



WHAT IS THE HEALTHCARE QUALITY IMPROVEMENT ACT?

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Are you the subject of a peer review investigation? Have you received a notice from your hospital asking you about the facts and circumstances surrounding a particular case or patient incident? Has a representative of your hospital's Medical Executive Committee, Peer Review Committee, or your Medical Staff President reached out to you for a casual or formal conversation about a certain incident, whether known or unknown? Oftentimes, physicians are unaware that they are being targeted by a peer review investigation when approached in the above circumstances. If you are subject to a peer review action or investigation, or suspect that you may be subject to such action, it is important to understand your rights.

Peer review actions and related investigations are governed by the Healthcare Quality Improvement Act of 1986 (HCQIA).¹ The HCQIA provides a basic framework for how peer review actions should be governed, including the rights of the accused physician and the responsibilities of the hospital's investigative body. In addition, the HCQIA requires that hospitals report any adverse findings to the National Practitioner Data Bank.²

¹ 42 U.S.C. § 11112 et seq.

² National Practitioner Data Bank, U.S. Department of Health and Human Services.



What Immunity Does the Hospital Have Under the HCQIA?

To encourage honest and fair participation in the peer review process, the HCQIA provides immunity against civil liability for monetary damages to physicians and hospitals engaging in professional peer review.

To invoke HCQIA immunity, those participating in the peer review process generally must satisfy four factors, i.e., the individual/body must:

1. Have an objective, reasonable belief that its action furthered quality health care,
2. Make an objective, reasonable effort to obtain the facts,
3. Ensure that, under the totality of the circumstances, the physician being reviewed received adequate notice and fair hearing procedures (i.e., due process), and
4. Have a reasonable belief that its actions were warranted.³

The HCQIA also protects those who provide information to professional review bodies.

³ 42 U.S.C. § 11112(a)(1-4).



What Rights Do I Have Under the HCQIA?

For certain adverse actions, the HCQIA requires the hospital entity to provide the targeted healthcare provider with certain notice and hearing rights. Specifically, the HCQIA requires the physician to have been given notice stating: (i) that a professional review action has been proposed to be taken against the physician, (ii) reasons for the proposed action, (iii) that the physician has the right to request a hearing on the proposed action, including any time limit (of not less than 30 days) within which to request such a hearing, and (iii) a summary of the rights in the hearing.⁴ The hospital entity may afford additional rights to the physician above and beyond the HCQIA; the above requirements simply serve as the baseline framework that is overlaid by the health care entity's medical staff bylaws.

It is important to note that health care entities are not required to provide these notice and hearing protections “where there is no adverse professional review action taken, or in the case of a suspension or restriction of clinical privileges, for a period of not longer than 14 days, during which an investigation is being conducted to determine the need for a professional review action[.]”⁵ Finally, these protections do not preclude the health care entity from taking “an immediate suspension or restriction of clinical privileges, subject to subsequent notice and hearing or other adequate

⁴ 42 U.S.C. § 11112(b)(1).

⁵ 42 U.S.C. § 11112(c)(1).



procedures, where the failure to take such an action may result in an imminent danger to the health of any individual.”⁶

What Are Exceptions to HCQIA Immunity?

As noted above, HCQIA immunity extends to those medical professionals participating in a peer review committee. As a result, those protections can make it difficult for a reviewed surgeon or physician to seek legal remedies due to an unfair adverse action. However, in addition to immunity possibly not applying where the four factors described above are not met, there are two other exceptions worth noting.

First, the HCQIA protections only cover monetary damages, not lawsuits. This means that, while they may not have to pay the plaintiff physician for a successful lawsuit, the panel participant can still be sued. Injunctive relief can be sought, which is a court order requiring a party to do or refrain from doing something.

Second, immunity to monetary damages generally does not extend to civil rights violations. Discriminatory practices violating federal or state civil rights laws mean that the offending peer reviewer can be subject to a lawsuit and liable for monetary damages.

⁶ 42 U.S.C. § 11112(c)(2).



It is important to discuss whether any exceptions to HCQIA immunity might apply to your peer review matter with an attorney experienced in peer review and physician credentialing issues.

Do I Have to Exhaust My Administrative Remedies?

Before filing a lawsuit regarding your peer review investigation, you must generally exhaust your administrative or hospital-based remedies, i.e., request a fair hearing under your hospital's medical staff bylaws. In many instances, courts will not hear your civil case for monetary damages unless and until you have exhausted the in-house processes first. You are, however, able to seek injunctive (non-monetary relief), e.g., ask a court to stop the hospital from improperly reporting an adverse action to the National Provider Data Bank (NPDB).⁷

When Should I File a Lawsuit?

After exhausting all administrative remedies, if a just result has not been found, seeking relief via a lawsuit may be an appropriate next step depending on the circumstances. In general, civil litigation is very expensive and the

⁷ Like all litigation, seeking injunctive relief (and, in particular, emergency injunctive relief via a temporary restraining order) can be very expensive. The costs and benefits of proceeding with such an approach must be balanced against the harm that may be caused by a damaging report to the NPDB. These are issues and topics that you should discuss with your lawyer. Regardless of the approach (fighting an adverse recommendation via your hospital's fair hearing process or through a court action downstream), it will take a significant amount of time—nothing happens overnight.



process is slow – it can take up to two years or longer if an appeal is necessary. Additionally, a lawsuit can have a negative mark on a physician's reputation, thereby making the physician not marketable for a new job as new employers can be wary of hiring or contracting with physicians who have a litigious history. That said, in some circumstances, the peer review process has been abused to such a great degree—and the physician's professional irreparably tarnished—that seeking judicial relief via a lawsuit is the only viable path forward.

Our firm is experienced in health care and peer review/credentialing matters. Contact Athan Law today at athan-law.com or call (509) 215-4679.

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