

AHLA 2025 Annual Meeting – Session Outline

Navigating Peer Review and Privileging Across State Lines: Legal Challenges and Practical Solutions

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Navigating Peer Review and Privileging Across State Lines

I. Introduction

- **Presenters:** Stephen Kleinman (EBG), Shelli Stoker (Novant Health)
- **Focus:** Legal and practical challenges of navigating peer review and privileging in multi-state healthcare systems

II. Legal Foundations of Medical Staff Governance

- **Federal Requirements:** Medicare Hospital and CAH Conditions of Participation (CoPs)
- **State Law Requirements**
 - Licensure, scope of practice, peer review protections
 - Laws on prescribing, supervision, telemedicine, and reporting
- **Accreditation Standards:** ACHC, DNV, TJC
- **Medical Staff Bylaws:** Required elements, including structure, privileges, and procedures

III. Peer Review Privilege: General Concepts

- **Definition and Purpose**
 - Legal privilege: governed by state law
 - Extends immunity from damages for most state claims a practitioner would bring against the hospital and/or peer review participants
 - Precludes use of PRI as evidence in civil cases; some states extend protection to criminal cases
- **Variability by State**
 - Scope and setting of protections (hospital vs. broader)
 - Differences in what's protected and with whom it can be shared
 - Examples from AL, AZ, NM, NC, WI, KS, SC, OH, KY

IV. Sharing Peer Review Information (PRI)

- **Why Share?**
 - Internal use, quality improvement, credentialing
 - Sharing with other hospitals or external entities
- **Risks and Requirements**
 - Loss of privilege if shared improperly
 - Must align with state-specific definitions and purposes
- **State Variability**
 - What is protected, who is covered, acceptable purposes for use
 - Impact on system-wide policies and affiliated entities

V. Strategic Approaches to Compliance

- **Bylaws and Governing Documents:** Include PRI sharing authorization and notice provisions
- **System-Wide Policy Elements**
 - Affiliate list, scope of PRI, triggers, usage limitations

- Examples of events triggering PRI sharing (e.g., FPPE failures, resignations under investigation)
- **Medical Staff Applications:** Applicant acknowledgment of system-wide PRI sharing
- **Bylaw Content Provisions**
 - **Grant of Immunity**
 - **Authorization to Obtain Information**
 - **Authorization to Release Information**
 - **Authorization to Share Within System**

VI. Balancing Legal Risk and Patient Safety

- **Key Consideration**
 - The real risk may be *not* sharing critical PRI
 - Must weigh legal protections against harm from non-disclosure
- **Risk Mitigation Strategies**
 - Use written policies and agreements
 - Align disclosure with quality and credentialing purposes

VII. Other Legal Considerations

- **Federal vs. State Law:** PSQIA vs. peer review statutes
- **Alternatives to Sharing Full Peer Review Files**
 - Use summaries or alternative sources
 - Tailor disclosures and protocols to reduce risk

VIII. Case Studies

1. **Summary Suspension in One State, Ongoing Practice in Another**
2. **Repeated Resignations Under Investigation Across State Lines**
3. **Use of PRI by Employment HR in Disciplinary Action**

IX. Conclusion

- **Navigating the Landscape**
 - Multi-state systems must adopt tailored strategies
 - Bylaws, policies, and consistent practices are essential
 - Sharing PRI appropriately is critical for quality and safety