

Peer Review for Advanced Practice Registered Nurses & Ohio Law



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Conflict of Interest

- No Disclosures

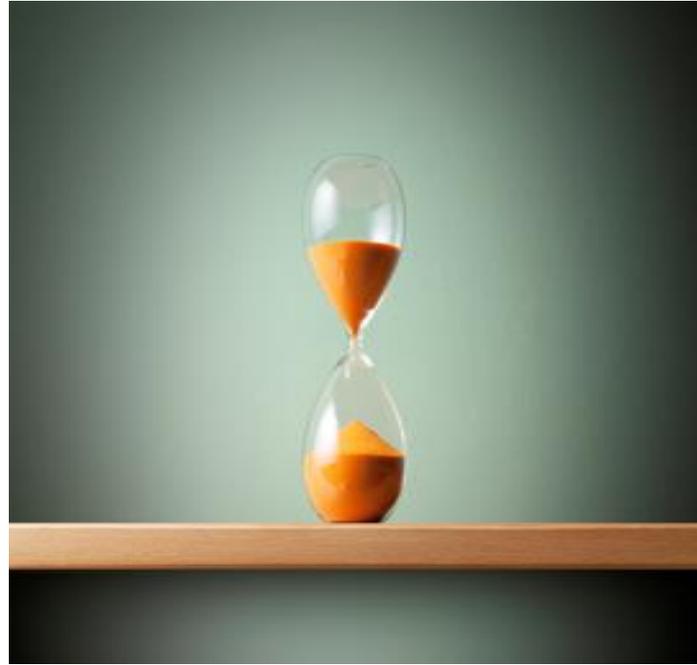


Objectives

- Increase understanding of peer review and the peer review process for Advanced Practice Registered Nurses (APRNs)
- Identify state and federal laws and statutes that protect medical providers who participate in the peer review process
- Recognize the discoverability and legal liabilities of peer reviewed documents for APRNs in Ohio



- HISTORY OF PEER REVIEW



Evolution of Peer Review

- 19th century
 - Physician Regulation Opposition
 - State Medical License boards created
 - American Medical Association and Department of Health and Human Services
 - Physicians' unwillingness to conduct peer review



Evolution of Peer Review continued

- 20th century
- Evidence of peer review in early 20th century
- Pioneered by the American College of Surgeons
 - 1924 “Minimum Standard”
- 1951-Evolved into the Joint Commission



Joint Commission

- 1951-1952
- Required in order to maintain accreditation
- 2007
 - Reforms of the Medical Staff Standards for hospitals
 - Mechanisms for allowance of fair hearings and appeals



Patrick versus Burget

- 1986
- Landmark peer review case
 - Multimillion dollar verdict
 - Bad faith peer review
 - Sham peer review
- Violation of Sherman Anti-trust act



The Health Care Quality Improvement Act of 1986 (HCQIA)

- Provides comprehensive legal immunity for peer reviewers
- Does not protect peer review documents from federal discovery
- Part A
 - Grants hospitals and reviewers' immunity from litigation
- Part B
 - Attempt to prevent physicians from circumventing the results of disciplinary action “state hoppers”
 - Led to development of the National Practitioner Data Bank

H.R. 5540-Health Care Quality Improvement Act of 1986

<https://www.congress.gov/bill/99th-congress/house-bill/5540> (n.d)



