Supreme Court of Ohio Clerk of Court - Filed September 19, 2023 - Case No. 2023-0352

IN THE SUPREME COURT OF OHIO

CASE NO. 2023-0352

KALVYN STULL, an incompetent person, by and through his Guardian of the Estate, BRIAN ZIMMERMAN, *et al.*,
Plaintiff-Appellees,

-vs-

SUMMA HEALTH SYSTEM, *et al.*,
Defendant-Appellants.

ON APPEAL FROM THE NINTH DISTRICT COURT OF APPEALS
CASE NO. 29969

BRIEF OF *AMICUS CURIAE*, THE STARK COUNTY, OHIO ASSOCIATION FOR JUSTICE, IN SUPPORT OF PLAINTIFF-APPELLEES

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AMICUS CURIAE'S STATEMENT OF INTEREST

Medical negligence occurs at a staggering rate in the United States – it is conservatively estimated that between 44,000 and 98,000 people in this country lose their lives every year in hospitals due to preventable medical errors. *See* Bell, *Make Way: Why Arkansas & the States Should Narrow Health Care Peer Rev. Privileges for the Patient Safety & Quality Improvement Act of 2005*, 62 Ark. L. Rev. 745, 745 (2009). According to Bell, "even at the low end of this estimate, medical error ranks as the eighth leading cause of death in the United States, exceeding the number of deaths caused by car accidents, breast cancer, and AIDs. *Id.* (citing: Institute of Medicine, *To Err Is Human: Building a Safer Health System* 26 (Linda T. Kohn et al. eds., 2000). Other studies find the number of deaths associated with medical negligence to be far greater—potentially killing upwards of 195,000 people per year in the United States. *Id.* (citing: Press Release, Health Grades, *In-Hospital Deaths from Medical Errors at 195,000 Per Year*, Health Grades Study Finds (July 27, 2004), available at http://healthgrades.com). These numbers only reflect the deaths associated with medical negligence and demonstrate that the number of people merely affected by medical negligence is likely far greater.

While medical practitioners and organizations have numerous associations to protect their interests, such as Amicus Curiae Ohio Hospital Association, Ohio State Medical Association, and Ohio Osteopathic Association (collectively, the "Associations"), the Stark County Association of Justice ("SCAJ") is an organization that exists to represent, organize, and advocate on behalf of victims of medical negligence. SCAJ lawyers are devoted to protecting the rights of injured persons and strengthening the civil justice system so that deserving individuals may seek fair compensation by holding wrongdoers accountable. SCAJ comprises of forty-two Ohio attorneys practicing in areas of law that include personal injury, medical negligence, product

liability, consumer law, insurance law, employment law, and civil rights law. The lawyers who comprise SCAJ's membership do not represent insurance companies or government agencies; rather, they seek to preserve the rights of private individuals and promote public confidence in the legal system.

SCAJ submits this brief out of a concern that Defendant-Appellants, Summa Health System, Summa Health System Corp., Summa Health System Community, Summa Health, Summa Physicians, Inc., d/b/a Summa Health Medical Group (collectively, "Summa Defendants"), Jeffery R. Welko, M.D. ("Dr. Welko"), Nathan R. Blecker, M.D. ("Dr. Blecker"), Mazen E. Elashi, M.D. ("Dr. Elashi"), and Lynda J. Shambaugh, R.N. ("Nurse Shambaugh") have asked this Court to broadly interpret Ohio's peer review statute, R.C. 2305.25 *et seq*., so as to cast an impenetrable cloak of secrecy around relevant medical records and place the burden of discovering those records on victims of medical negligence. SCAJ urges this Court to reject Appellants' attempts to effectively rewrite the text of R.C. 2305.25 *et seq.* and further reject the proposition of law that Appellants' have asserted in this matter.

STATEMENT OF THE CASE AND FACTS

SCAJ adopts by reference the statement of facts furnished in the Jurisdictional Brief of Plaintiff-Appellee, Kalvyn Stull ("Appellee"), that was filed on April 12, 2023, and in the Merit Brief of Appellee filed on September 19, 2023.

