



# Indiana's Peer Review Statute



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# Topics

- I. Indiana's Peer Review Statute: Indiana Code § 30-34-15
  - A. An overview of the Statute
  - B. Legislative Purpose
  - C. Its Significance
  
- II. Its application in medical malpractice cases
  - A. Case law
  - B. Its impact on the discovery of incident reports
  
- III. Peer Review privileges in conjunction with other applicable privileges



# I. What is “Peer Review”?

- Created by Statute - Ind. Code § 30-34-15
- Defines all pertinent aspects of Peer Review
  - Purpose of Peer Review
  - Who is a peer reviewer
  - What aspects of peer review are confidential
  - Under what circumstances is Immunity available



# Legislative Purpose of Peer Review

Peer Review is meant to further quality of care.

- Activities must at all times serve this purpose
- Must be “fair” and made in “good faith”
- Bylaws/Peer Review policies should be followed
- Confidentiality should be maintained



# Significance of Peer Review Statute

- “To foster an effective review of medical care”.  
*Community Hospitals of Indianapolis, Inc. v. Medtronic, Inc.*, 549 N.E.2d 448, 451 (Ind. Ct. App. 1992)(internal citations omitted).
  - But how is this achieved?



# Achieving the Statute's Purpose

- A peer reviewer's activities must:
  - At all times, further the quality of patient care.
  - Be done in "good faith". Ind. Code 34-30-15-23
  - Follow applicable policies and/or procedures.
  - Maintain confidentiality. Ind. Code 34-30-15-1. Ind. Code 34-30-15-2.



# Duties of a “Peer Review Committee”?

- Indiana Code § 34-6-2-99 outlines a Peer Review Committee’s duties.
- But generally, a Peer Review Committee deals with evaluating:
  - The qualifications and/or credentials of health care providers;
  - Patient care rendered by professional health care providers; or
  - Merits of a complaint against health care providers based on competence or professional conduct.





# What is a “Peer Review Committee”? (cont.)

- Ind. Code § 34-6-2-99 provides the organizational requirement for Peer Review Committees.
- Generally, Peer Review Committees must be organized by:
  - Professional staff of a hospital;
  - Professional staff of a professional healthcare organization; or
  - A nonprofit healthcare organization affiliated with a hospital owned or operated by a religious order.



# What is a “Peer Review Committee”? (cont.)

- Ind. Code § 34-6-2-99 outlines the composition requirement.
- Peer Review Committees must be:
  - Composed of at least 50% members who are:
    - A governing board of a hospital; or
    - Professional health care providers
- Bylaws and policies are helpful to establish legitimate peer review committee and processes for quality care reviews



# What is the significant of Peer Review

- Confidentiality/Privilege
- Reporting/Immunity



# Confidentiality/Privilege

- Peer Review “proceedings” are confidential.
- Communications to committee are privileged.
  - The communications to, records of, and determinations of a peer review committee are privileged communications and “shall” not be disclosed
    - Criminal violation
  - Extends to personnel of the committee and all participants and witnesses
- Determinations of a Peer Review Committee
  - The conclusions, recommendations, decisions, plans, etc. of a peer review committee related to a particular matter
    - Exception – does not include “final action taken” –  
*Fidorno v. Chuman*, 747 N.E.2d 610 (Ind. Ct. App. 2001)



# Permitted Disclosures

- Peer review committees (hospitals, nonprofit health care orgs, PPOs, HMOs, other health facilities)
- Professional organization disciplinary authorities
- State Licensing Boards
- Legitimate internal business purposes
- Indiana Attorney General has limited discovery authority



# Immunity – I.C. 16-21-2-6

- (a) The governing board shall report, in writing, to the Indiana medical licensing board the results and circumstances of a final, a substantive, and an adverse disciplinary action taken by the governing board regarding a physician on the medical staff or an applicant for the medical staff if the action results in voluntary or involuntary resignation, termination, nonappointment, revocation, or significant reduction of clinical privileges or staff membership. The report shall not be made for non-disciplinary resignations or for minor disciplinary action.
- (b) The governing board and the governing board's employees, agents, consultants, and attorneys have absolute immunity from civil liability for communications, discussions, actions taken, and reports made concerning disciplinary action or investigation taken or contemplated if the reports or actions are made in good faith and without malice



# Immunity - I.C. 16-21-2-8

“ The members of a medical staff committee who conduct a retrospective medical review have absolute immunity from civil liability for the following:

- (1) Communications made in committee meetings.
- (2) Reports and recommendations made by the committee arising from deliberations by the committee to the governing board of the hospital or another duly authorized medical staff committee.”