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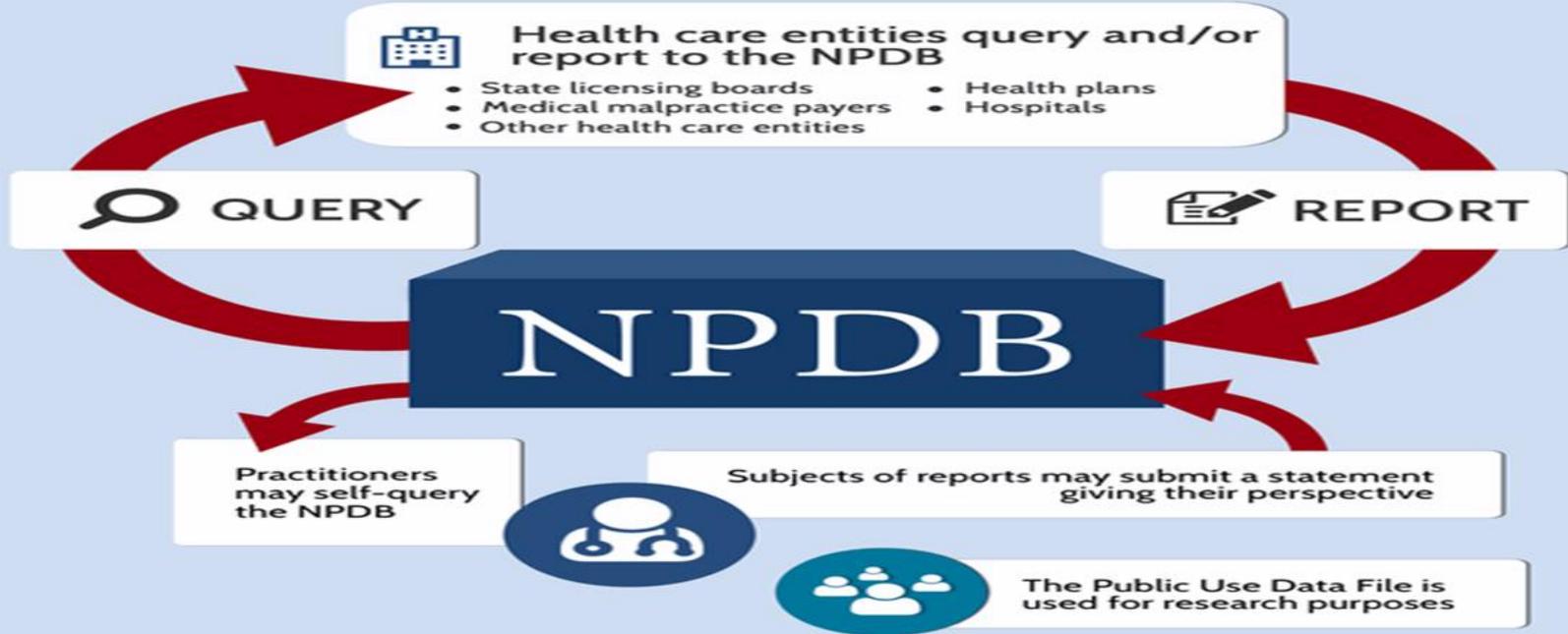
National Practitioner Data Bank

- Centralized repository
 - Adverse actions
 - Malpractice payments
 - Medicare/Medicaid exclusion reports
- Used as screening tool for practitioners
 - Required by law
 - Initial appointment and every 2 years thereafter



HOW THE NPDB WORKS

Only registered entities have access to the NPDB reports.



Access to National Data Bank

- Third Parties directly involved in regulation
 - Hospitals
 - State boards
 - Professional societies

- ❖ Confidential and closed for consumer review



- DEFINITIONS

- Peer Review
- Peer Review Committee
- Hospital
- Health Care Entity
- Peer Protected Document



Peer Review

- According to the American Medical Association
- “Physicians have mutual obligations to hold one another to the ethical standards of their profession. Peer review, by the ethics committees of medical societies, hospital credentials and utilization committees, or other bodies, has long been established by organized medicine to scrutinize professional conduct. Peer review is recognized and accepted as a means of promoting professionalism and maintaining trust. The peer review process is intended to balance physicians’ right to exercise medical judgment freely with the obligation to do so wisely and temperately”



Peer Review Committee

- Utilization review committee
- Quality assessment committee
- Performance improvement committee
- Tissue committee
- Credentialing committee

<https://codes.ohio.gov/ohio-revised-code/section-2305.251> (2014).



