STATE OF NEW JERSEY

N J L R C

NEW JERSEY LAW REVISION COMMISSION

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TENTATIVE REPORT

relating to

M EDICAL PEER REVIEW PRIVILEGE

NOVEMBER 2004

This tentative report is distributed to advise interested persons of the Commission’s tentative recommendations and to notify them of the opportunity to submit comments. The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the tentative report, please inform the Commission so that your approval can be considered along with other comments.

COMMENTS MUST BE RECEIVED BY THE COMMISSION NOT LATER THAN

Please send comments concerning this tentative report or direct any related inquiries, to:

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Section 1. Peer review committee

a. In this statute, a “peer review committee” is a group responsible for:

1) reviewing qualifications and credentials of physicians or dentists seeking appointment or reappointment to the medical or dental staff of a hospital; and

2) investigating questions about staff physicians or dentists concerning:
   A) their clinical or administrative competence;
   B) limiting the scope of their hospital privileges; or
   C) their dismissal.

b. In addition to hospital peer review committees, this statute applies to peer review committees of a:

1) local, county or State medical, dental, podiatric, optometric, psychological, veterinary, chiropractic or pharmaceutical society;

2) long-term health care facility association; or

3) health maintenance organization.

Source: New

Comment

Subsection (a) borrows from 2A:84A-22.10(d); Subsection (b), from 2A:84A-22.10(e). Those statutes deal with non-liability of members of peer review committees. This proposed statute sets out the responsibilities and types of peer review committees with a view to protecting, in subsequent sections, the materials used by the committees.

Section 2. Peer review committee materials privileged

a. The evaluative and deliberative materials of hospital peer review committees concerning the health care provided any patient are privileged and not subject to discovery. “Evaluative and deliberative materials” includes opinions, analyses and findings of fact and any part of reports and minutes that include them.

b. A witness may not be questioned about testimony or other proceedings before a peer review committee nor about opinions formed as a result of committee hearings.

c. Information otherwise discoverable or admissible is not immune from discovery or use in any proceeding merely because it was presented during peer review proceedings. Nor shall a committee member, employee or agent, or a person appearing before the committee, be prevented from testifying about matters within the person’s personal knowledge.

Source: New

Comment

Subsection (a) tracks language in Christy v. Salem, 366 N.J. Super. 535 (App. Div. 2004), the latest case discussing disclosure and non-disclosure of peer review materials. Subsections (b) and (c) are similar to parts of Mo. Rev. Stat. 537.035(4) and to Ohio Rev. Code Ann. 2305.251.
Section 3. Exceptions

The privilege established by Section 2 does not apply:

a. in any judicial or administrative action brought by a peer review committee or the legal entity which formed it or within which the committee operates, to deny, restrict or revoke a physician’s hospital staff privileges or license to practice;

b. when a member, employee or agent of the peer review committee or the hospital within which the committee operates, is sued for actions taken by the committee;

c. when the New Jersey State Board of Medical Examiners seeks to obtain information by subpoena or other authorized process or requires disclosure of otherwise confidential information relating to matters within the Board’s jurisdiction; or

d. if the committee waives the privilege.

Source: New

Comment

Subsections (a) and (b) follow exceptions found in Mo. Rev. Stat. 537.035(5). Subsection (c) follows Mo. Rev. Stat. 537.035(60). Subsection (d) broadens the scope of a Virginia Supreme Court ruling that a physician cannot waive the peer review privilege.

Section 4. Confidentiality

Materials used by peer review committees shall be used only for the proper functions of the committee. The committee shall keep confidential the identity of any patient whose condition, care or treatment is part of the committee proceeding. No person who was in attendance at any peer review committee proceeding shall be permitted to disclose any information acquired in connection with a peer review proceeding, or to disclose any opinion, recommendation or evaluation of the committee or of any committee member.

Source: New

Comment