HISTORICAL BACKGROUND OF PEER-REVIEW STATUTES

States across the country began enacting peer-review privilege statutes as early as the 1960s in response to the increase in medical malpractice lawsuits and the proliferation of medical negligence. Scheutzow, State Med. *Peer Review: High Cost but No Benefit-Is It Time for A Change?*, 25 Am. J.L. & Med. 7, 33 (1999). Today, forty-eight states, including Ohio, and the

District of Columbia have enacted peer-review privilege statutes. These statutes generally "exempt from discovery and admissibility the work product of peer-review committees designed to review their organizations' or colleagues' delivery of health care." Bell, *Make Way: Why Arkansas & the States Should Narrow Health Care Peer Rev. Privileges for the Patient Safety & Quality Improvement Act of 2005*, 62 Ark. L. Rev. 745, 748 (2009). Each state's statute varies in the "types of documents and information to which they provide protection and the type of peer review committee required to qualify for the statutory protection." *Id.*

As Appellants and the Associations note, the alleged purpose behind these peer-review privileges is to encourage physicians to review the work and behavior of their colleagues with candor to improve the quality of health care. *See* Merit Brief of Appellants at Page 1 and Merit Brief of Associations at Page 3. However, "scholars and courts around the United States have criticized the creation of a peer-review privilege" for several reasons. Graham, *Hide & Seek: Discovery in the Context of the State & Fed. Peer Rev. Privileges*, 30 Cumb. L. Rev. 111, 114 (2000) (citing to: B. Abbott Goldberg, *The Peer Review Privilege: A Law in Search of a Valid Policy*, 10 Am. J.L. & Med. 151, 153 (1984); Geoffrey J. Wright, *Comment, Anatomy of the Conflict Between Hospital Medical Staff Peer Review Confidentiality and Medical Malpractice Plaintiff Recovery: A Case for Legislative Amendment*, 24 Santa Clara L. Rev. 661 (1984).

I. Several Studies Found that Peer-Review Protections Result in No Increased Peer-Review Activity or Adverse Peer Review Actions Against Incompetent Doctors—Negating the Purported Benefit Behind Peer Review Protections.

First, empirical studies by several organizations suggest that peer-review laws are ineffective at accomplishing their purported public policy goal of promoting candor among the medical community and improving the quality of health care. A 1995 report by the Office of the Inspector General of the Department of Health and Human Services found that over a period of

three years, hospitals reported only 3,154 adverse peer-review actions, and over 75% of all hospitals in the United States, some with over 300 beds, never reported a single disciplinary action. Scheutzow, *State Med. Peer Review: High Cost but No Benefit-Is It Time for A Change?*, 25 Am. J.L. & Med. 7, 15 (1999) (citing to Office of Inspector General, U.S. Dep't of Health and Human Services, Hospital Reporting to The National Practitioner Data Bank 3 (1995)).

In that same time period, the Inspector General found that over twice as many disciplinary actions were taken by state licensing boards. *Id.* Therefore, either peer-review boards were significantly ineffective at reviewing the conduct of other doctors or medical facilities purposefully chose to not conduct meaningful reviews of their doctors.

Another study in 1992 evaluated the effectiveness of peer review on improving the quality of care in the medical industry. The study concluded that "[o]verall, physician agreement regarding quality of care is only slightly better than the level expected by chance. This finding casts considerable doubt on the standard practice of peer assessment…" *Id.* (citing: Ronald L. Goldman, *The Reliability of Peer Assessments of Quality of Care*, 267 JAMA 958, 958 (1992).

Additionally, a study in 1999 examined various types of peer-review protection statutes across the country, including Ohio, and whether they influenced the number of adverse peer-review actions. *Id.* The study noted that if peer review protection laws effectively promoted peer review, more peer review activities should occur in hospitals in those states offering greater protections and privileges for the practice. The study found, however, that "no positive relation exists between the strength of state [peer-review] statutes and the number of adverse peer review actions reported." *Id.* at 9. Rather, states with extensive privilege statutes had an unexpected negative effect on adverse peer-review actions (i.e. these states experienced less adverse reporting

than states with less extensive privilege statutes). *Id.* The conclusion: peer-review protections may hinder the quality of medical care by insulating doctors from any adverse peer-review actions.

II. Peer-Review Statutes Can Unreasonably Restrict Discovery and Enable Hospitals to Engage in Bad Faith Peer-Review to Shield Themselves from Being Held Accountable for Their Actions. Accordingly, Peer Review Statutes Should Strictly Construed.