## **II. Peer Review – medical malpractice**

- A. Indiana caselaw application and interpretation of the Peer Review Statute.
- B. Peer Review and incident reports.





# A. Peer Review – litigation

- Peer Review situations vary factually, and generally, litigants raise the privilege to limit the scope of discovery. These leading Indiana cases illustrate typical Peer Review situations:
  - *Community Hosp. of Indianapolis, Inc. v. Medtronic, Inc., Neuro Div.*, 594 N.E.2d 448, 452-453, (Ind. Ct. App. 1992).
  - *Ray v. St. John's Health Care Corp.*, 582 N.E.2d 464, 474 (Ind. Ct. App. 1991).
  - *Fridono v. Chuman*, 747 N.E.2d 610, 618-619, (Ind. Ct. App. 2001).
  - *Terre Haute Regional Hospital, Inc. v. Basden*, 524 N.E.2d 1306, 1309 (Ind. Ct. App. 1988).



# Peer Review successfully raised

- Indiana Court of Appeals held that Defendant hospital did not have to respond to Plaintiff's requests for production nor answer Plaintiff's interrogatories because Plaintiff inquired for the exact information (a peer review committee's determinations and communications to a peer review committee) that is confidential/privileged by the Peer Review statute. *Terre Haute Regional Hosp., Inc., v. Basden*, 524 N.E.2d 1306, 1309 (Ind. Ct. App. 1988).



# Peer Review unsuccessfully raised

- A hospital may not insulate itself from judicial review simply by stamping the words “Privileged Peer Review Material” on its files
- Court of Appeals held that in determining whether documents were subject to the peer review privilege, the court had a duty to dig behind labels the hospital put on its documents and ordered the trial court to conduct an in-camera review on each document. *Ray v. St. John’s Health Care Corp.*, 582 N.E.2d 464, 474 (Ind. Ct. App. 1991).



# Peer Review unsuccessfully raised (cont.)

- The “final action taken” as a result of the peer review process is discoverable. (i.e. modification, restriction, or termination of physician staff privileges taken as a result of peer review proceedings is outside the scope of the peer review privilege and, thus, is discovery and admissible in judicial proceedings without the necessity of a written waiver by the peer review committee. *Fridono v. Chuman*, 747 N.E.2d 610, 618-619 (Ind. Ct. App. 2001).



## **B. Peer Review and Incident Reports**

- As mentioned, Peer Review protects materials (communications, records, determinations, documents, etc.) from discovery if the materials foster effective review of medical care.
  - But what does this look like with certain materials, such as incident reports?



# Incident Reports

- Typically, if incident reports are generated for patient care quality, and if a peer review committee reviews those reports for such purposes, then those reports will be privileged.
- The Indiana Court of Appeals held that the hospital need not comply with Plaintiff's request for production of incident reports because the hospital's quality assurance department generated the incident reports for purposes of patient quality care, and a Director of Patient Care Evaluation reviewed such reports. Therefore, such incident reports fall within the peer review privilege. *Community Hospitals of Indianapolis, Inc. v. Medtronic, Inc.*, 594 N.E.2d 448, 452-453 (Ind. Ct. App. 1992).



# Peer Review and Incident Reports

- Incident reports, that relate to quality assurance, and submitted to a peer review committee, for evaluation of patient care, may be protected by Peer Review privilege.
- Follow hospital policy and procedures on quality assurance investigations and peer review communications. Policies can help establish the purpose of communication.
- A party seeking to avoid discovery has the burden to establish the essential elements of the privilege be invoked.



# III. Peer Review Privilege + Other Applicable Privileges

- How does the Peer Review privilege interact with other privileges?
  - Attorney-Client privilege
  - Work Product





# Peer Review, Attorney-Client Privilege, and the Work-Product Doctrine

- Physician who was subject to peer review brought action against hospital operator, manager, and nurse. Defendants moved to compel plaintiff to return document produced during discovery and plaintiff moved to compel production of documents.
- The district court concluded that defense counsel waived their Attorney-Client privilege, and Peer Review privilege, when they inadvertently produced a confidential letter (related to a peer review process) to Plaintiff. Also, the court rejected the Defense counsel's claim of Work Product doctrine and concluded that Plaintiff did not have to return the confidential letter to Defendant. *Draus v. Healthtrust, Inc.*, 172 F.R.D. 384, 385-390 (S.D. Ind. 1997).