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Peer Review Committees Include

- A peer review committee of
 - a hospital or long-term care facility
 - a nonprofit health care corporation that is a member of the hospital or long-term care facility or of which the hospital or facility is a member
 - a community mental health center
- A board or committee of a hospital, a long-term care facility, or other health care entity when reviewing professional qualifications or activities of health care providers, including both individuals who provide health care and entities that provide health care
- A peer review committee, professional standards review committee, or arbitration committee of a state or local society composed of members who are in active practice as physicians, dentists, optometrists, psychologists, or pharmacists
- A peer review committee of a health insuring corporation that has at least a two-thirds majority of member physicians in active practice and that conducts professional credentialing and quality review activities involving the competence or professional conduct of health care providers that adversely affects or could adversely affect the health or welfare of any patient

<https://codes.ohio.gov/ohio-revised-code/section-2305.251> (2014).



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Peer Review Committees Continued

- A peer review committee of a sickness and accident insurer that has at least a two-thirds majority of physicians in active practice and that conducts professional credentialing and quality review activities involving the competence or professional conduct of health care providers that adversely affects or could adversely affect the health or welfare of any patient;
- A peer review committee of a sickness and accident insurer that has at least a two-thirds majority of physicians in active practice and that conducts professional credentialing and quality review activities involving the competence or professional conduct of a health care facility that has contracted with the insurer to provide health care services to insureds, which conduct adversely affects, or could adversely affect, the health or welfare of any patient;
- A peer review committee of any insurer authorized under Title XXXIX of the Revised Code to do the business of medical professional liability insurance in this state that conducts professional quality review activities involving the competence or professional conduct of health care providers that adversely affects or could affect the health or welfare of any patient;
- A peer review committee of the bureau of workers' compensation or the industrial commission that is responsible for reviewing the professional qualifications and the performance of providers certified by the bureau to participate in the health partnership program or of providers conducting medical examinations or file reviews for the bureau or the commission;
- Any other peer review committee of a health care entity.

<https://codes.ohio.gov/ohio-revised-code/section-2305.251> (2014).



Hospital

- An institution that has been registered or licensed by the department of health as a hospital;
- An entity, other than an insurance company authorized to do business in this state, that owns, controls, or is affiliated with an institution that has been registered or licensed by the department of health as a hospital
- A group of hospitals that are owned, sponsored, or managed by a single entity.



Health Care Entity

- Government entity
- For-profit or nonprofit corporation
- Limited liability company
- Partnership
- Professional corporation
- State or local society composed of physicians, dentists, optometrists, psychologists, or pharmacists
- Accountable care organization
- Other health care organization
- Combination of any of the foregoing entities.

<https://codes.ohio.gov/ohio-revised-code/section-2305.251> (2014).



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Examples of Peer Protected Documents

- Ongoing Professional Practice Evaluation (OPPE)

Ongoing Professional Practice Evaluation. Understanding the Requirements
<https://www.jointcommission.org> (2021).

- Focused Professional Practice Evaluation (FPPE)

- Prescriptive
- Trigger based
- New provider
- New Privilege

Focused Professional Practice Evaluation. Understanding the Requirements
<https://www.jointcommission.org> (2021).



OPPE

- OPPE identifies professional practice trends that may impact the quality and safety of care and applies to all practitioners granted privileges via the Medical Staff chapter requirements. A well-designed process supports early detection and response to performance issues that could negatively impact patient outcomes.



FPPE

- The Focused Professional Practice Evaluation (FPPE) is a process whereby the medical staff evaluates the privilege-specific competence of the practitioner that lacks documented evidence of competently performing the requested privilege(s) at the organization.
- A FPPE is required for all new providers and all new privileges.