Second, while peer-review statutes fail to meet their intended policy goals, they also represent a significant impediment to the liberal approach of evidence collection taken in discovery. The common proverbial that underpins the policy of liberal discovery is that "Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." Louis d. Brandeis, *Other People's Money* 92 (McClure 1914). Shielding peer-review proceedings and their documents from discovery inhibits the deterrence goal that underpins tort law by denying worthy plaintiffs access to information and making it increasingly difficult to pursue a malpractice claim. This is troubling when malpractice suits have been traditionally regarded as a necessary means of regulating the quality of health care. B. Abbott Goldberg, The *Peer Review Privilege: A Law in Search of a Valid Policy*, 10 Am. J.L. & Med. 151, 160 (1984).

The limitation on discovery is compounded by the fact that hospitals often use peer-review statutes to protect themselves from liability. Scheutzow, *State Med. Peer Review: High Cost but No Benefit-Is It Time for A Change?*, 25 Am. J.L. & Med. 7, 11 (1999); see also, Benson, Benson, Stein, *Hospital Quality Improvement: Are Peer Review Immunity, Privilege, and Confidentiality in the Public Interest?*, 30 Northwestern L. R. 1, 13 (2016). With respect to lawsuits filed by victims of medical negligence, hospitals have attempted to label all sorts of records as "peer-review" to prohibit their disclosure and subsequently require extensive motion briefing. *See* e.g. *Fravel v. Columbus Rehab. & Subacute Inst.*, 10th Dist. No. 16AP-270, 2016-Ohio-5807, 70 N.E.3d 1161, ¶ 17, cause dismissed, 148 Ohio St.3d 1422, 2017-Ohio-866, 71 N.E.3d 294, ¶ 17.

However, physicians, who are subjected to "sham" peer-review proceedings, are also left without access to important evidence if they wish to seek a wrongful discharge claim because the hospital will claim their review records are privileged. *See* Yann H.H. van Geertruyden, *The Fox Guarding the Henhouse: How the Health Care Quality Improvement Act of 1986 and State Peer Review Protection Statutes Helped Protect Bad Faith Peer Review in the Medical Community*, 18 J. Contemp. Health L. & Pol'y 239, 243 (2001).

This limitation on discovering the truth has not produced an atmosphere of candor among the medical community; rather, it has created the legal legitimization of a "conspiracy of silence" among medical professionals. B. Abbott Goldberg, *The Peer Review Privilege: A Law in Search of a Valid Policy*, 10 Am. J.L. & Med. 151, 160 (1984) (citing: Dunn, *Peer Review: A Secret Affair*?, 31 Trustee 10 (1978) (To say that a physician . . . will not stand by his professional opinion of a colleague's action in the event of subsequent litigation unless he is guaranteed anonymity and immunity is to say, in effect, that physicians are unwilling or unable to police their own ranks—or that the universally denied 'conspiracy of silence' in fact exists.")). Therefore, peer-review statutes, including Ohio's statute, should be met with substantial skepticism and strictly construed as they harm the truth-finding goal of litigation while simultaneously failing to advance any legitimate interest.

LAW AND ARGUMENT

This case represents a significant opportunity for this Court to solidify the scope of Ohio's peer review statute and prohibit a hospital's ability to hide information from patients. Specifically, the Court could decide the following issues:

1. Whether an appellate court should grant deference to a trial court's findings of fact when determining whether the application of the peer-review privilege is warranted.

2. Whether the peer-review statute should be strictly construed with any ambiguity being construed most strongly against hospitals.

3. Whether hospitals bear the burden of making an evidentiary showing supporting the peer review privilege's application to each piece of evidence they wish to withhold from discovery.

4. Whether hospitals are required to submit disputed documents to a trial court under seal, so that the trial court can conduct an in-camera review of the documents.

I. Longstanding Ohio Case Law Requires the Peer Review Statute to Be Strictly Construed and That Any Ambiguity in the Statute Should be Construed Most Strongly Against the Grantee of the Privilege.

This Court has previously held that statutes creating new privileges are in derogation of common law and must be strictly construed. *Weis v. Weis*, 147 Ohio St. 416, 428, 72 N.E.2d 245, 252 (1947). The United States Supreme Court similarly held:

> We do not create and apply an evidentiary privilege unless it promotes sufficiently important interests to outweigh the need for probative evidence. Inasmuch as testimonial exclusionary rules and privileges contravene the fundamental principle that the public has a right to every man's evidence, any such privilege must be strictly construed.

