Protect Your Peer Review Privilege Or Lose Major Protection

Sara Hersh was quoted extensively in a *Relias* article titled, “Protect Your Peer Review Privilege Or Lose Major Protection:”

State laws regarding peer review will vary, but California’s protection under Evidence Code sec 1157 is typical of most states, says **Sara Hersh**, JD, an attorney with the law firm of Nelson Hardiman in Los Angeles. Peer review proceedings and the records of peer review committees are protected from discovery primarily to encourage the free exchange of ideas and opinions among healthcare providers regarding care and treatment rendered to patients by members of a medical staff without fear of public scrutiny and to ensure safe and competent delivery of care. Participants in the peer review meetings cannot be compelled to testify in a civil lawsuit as to what happened or said in the meeting, Hersh explains. The protection, however, is not absolute.

Hersh outlines these limitations to the peer review privilege in California:

- Although the member of a committee cannot be compelled to testify, any member can do so voluntarily because the privilege against testifying is held by each individual and not by the committee.
- The protection does not apply to statements made by the physician, present at the meeting, who is the subject of the peer review discussion.
- The protection against discovery of the proceedings of a peer review committee does not apply to lawsuits brought by physicians claiming wrongful denial of hospital privileges.
- The protection could arguably not apply if the committee was not in conformity with the facility’s bylaws.
- The protection does not apply to criminal proceedings.
- The Medical Board of California can inspect and copy certain documents (statement of charges, documents in evidence, any opinion, finding or conclusion for use in a subsequent disciplinary hearing or investigation by law enforcement).