

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 841
93RD GENERAL ASSEMBLY

Reported from the Committee on Aging, Families, Mental and Public Health, March 16, 2006, with recommendation that the Senate Committee Substitute do pass.

4111S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 537.035, RSMo, and to enact in lieu thereof one new section relating to peer review committees.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 537.035, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 537.035, to read as follows:

537.035. 1. As used in this section, unless the context clearly indicates otherwise, the following words and terms shall have the meanings indicated:

(1) "Health care professional", a physician or surgeon licensed under the provisions of chapter 334, RSMo, **or a physical therapist licensed under the provisions of chapter 334, RSMo**, or a dentist licensed under the provisions of chapter 332, RSMo, or a podiatrist licensed under the provisions of chapter 330, RSMo, or an optometrist licensed under the provisions of chapter 336, RSMo, or a pharmacist licensed under the provisions of chapter 338, RSMo, or a chiropractor licensed under the provisions of chapter 331, RSMo, or a psychologist licensed under the provisions of chapter 337, RSMo, or a nurse licensed under the provisions of chapter 335, RSMo, or a social worker licensed under the provisions of chapter 337, RSMo, or a professional counselor licensed under the provisions of chapter 337, RSMo, or a mental health professional as defined in section 632.005, RSMo, **or an emergency medical technician, including an emergency medical technician-basic, emergency medical technician-intermediate, and an emergency medical technician-paramedic, and emergency medical dispatcher licensed or authorized under the provisions of chapter 190, RSMo**, while acting within their scope of practice;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 (2) "Peer review committee", a committee of health care professionals with
20 the responsibility to evaluate, maintain, or monitor the quality and utilization of
21 health care services or to exercise any combination of such responsibilities.

22 2. A peer review committee may be constituted as follows:

23 (1) Comprised of, and appointed by, a state, county or local society of
24 health care professionals;

25 (2) Comprised of, and appointed by, the partners, shareholders, or
26 employed health care professionals of a partnership or professional corporation
27 of health care professionals, or employed health care professionals of a university
28 or an entity affiliated with a university operating under chapter 172, 174, 352,
29 or 355, RSMo;

30 (3) Appointed by the board of trustees, chief executive officer, or the
31 organized medical staff of a licensed hospital, or other health facility operating
32 under constitutional or statutory authority, including long-term care facilities
33 licensed under chapter 198, RSMo, or an administrative entity of the department
34 of mental health recognized pursuant to the provisions of subdivision (3) of
35 subsection 1 of section 630.407, RSMo;

36 (4) **Appointed by a board of trustees or chief executive officer of:**

37 **(a) A licensed ambulance service;**

38 **(b) A licensed emergency medical response agency; or**

39 **(c) Any not-for-profit organization that provides or contracts for**
40 **ambulance services under authority granted to such not-for-profit**
41 **organization by a city, county, town, village, or ambulance district and**
42 **of which a majority of the governing body of such not-for-profit**
43 **organization consists of elected officials or individuals appointed by a**
44 **mayor, board of aldermen, city council, county commission, county**
45 **legislature, or ambulance district;**

46 (5) Any other organization formed pursuant to state or federal law
47 authorized to exercise the responsibilities of a peer review committee and acting
48 within the scope of such authorization;

49 [(5)] (6) Appointed by the board of directors, chief executive officer or the
50 medical director of the licensed health maintenance organization;

51 **(7) Appointed by a mayor, city council, board of aldermen,**
52 **county commission, county legislature, or ambulance district.**

53 3. Each member of a peer review committee and each person, hospital
54 governing board, **ambulance service governing board, emergency medical**

55 **response agency governing board**, health maintenance organization board
56 of directors, and chief executive officer of a licensed hospital or other hospital
57 operating under constitutional or statutory authority, **chief executive officer**
58 **of an ambulance service or emergency medical response agency**, chief
59 executive officer or medical director of a licensed health maintenance organization
60 who testifies before, or provides information to, acts upon the recommendation of,
61 or otherwise participates in the operation of, such a committee shall be immune
62 from civil liability for such acts so long as the acts are performed in good faith,
63 without malice and are reasonably related to the scope of inquiry of the peer
64 review committee.

65 4. Except as otherwise provided in this section, the interviews,
66 memoranda, proceedings, findings, deliberations, reports, and minutes of peer
67 review committees, or the existence of the same, concerning the health care
68 provided any patient are privileged and shall not be subject to discovery,
69 subpoena, or other means of legal compulsion for their release to any person or
70 entity or be admissible into evidence in any judicial or administrative action for
71 failure to provide appropriate care. Except as otherwise provided in this section,
72 no person who was in attendance at any peer review committee proceeding shall
73 be permitted or required to disclose any information acquired in connection with
74 or in the course of such proceeding, or to disclose any opinion, recommendation,
75 or evaluation of the committee or board, or any member thereof; provided,
76 however, that information otherwise discoverable or admissible from original
77 sources is not to be construed as immune from discovery or use in any proceeding
78 merely because it was presented during proceedings before a peer review
79 committee nor is a member, employee, or agent of such committee, or other person
80 appearing before it, to be prevented from testifying as to matters within his
81 personal knowledge and in accordance with the other provisions of this section,
82 but such witness cannot be questioned about testimony or other proceedings
83 before any health care review committee or board or about opinions formed as a
84 result of such committee hearings. The disclosure of any interview, memoranda,
85 proceedings, findings, deliberations, reports, or minutes to any person or entity,
86 including but not limited to governmental agencies, professional accrediting
87 agencies, or other health care providers, whether proper or improper, shall not
88 waive or have any effect upon its confidentiality, nondiscoverability, or
89 nonadmissibility.

90 5. The provisions of subsection 4 of this section limiting discovery and

91 admissibility of testimony as well as the proceedings, findings, records, and
92 minutes of peer review committees do not apply in any judicial or administrative
93 action brought by a peer review committee or the legal entity which formed or
94 within which such committee operates to deny, restrict, or revoke the hospital
95 staff privileges or license to practice of a physician or other health care providers;
96 or when a member, employee, or agent of the peer review committee or the legal
97 entity which formed such committee or within which such committee operates is
98 sued for actions taken by such committee which operate to deny, restrict or
99 revoke the hospital staff privileges or license to practice of a physician or other
100 health care provider.

101 6. Nothing in this section shall limit authority otherwise provided by law
102 of a health care licensing board of the state of Missouri to obtain information by
103 subpoena or other authorized process from peer review committees or to require
104 disclosure of otherwise confidential information relating to matters and
105 investigations within the jurisdiction of such health care licensing boards.

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