e(f))

➤ *But beware introducing evidence to defend self!*

- Waive privilege;
- Participants may not be happy;
- May dissuade others from participating; and
- Lose ability to use the privilege as a defense against discovery or evidence.

PEER REVIEW PRIVILEGE LIMITS

- Healthcare organization may waive privilege by disclosing info outside the peer review process, e.g.,
 - To defend itself in a proceedings. (See IC 39-1392e(f))
 - To others except for those disclosures permitted by the peer review statute.
- “Waiver” = “intentional relinquishment of a known right. It is a voluntary act and implies election by a party...” (*Montalbano*, 151 Idaho at 842)
 - Not accidental disclosures
 - But don’t count on it...

PEER REVIEW PRIVILEGE LIMITS

- May be required to disclose if other law requires disclosure, e.g.,
 - Federal surveyors, e.g., skilled nursing home surveys.
 - Others?
- Resist subpoenas if you can.
 - Motion for protective order.
 - Motion in limine.
 - Motion to quash.
 - Other.

IDAHO RULE OF EVIDENCE 519



IDAHO RULE OF EVIDENCE 519

- **“General rule of privilege.** A hospital, in-hospital medical staff committee, medical society, and maker of a confidential communication has a privilege to refuse to disclose and to prevent any other person from disclosing [a] confidential communication” made in the course of peer review.

(IRE 519(b))

- Applies only in court proceedings.

IDAHO RULE OF EVIDENCE 519

“Confidential communication ... if it

- **“is made in connection with a [peer review proceeding];**
- **“is a statement of opinion or conclusion concerning the subject matter of the proceeding; and**
- **“is not intended for disclosure to third persons, except persons present to further the purposes of or participate in the proceeding, or necessary for the transmission of the communication.”**

(IRE 519(a)(4))

IDAHO RULE OF EVIDENCE 519

“Waiver of privilege by testimony. The privilege as to a confidential communication under this rule is waived if the maker of the confidential communication gives evidence of his opinion or conclusion concerning the subject matter of the confidential communication.”

(IRE 519(e))

ADDITIONAL PRIVILEGES



ADDITIONAL PRIVILEGES THAT MAY APPLY

- Patient Safety Organization (“PSO”) communications per the Patient Safety Quality Improvement Act (“PSQIA”) (42 USC 299b-22)
 - Applies to quality improvement activities.
- Self-Critical Analysis Privilege, Self-Evaluative Privilege or Self-Investigation Privilege
 - Applies to quality improvement activities.
 - May apply in federal court.
- Attorney-Client Communication.
 - Only applies to communications involving attorney.
 - Protect info through communications with attorneys.
- Attorney Work Product Doctrine
 - Only applies to records created in anticipation of litigation.

PROTECTING THE PRIVILEGE



PROTECTING THE PEER REVIEW PRIVILEGE

- Establish one or more peer review committees authorized to engage in relevant activities.
 - Credentialing and privileging
 - Peer review
 - Corrective action
 - Quality assurance and performance improvement
 - Incident investigations
 - Root cause analysis
 - Others?

PROTECTING THE PEER REVIEW PRIVILEGE

- Designate committees as a peer review committee within the meaning of IC 39-1392a.
 - Bylaws or charter
 - Policies
 - Minutes
 - Reports
 - Reminders to participants
- Confirm persons acting on behalf of committee are engaging in peer review.

PROTECTING THE PEER REVIEW PRIVILEGE

- Conduct peer review activities through the designated committee or representatives.
 - Investigations
 - Interviews
 - Record reviews
 - Reports
- Beware: disclosure outside the committee may jeopardize privilege.

PROTECTING THE PEER REVIEW PRIVILEGE

- Educate participants re confidentiality.
- Retain outside consultants under peer review authority.
- Require peer review participants to maintain confidentiality.
 - Limit communications to authorized process and personnel.
 - No communications in nonprivileged documents.
 - No informal discussions re issues.
 - No unauthorized disclosure of records.

PROTECTING THE PEER REVIEW PRIVILEGE

- Designate qualified and trained personnel to maintain peer review records.
- Separate and secure peer review records from other records.
 - Separate room or storage area.
 - Separate, labeled file.
 - Other?
- Distinguish incident reports but apply protections.
 - May be peer review for purposes of third-party litigation.
 - May not be protected from surveyors.