Univ. of Pennsylvania v. E.E.O.C., 493 U.S. 182, 189, 110 S.Ct. 577, 582, 107 L.Ed.2d 571 (1990) (internal citations omitted). As noted above, peer-review privilege provides no measurable benefit as hospitals are not engaging in more peer-review actions and have used the privilege to improperly shield otherwise discoverable information. Thus, the privilege should be strictly construed as being in derogation of common law.

Several Ohio appellate courts have applied this strict construction standard to R.C. 2305.252; finding that the peer-review privilege is in derogation of common law. *Large v. Heartland-Lansing*, 7th Dist. No. 12 BE 7, 2013-Ohio-2877, 995 N.E.2d 872, ¶ 37; and *Smith v. Cleveland Clinic*, 8th Dist. No. 96751, 197 Ohio App.3d 524, 2011-Ohio-6648, 968 N.E.2d 41, ¶ 9. The strict construction canon of statutory interpretation requires any ambiguity to be construed most strongly against the grantee of the privilege and applied only in those circumstances specifically identified in the statute. *Smith*, 8th Dist. No. 96751, 197 Ohio App.3d 524, 2011-Ohio-

6648, 968 N.E.2d 41, ¶ 9; *see also,* 85 Ohio Jur. 3d Statutes § 274 (citing: *City of Cincinnati v. Louisville & N. R. Co.*, 88 Ohio St. 283, 102 N.E. 951 (1913).

II. The Party Seeking Application of the Statutory Privilege Bears the Burden of Producing Evidence Warranting Application of the Privilege as to Each Record Requested.

Ohio appellate courts have uniformly held that the party seeking application of the privilege bears the burden of proving the privilege applies. *Smith*, 8th Dist. No. 96751, 197 Ohio App.3d 524, 2011-Ohio-6648, 968 N.E.2d 41, ¶ 9; *Large*, 7th Dist. No. 12 BE 7, 2013-Ohio-2877, 995 N.E.2d 872, ¶ 37; *Fravel*, 10th Dist. No. 16AP-270, 2016-Ohio-5807, 70 N.E.3d 1161, ¶ 10; *Smith v. Manor Care of Canton, Inc.*, 5th Dist. Stark No. 2005-CA-00100, 2006-Ohio-1182, ¶ 61; *Cousino v. Mercy St. Vincent Med. Ctr.*, 6th Dist. No. L-17-1218, 2018-Ohio-1550, 111 N.E.3d 529, ¶ 29.

R.C. 2305.252 describes the peer review committee privilege as follows:

> (A) 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, including both individuals who provide health care and entities that provide health care, **arising out of matters that are the subject of evaluation and review by the peer review committee.** 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.
>
> 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.
>
> ***

(Emphasis Added).

Several Ohio appellate courts have held the purpose of the peer-review statute is to "provide limited protection to individuals who provide information to review committees or boards…" *Whiteman v. Rawitscher*, 6th Dist. Lucas No. L-02-1383, 2003-Ohio-4966, ¶ 16. The statute does not grant a "generalized cloak of secrecy over the entire peer-review process." Indeed, "[i]f all materials viewed and utilized by review committees were deemed undiscoverable, a hospital could never be held accountable for any negligent act…" *Large*, 7th Dist. No. 12 BE 7, 2013-Ohio-2877, 995 N.E.2d 872, ¶ 34 (quoting: *Huntsman v. Aultman Hosp*., 5th Dist. No.2006 CA 00331, 2008-Ohio-2554, 2008 WL 2572598, ¶ 47).

Rather, to invoke the protection of the statute, a hospital must establish: (1) the existence of a committee that meets the statutory definition of peer review contained in R.C. 2305.25; and (2) that each of the documents that it refused to produce in response to a discovery request is a "record within the scope of a peer review committee." *Smith*, 8th Dist. No. 96751, 197 Ohio App.3d 524, 2011-Ohio-6648, 968 N.E.2d 41, ¶ 14. To be considered a record within the scope of the peer review committee, the record must either be (a) created by the committee or (b) created exclusively for the peer review committee. *Large*, 7th Dist. No. 12 BE 7, 2013-Ohio-2877, 995 N.E.2d 872, ¶ 35. It is not sufficient for a hospital to claim privilege over documents that are merely provided for review or are otherwise circulated to the peer review committee. *Id.*

Ohio case law and the plain language of the statute provide a strict framework for when the application of the peer-review privilege is warranted. The decision of whether the privilege should apply requires a careful factual analysis of the evidence on a case-by-case basis.

