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Pharmacy Peer Review

*Edward D. Rickert, BS Pharm, JD
Smith, Rickert & Smith
8383 West Belmont, Ste. 304
River Grove, IL 60171-1083
708-456-4500
Fax: 708-456-4520
email: edr@smithrickert.com*

Peer Review - Background

- IOM Report on Medical Errors
- CQI Initiatives
- Need data to improve system

Peer Review Protections: Why?

- “Access to detailed information compiled by peer reviewers, risk managers and others could greatly help a plaintiff’s lawyer build a case.”
- “This in turn creates a strong disincentive to collect and report such information.”

IOM Report, p. 110

Peer Review

Part of an out-come based, continuous quality improvement process involving:

- Setting and periodic review of quality standards
- Collection of data to determine when and why standards are not met

Peer Review

- Effective review of data by a peer review committee to make recommendations for QI
- Appropriate feedback to ensure that process is working

“Treasure map for the plaintiff’s lawyer”

Peer Review Protections

- Designed to foster full disclosure, and full and frank discussions
- Nearly always created by statute
 - ◆ Evaluation of quality of care or professional competence
 - ◆ Activities that are encompassed by peer review laws vary from state to state
 - ◆ Protections vary from state to state

IOM Recommendation 6.1

- “Congress should pass legislation to extend peer review protections to data released to patient safety and quality improvement that are collected and analyzed by health care organizations for internal use or shared with others solely for purposes of improving safety and quality.”

Peer Review Protections

- All fifty states have peer review statutes that specifically apply to doctors and hospitals
- Many states have statutes that apply to dentists, nurses, and physician assistants
- Only a handful of states have statutes that specifically apply to pharmacies and pharmacists

Peer Review Protections

- Incident reports, as commonly used in the retail setting, most likely do not fall within the statutory definition of a “peer review” document
- Need to implement changes in the system in order to create protection
- Need to pass laws to provide for peer review and evidentiary protections

Peer Review Protections

What needs to be protected?

- All data reported
- All communications
- All proceedings
- All participants in the process, including original reporter
- All reports, determinations, conclusions, etc.

Peer Review Protections

- Cannot be created by Board rule
- Requires legislation

Peer Review Committees

- Review documentation of quality-related activities
- Assess system failures and personnel deficiencies
- Determine facts, and make recommendations or issue decisions in a written report that can be used for continuous quality improvement purposes.

Peer Review Protections

- All **proceedings** and **records** of a pharmacy peer review committee are confidential
- All **communications** made to a pharmacy peer review committee are privileged

Peer Review Protections

- **Confidentiality** must be preserved, but information must be useful
- **No waiver for disclosure** to other pharmacy peer review committees, appropriate state or federal agencies, national accreditation bodies, or state boards of registration or licensure

Peer Review Protections

- Records, determinations and communications are not discoverable in any court proceeding or administrative matter
- Are not admissible in evidence
- Waiver only in writing by the Committee

Peer Review Protections

- Who can raise privilege?
- Any person or organization unless the person or organization seeking the information has secured a waiver of the privilege executed in writing by the Committee
- Party seeking the information must plead and prove waiver

Peer Review Protections - Immunity

- No cause of action against the members, agents, or employees of a pharmacy peer review committee for any act, statement, determination, or recommendation made or act reported
- Exception - Intentional or malicious conduct

Peer Review Protections - Pitfalls

- Activities must be reviewed by a committee set up specifically for peer review
- Disclosure of information to persons or entities outside of the Peer Review Committee can result in waiver
- Participation by non-committee members can result in waiver