PROTECTING THE PEER REVIEW PRIVILEGE

- Designate documents as confidential, e.g.,

**CONFIDENTIAL PEER REVIEW INFORMATION
PROTECTED BY IC § 39-1392a et seq.**

**DO NOT DISTRIBUTE OR DISCLOSE
WITHOUT AUTHORIZATION.**

PROTECTING THE PEER REVIEW PRIVILEGE

- Maintain tight control over peer review records.
 - Beware copying or distributing records.
 - Require recipients to acknowledge duty of confidentiality.
 - Return or destroy the documents upon completion of the recipient's participation and after relevant limitations period.
- Do not disclose peer review records outside authorized peer review process.

PROTECTING THE PEER REVIEW PRIVILEGE

- When responding to an incident, complaint or other issue, consider who should conduct the response:
 - Non-peer review entity.
 - **May not be protected.**
 - Peer review committee or delegee.
 - **May be protected depending on circumstances.**
 - Attorney or entity retained by attorney.
 - **May maximize protection under:**
 - **Attorney-client privilege**
 - **Work product doctrine.**

PROTECTING THE PEER REVIEW PRIVILEGE

- Confirm what should/should not be included in:
 - Peer review communications.
 - Incident reports.
 - Limit to info required by regulations.
 - Medical records.
 - Limit to factual info, e.g., pertinent, objective facts concerning what happened, patient's condition before/after, medical care rendered, and who notified.
 - No analysis, opinion, or speculation.
 - No reference to separate incident or QAPI report.
 - Other required documents.

Not protected in litigation

PROTECTING THE PEER REVIEW PRIVILEGE

- Educate staff concerning requirements.
- Enforce the confidentiality rules.
 - Warn or reprimand participants who violate rules.
 - Impose appropriate sanctions.
- Other suggestions?

PROTECTING THE PEER REVIEW PRIVILEGE

- Carefully consider the consequences before waiving the peer review privilege, e.g.,
 - Disclosing peer review info in response to discovery requests or subpoenas.
 - Responding to complaints, pleadings or other documents in litigation or otherwise outside peer review process.
 - Using peer review documents to defend self.
- *It may be that the healthcare organization is better off asserting the privilege instead of using or disclosing the privileged documents in its defense.*

PROTECTING THE PEER REVIEW PRIVILEGE

- In litigation, consider bringing appropriate motions to protect info.
 - Motion to strike complaint or other pleadings containing peer review information.
 - Motion to seal record
 - Protective order
 - Motion *in limine*
- When in doubt, check with an attorney who knows and understands the peer review statutes and the consequences of waiving any privilege.

ALWAYS ASSUME THE RECORDS MAY BE DISCLOSED

- Use qualified, trained persons to document.
 - More serious the issue → more important to document.
- Document accurately and professionally.
- Don't speculate or cast aspersions.
- Supplement the records as appropriate.
 - Use appropriate late entries.
 - Never falsify the record.
- Report up the chain.
- Follow through on whatever you write.
- Other suggestions?

OTHER DEFENSES



HEALTH CARE QUALITY IMPROVEMENT ACT ("HCQIA")

- HCQIA provides immunity for most claims arising from credentialing action **against physician** if the action is taken:
 - In reasonable belief action furthered quality care,
 - After reasonable effort to obtain facts,
 - After adequate notice and hearing procedures,
 - In reasonable belief that facts warranted action.
- Hospital presumed to have complied; physician must rebut.

(42 USC 11101 et seq.)

HCQIA

- Hospital process is deemed to be fair if:
 - Proper notice given
 - Hearing before a fair-minded officer or panel
 - Physician has right to present evidence
 - Physician receives written recommendation

(42 USC 11101 et seq.)

Ensure your
bylaws or
policies
comply with
HCQIA
standards



LAURINO V. SYRINGA GENERAL (IDAHO 2005)

- Physician with provisional staff membership denied privileges following fair hearing process involving independent hearing officer. Physician sued hospital, trustees, and chief of staff for \$2,000,000.
- Court granted summary judgment in favor of Hospital



FEDERAL VOLUNTEER PROTECTION ACT

- Protects volunteers in non-profit and govt entities from liability if:
 - Receive no more than \$500/year in compensation.
 - Authorized by law to engage in activities.
 - Act within scope of duties.
- Does not apply to:
 - Willful, criminal or reckless misconduct
 - Violent, sex, or hate crimes
 - Claims by hospital against volunteer
 - Civil rights violations
 - Injunctions

(42 USC 14501)

IDAHO

NON-PROFIT VOLUNTEERS

- Protects directors and volunteers who serve in non-profit corporation if:
 - Serve without compensation
 - Act within course and scope of duties and at direction of corporation
- Does not apply to
 - Willful, wanton, fraudulent or knowingly unlawful act
 - Intentional breach of fiduciary duty
 - Extent insurance applies.
 - Intentional breach of fiduciary duty or loyalty.
 - Bad faith or intentionally unlawful acts.
 - Acts in which director derived personal benefit.
 - Motor vehicle claims.