It is incumbent upon the hospital to present evidence that each document within the peer review committee's purview meets the statutory requirements warranting the application of the privilege. It is simply not sufficient to present broad assertions that the committee relied on a certain document or that certain documents are usually contained in the peer review committee's records. *Large*, 7th Dist. No. 12 BE 7, 2013-Ohio-2877, 995 N.E.2d 872, ¶ 38. Rather, the hospital must show that the record was created by or exclusively used by the peer-review committee. Absent this showing, the statutorily created privilege should not be extended.

For example, in *Large v. Heartland-Lansing*, the plaintiff sued the defendant nursing home, alleging his wife died as a result of negligent care. 7th Dist. No. 12 BE 7, 2013-Ohio-2877, 995 N.E.2d 872, ¶ 2-3. During discovery, the plaintiff requested, among other things, "all complaints and surveys of residents" and "copies of any reviews that were conducted by [governmental agencies]." *Id.* at 3 The defendant refused to provide these materials on the basis of the peer-review privilege, and the plaintiff moved to compel the production of these materials. To support the protection of the peer-review statute, the defendant submitted the affidavit of a nursing administrator at defendant's facility. The trial court held, and the Seventh District Court of Appeals affirmed, that the submitted affidavit, which generally alleged that the peer-review committee for the nursing home reviewed various documents in the performance of its duties, did not indicate that the requested documents were (1) generated by or (2) generated at the request of the peer-review committee. *Id.* at ¶ 38. Therefore, the privilege did not apply.

In the matter at bar, the Appellants failed to present specific evidence that the records Appellee requested were (1) generated by or (2) generated exclusively for the peer review committee. In fact, the trial court specifically noted that the affidavits Appellants submitted contained conclusory and generalized statements that documents reviewed by the peer-review

committee were contained in a peer-review file. Notably, these affidavits did not demonstrate whether any of the documents in the file were generated by or exclusively for the peer review committee. Therefore, the trial court properly found, and the Ninth District Court of Appeals properly held, that the Appellants failed to meet the burden of proof to warrant application of the peer-review statute.

Nevertheless, Appellants assert that this Court should disregard the plain language of the statute and the framework established by the Ohio appellate courts. Appellants contend that as soon as a hospital establishes it has a peer review committee, any evidence presented to the committee is absolutely privileged. In making this assertion, Appellants rely exclusively on a misunderstanding of *Cousino v. Mercy St. Vincent Medical Center*. In that case, the court found that the evidence established that "the credentialing file of [the doctor] consists entirely of documents generated by and created solely for use by the [peer review committee]." 6th Dist. No. L-17-1218, 2018-Ohio-1550, 111 N.E.3d 529, ¶ 26. Thus, the *Cousino* court held that only those documents that meet the plain language of the statute as being created by or exclusively for a committee are privileged rather than ***any*** documents reviewed or retained by a peer-review committee are privileged. In fact, the *Cousino* court noted that the hospital did not present evidence that a separate file, titled the "physician file," contained solely documents created by or exclusively for the peer-review committee. *Id.* at ¶ 28. Thus, the *Cousino* court held that the hospital "must separately establish that each of the documents are records within the scope of the peer review committee." *Id.* at 29. The *Cousino* court further noted that the hospital must meet this burden "via affidavit testimony and submit the disputed documents to the trial court, under seal, [for] an in-camera review." *Id.* at ¶ 29 and ¶ 49.

Other Ohio courts have addressed Appellants' flawed interpretation of the peer review statute. The Seventh District Court of Appeals recently held that:

> Documents that may be provided to a peer review committee, but were not originally prepared exclusively for the committee and are also accessible to staff of the facility in their capacities as employees or managers of the facility, separate and apart from any role on a review committee, are not in any way protected by the privilege.

Large, 7th Dist. No. 12 BE 7, 2013-Ohio-2877, 995 N.E.2d 872, ¶ 39; *Whiteman*, 6th Dist. Lucas No. L-02-1383, 2003-Ohio-4966, ¶ 20 (holding that where documents are not shown to be created exclusively for a peer review committee, they can be discovered).

