

MEDICAL SOCIETY
of the
STATE OF NEW YORK

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MEMORANDUM IN SUPPORT

**IN SENATE HIGHER EDUCATION
COMMITTEE**

S.1015 (COONEY)

**IN ASSEMBLY HIGHER EDUCATION
COMMITTEE**

A.5316 (MCDONALD)

**AN ACT to amend the education law and public health law, in
relation to removing the prohibition relating to certain
discovery of testimony**

This bill would facilitate full and robust health care quality improvement discussions by eliminating exceptions to current laws that protect the confidentiality of communications made during a hospital and physician practice peer review proceedings. **The Medical Society of the State of New York strongly supports this measure.**

The objective of the existing discovery exclusions under section 2805-m of the Public Health Law and section 6527 of the Education Law is to enhance the effectiveness of the review process by ensuring that peer review committees may frankly and objectively analyze the quality of health services rendered. This exclusion from discoverability, however, contains a very significant exception that permits disclosure of statements given at an otherwise privileged peer review meeting by a party (such as medical provider) to a lawsuit which involves the same underlying conduct that is the topic of discussion at the meeting. As a result of this exception, any statements or information volunteered as part of the peer review process could be discovered and used against them in subsequent litigation. It is believed that incidents involving medical errors can go undetected and are under-reported because physicians and other health care providers understand that they would potentially be exposed to future lawsuits even though the particular event did not involve negligence. This statutory exception is a significant deterrent to open and frank peer review discussions.

This already longstanding problem became even more problematic as a result of a recent 2d Department decision which concluded that a hospital peer review committee must be able to establish that statements made at a peer review meeting were not made by the party involved in litigation and, if it is unclear who made the statements, then all the statements are discoverable. Physicians have raised alarm regarding the chilling impact that this recent decision will have on physician participation in hospital peer review discussions. This in turn could have substantial adverse impact on efforts to improve patient care delivery based upon honest and thorough discussions in a peer review forum. This legislation would greatly enhance the effectiveness of the peer review quality improvement process by removing impediments to health care providers wanting to participate.

For all of the foregoing reasons, the Medical Society strongly supports this measure and urges its enactment into law.

5/22/23
MMA - support

Respectfully submitted,

MSSNY DIVISION OF GOVERNMENTAL AFFAIRS