Confidentiality and Sharing of Peer Review Information Across Campuses
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Ohio Peer Review Privilege

• Ohio law protects proceedings and records within the scope of a peer review committee of a health care entity.

• "Peer review committee" means a committee that conducts professional credentialing or quality review activities involving the competence of, professional conduct of, or quality of care provided by health care providers.

• "Health care entity" means an entity that conducts as part of its regular business activities professional credentialing or quality review activities involving the competence of, professional conduct of, or quality of care provided by health care providers.
Ohio Peer Review Privilege

• Ohio law provides:
  – Peer review proceedings and records shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action against a health care entity or health care provider.
  – Individuals who attend, serve as members of, work for or on behalf of, or provide information to peer review committees are not permitted, and shall not be required, to testify in any civil action as to any evidence produced or presented during, or any outcomes of, peer review committee proceedings.
Privilege Scope Limitations

- The privilege only applies to proceedings and records within the scope of a peer review committee.
  - Peer review information should be maintained separately from other information and used only within the scope of the peer review committee.
  - Information maintained in a joint file, or used for other purposes, becomes discoverable.
  - Once the privilege is lost, it cannot be reobtained.
  - Loss of privilege is limited to the information improperly released.
Sharing of Peer Review Information

• The peer review statute permits health care entities to share peer review information with other health care entities, as long as the shared information is used only for peer review purposes.
• Just because you can share all peer review information doesn’t mean that you should.
• The process should be designed to create trust among the parties sharing and receiving the information, and implement guardrails to ensure that the information shared is useful.
Sharing of Peer Review Information

• Sharing can occur both internal and external to a health care entity.
• External sharing is permissible between affiliated (within OhioHealth) and non-affiliated health care entities.
• Sharing with a non-affiliated health care entity would require trust and a structured relationship between the parties.
Sharing of Peer Review Information

• Though not required by statute, sharing of peer review information between health care entities should be pursuant to a written agreement.

• The agreement should define (at a minimum):
  – What information may be shared.
  – The circumstances under which information will be shared.
  – The purposes for which information can be used.
  – The methodology for sharing, including identification of the individuals authorized to disclose and receive information.
Use of Shared Peer Review Information

• Peer review information may only be used by the disclosing entity and any receiving entity for peer review purposes.
• Loss of privilege of by a receiving entity would also result in loss of privilege for the disclosing entity.
• Employment matters are not a peer function.
Use of Shared Peer Review Information

- A receiving entity, whether affiliated or not, cannot use shared peer review information to initiate a peer review action. Received information may be used for trending purposes.
- Doesn’t limit ability for automatic action by an entity when there is an automatic suspension and/or termination, revocation, or limitation as a result of a peer review action at another entity.
When to Call Counsel

• Since loss of privilege is permanent, if in doubt, call the Office of General Counsel *before* making any disclosures in response to:
  – Federal or State Subpoenas
  – Requests for information from a government agency (e.g., ODH, OIG, law enforcement)
  – A request from an attorney, patient, health care provider, or other third party not part of the peer review process.
Questions?
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