(IC 6-1605)

IDAHO TORT CLAIMS ACT

- Protects state actors from certain tort claims.
 - Policy or planning decisions.
 - Certain intentional torts, e.g., assault, battery, defamation, fraud, interference with contract, etc.
- Does not apply to:
 - Actions outside course and scope of duties.
 - Malicious or willful misconduct.
 - Federal claims.
 - Non-tort claims, e.g., claims based on contract or statute.
- Provides certain procedural protections.
 - Plaintiff must file notice of tort claim within 180 days.
 - Shortened statute of limitations.
 - Cap on damages.

(IC 6-901 et seq.)

RELEASES AND WAIVERS

- Include in:
 - Bylaws
 - Credentialing applications
 - Contracts
 - Address
 - Authorization to release records
 - Waiver and release of liability arising out of credentialing matters
 - Confidentiality of credentialing and peer review matters
- May not be enforceable
 - But better than not having them.
 - May be enforced.
 - May dissuade physician from pursuing.

SAMPLE RELEASE LANGUAGE

- **“Consent to Disclosure.** I hereby authorize Hospital, its medical staff, their agents and representatives, and/or any other person to obtain, disclose or share the following information for purposes of any credentialing or peer review activity involving me: any records or information relevant to my training and education, professional qualifications, ability to provide effective patient care, licensure, character, physical and mental capacity, ethics, behavior or conduct, claims history, eligibility to participate in health care programs, and any other information reasonably relevant to my professional conduct, ability to provide effective patient care, and/or qualifications for medical staff appointment, reappointment, or clinical privileges. I authorize and direct any person with knowledge of such information to fully disclose such information to Hospital, its medical staff, or their representatives. I also authorize and direct Hospital, its medical staff, and their representatives to disclose such information to any person or entity who solicits such information for the purpose of evaluating my qualifications pursuant to a request for appointment, reappointment, or clinical privileges, or any other credentialing, licensing, or regulatory matter. I further agree to execute any documentation reasonably required by Hospital to effect the intent of this provision.”

SAMPLE BYLAWS LANGUAGE

- **“Confidentiality.** To the maximum extent consistent with applicable law, the Medical Staff and its committees shall constitute a peer review body under Idaho law, and information considered or generated by the Medical Staff, its committees, or its members shall be privileged and confidential, including but not limited to records, reports, minutes, discussions, and any other information collected, generated, utilized or provided for the purposes of evaluating or improving the quality and efficiency of health care or reducing the morbidity or mortality of patients; investigating, evaluating or reviewing the qualifications or competence of Medical Staff applicants, members, or persons who request or have privileges; contributions to clinical teaching or research; or information containing protected health information of patients. Medical Staff members and others bound by these bylaws shall not use such information outside of the credentialing or peer review process or disclose such confidential information unless expressly required by law or with the written authorization of the MEC and/or CEO. Persons who violate this Section shall be subject to corrective action.”

SAMPLE BYLAWS LANGUAGE

- **“Immunity.** To the maximum extent allowed by law, no member or representative of the Medical Staff or [HOSPITAL] shall be liable to any person for damages or other relief for any decision, opinion, action, omission, statement, or recommendation made within the scope of his or her duties as an official representative of the Medical Staff relating to or arising from the provision of information, opinion, or counsel, or relating to or arising from participation in any credentialing, privileging, quality improvement or peer review activities.”

SAMPLE BYLAWS LANGUAGE

- **“Releases.** Each practitioner or AHP requesting appointment, reappointment, or privileges shall, upon request of [HOSPITAL], execute general and specific releases when requested by the President, the Credentials Committee Chair, or their respective designees. Failure to execute such releases shall result in an application for appointment, reappointment or privileges being deemed voluntarily withdrawn, and it shall not be further processed.”

INSURANCE

- Consider whether your insurance provides coverage
 - Board members
 - Med staff officers or others participating in process
 - Witnesses or other participants
- Consider
 - Directors & officers liability insurance
 - Errors & omissions liability insurance
- Check with brokers

BUT MOST IMPORTANT...

- Ensure your peer review actions:
 - Are based on documented, legitimate reasons, i.e., not unreasonable, arbitrary, capricious or discriminatory.
 - Are consistent with the process and standards in bylaws and applicable statutes, rules and regulations, including HCQIA.
- Ensure the decisions are taken in the context of peer review and maintain peer review privilege at all costs.

QUESTIONS



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