This Court should reject Appellants' overly broad request that all documents in a peer-review committee are to be considered undiscoverable and absolutely privileged. Appellants' interpretation is against the plain language of the peer review statute and, as a result, does not comport with the strict interpretation canon that should be applied against the Appellants. Moreover, Appellants' interpretation is contrary to the established case law from the appellate courts in this state, and seeks to set a dangerous precedent that would permit hospitals to circulate materials to a peer review committee solely to conceal those documents from production. Instead, this Court should require that regardless of whether a hospital establishes the existence of a peer-review committee, the hospital must also show that each document with the peer-review committee's control was (1) generated by or (2) exclusively for the peer-review committee in order to invoke the protection of the statute.

III. The "Original Sources" Text of the Peer Review Statute Should Not Be Construed as a By-Pass to A Hospital's Requirement to Individually Identify and Present Evidence that Its Records Were Either Generated By or Exclusively For the Peer Review Committee.

Appellants and the Associations also contend that when records are "otherwise available from original sources," a hospital does not have to demonstrate that the records were

either generated by or exclusively for the peer review committee. In other words, these parties suggest that a hospital should be permitted to withhold its committee records regardless of whether the peer-review privilege applies.

There is no language in the peer-review statute to support this contention. More importantly, this Court has previously held that the "original sources" language operates as a "major exception" to the peer-review statute that benefits those seeking documents from a peer-review committee. In fact, the Court noted, "[peer-review] privilege does not extend to information, documents, or records otherwise available from original sources." *State ex rel. Grandview Hosp. & Med. Ctr. v. Gorman*, 51 Ohio St.3d 94, 96, 554 N.E.2d 1297, 1299 (1990) (internal citations omitted). Where documents may be available from original sources, a trial court must receive the peer-review committee's documents in camera and "separate out non-privileged portions" of the committee's records. *Id.*

This Court should reject the Appellant's attempt to limit the major exception to the peer-review statute that prohibits protection from "original sources." In so doing, this Court should further reject Appellant's position that it does not have to comply with all elements of the peer-review statute to invoke protection under the statute. Rather, this Court should reassert its ruling in *Grandview Hosp.* and require trial courts to hold in-camera reviews of records that may have been obtained from original sources.

IV. Other States Require Strict Compliance with their Respective Peer-Review Statutes and Place the Onus on their State Legislatures to Adopt More Strict or Lenient Guidelines on the Application of Peer Review Privileges.

Other statutes across the Country have strictly interpreted their peer-review statutes to protect the liberal policies surrounding the discovery process. For instance, the North Dakota Supreme Court found that its peer-review statute, which is similar to Ohio's in covering the

proceedings and records of a committee, only protected the minutes, deliberations, discussions of committee members, and testimony given during hearings. *Trinity Med. Ctr., Inc. v. Holum*, 544 N.W.2d 148, 156 (North Dakota1996). The court declined to extend the privilege to other information or data provided to the committee or collected for the committee's review by hospital departments or employees. *Id.*

The Illinois Supreme Court further held that applications for privileges and educational transcripts were not privileged because they were generated before the initiation of the peer review process. *Menoski v. Shih*, 242 Ill.App.3d 117, 123, 612 N.E.2d 834, 838 (Ill.App.1993). The court also declined to extend the peer review privilege to all documents found within the credentials file solely on the basis of their inclusion in the file. *Id.*

The Rhode Island Supreme Court also narrowly interpreted its peer-review privilege statute and found that it did not extend the privilege to protect the names of persons in attendance at peer-review meetings. *Moretti v. Lowe*, 592 A.2d 855, 858 (Rhode Island, 1991). In fact, the court noted its philosophy toward the balance between the conflicting public policy issues by stating:

> [The] public purpose [sought by candid medical review meetings] is not served ... if the privilege created in the peer-review statute is applied beyond what was intended and what is necessary to accomplish the public purpose. The privilege must not be permitted to become a shield behind which a physician's incompetence, impairment, or institutional malfeasance resulting in medical malpractice can be hidden from parties who have suffered because of such incompetence, impairment, or malfeasance.

Id.

CONCLUSION

For the reasons stated above, SCAJ urges this Court to reject the proposition of law advanced by Appellants and the Associations as it represents a dangerous precedent that will serve

only to protect the special interests of medical organizations while simultaneously road-blocking victims of medical malpractice from discovery the truth of a particular incident.

Respectfully submitted,

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