Incident Report or Risk Management Report

- A report of an incident involving injury or potential injury to a patient as a result of patient care provided by health care providers that is prepared by or for use by the peer review committee of a health care entity



LAWS



Federal vs State Laws

- All state laws recognize some form of privilege that protects various records and documents created as part of the peer review process
- 3 main areas:
 - Immunity
 - Confidentiality
 - privilege



Ohio Law

- The Ohio Revised code
- The Ohio Administrative code
- The Ohio Constitution



Work Product Privilege

- Type of peer review protection law that prevents information associated with peer review process from being discovered in court



Patient Safety and Quality Improvement Act

- Passed in 2005
- Into effect in 2009
- Allow protection of information from discovery of documents and data related to quality improvement
- Patient Safety Organizations (PSO)
 - Collects, aggregates and analyzes confidential information reported by healthcare workers
- Patient Safety Work Products (PSWP)
 - Documents can be designated as patient safety work products

The Patient Safety and Quality Improvement Act of 2005

www.ahrq.gov (2014).



Title 38 U.S.C. Section 5705

- Confidentiality of Medical Quality-Assurance Records
- Records and documents created by the Department as part of a medical quality-assurance program are confidential and privileged and may not be disclosed to any person or entity
- Exceptions:
 - To a Federal agency or private organization
 - To a Federal executive agency or provider of health-care services
 - To a criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety
 - To health-care personnel



SHARING OF PEER REVIEWED DOCUMENTS



Confidentiality of Peer Review Documents

- Proceedings and records within the scope of a peer review committee of a health care entity shall be held in confidence and shall not be subject to discovery or introduction in evidence in any civil action against a health care entity or health care provider
- No individual who attends a meeting of a peer review committee, serves as a member of a peer review committee, works for or on behalf of a peer review committee, or provides information to a peer review committee shall be permitted or required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the peer review committee or as to any finding, recommendation, evaluation, opinion, or other action of the committee or a member thereof.

Confidentiality of Proceedings and Records Within Scope of Peer Review Committee of Health Care Entity

<https://codes.ohio.gov/ohio-revised-code/section-2305.252> (2014).



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Use of Information & Documentation

- Information, documents, or records otherwise available from original sources are not to be construed as being unavailable for discovery or for use in any civil action merely because they were produced or presented during proceedings of a peer review committee, but the information, documents, or records are available only from the original sources and cannot be obtained from the peer review committee's proceedings or records.



Release of Documentation & Information

- The release of any information, documents, or records that were produced or presented during proceedings of a peer review committee or created to document the proceedings does not affect the confidentiality of any other information, documents, or records produced or presented during those proceedings or created to document them. Only the information, documents, or records actually released cease to be privileged under this section.



Ohio Board of Nursing

- Quality Assurance Process
- Rule 4723-8-05 Quality Assurance Standards



Sharing of Documentation & Information

- Health care entities may share information, documents, or records that were produced or presented during proceedings of a peer review committee or created to document them as long as the information, documents, or records are used only for peer review purposes

Confidentiality of Proceedings and Records Within Scope of Peer Review Committee of Health Care Entity

<https://codes.ohio.gov/ohio-revised-code/section-2305.252> (2014).



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APRNs in Peer Review Process

- An APRN who testifies before or provides information to a peer review committee, serves as a representative or member of a peer review committee, or works for or on behalf of a peer review committee, shall not be prevented from testifying as to matters within the individual's knowledge

BUT

- the APRN **cannot** be asked about their testimony before the peer review committee, information the individual provided to the peer review committee, or any opinion the individual formed as a result of the peer review committee's activities.



Court Orders for Documentation

- Workers Compensation
 - The proceedings and records within the scope of the peer review committee are subject to discovery or court subpoena and may be admitted into evidence in any criminal action or administrative or civil action initiated, prosecuted, or adjudicated by the bureau involving an alleged violation of applicable statutes or administrative rules



Incident or Risk Management Report

- The report and its contents are not subject to discovery and are not admissible in evidence in the trial of a tort action.
- An individual who prepares or has knowledge of the contents of the report shall not testify and shall not be required to testify in a tort action as to the contents of the report.



In Summary

- Peer Review Documents are Confidential with both federal and state laws in place to protect both the peer review participants and the peer review process

BUT

- It is up to you to know the rules and laws regarding participation in the peer review process & information sharing of documentation



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