

1 AN ACT relating to the privileging of peer review activities in health care.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 311.377 is amended to read as follows:

4 (1) Any person who applies for, or is granted staff privileges after June 17, 1978, by  
5 any health services organization subject to licensing under the certificate of need  
6 and licensure provisions of KRS Chapter 216B, shall be deemed to have waived as  
7 a condition of such application or grant, any claim for damages for any good faith  
8 action taken by any person who is a member, participant in or employee of or who  
9 furnishes information, professional counsel, or services to any committee, board,  
10 commission, or other entity which is duly constituted by any licensed hospital,  
11 licensed hospice, licensed home health agency, health insurer, health maintenance  
12 organization, health services corporation, organized medical staff, medical society,  
13 or association affiliated with the American Medical Association, American Podiatry  
14 Association, American Dental Association, American Osteopathic Association, or  
15 the American Hospital Association, or a medical care foundation affiliated with  
16 such a medical society or association, or governmental or quasigovernmental  
17 agency when ~~the~~<sup>such</sup> entity is performing the designated function of review of  
18 credentials or retrospective review and evaluation of the competency of professional  
19 acts or conduct of other health care personnel. This subsection shall have equal  
20 application to, and the waiver be effective for, those persons who, subsequent to  
21 June 17, 1978, continue to exercise staff privileges previously granted by any such  
22 health services organization.

23 (2) At all times in performing a designated professional review function, the  
24 proceedings, records, opinions, conclusions, and recommendations of any  
25 committee, board, commission, medical staff, professional standards review  
26 organization, or other entity, as referred to in subsection (1) of this section shall be  
27 confidential and privileged and shall not be subject to discovery, subpoena, or

1 introduction into evidence, in any civil action in any court, including but not  
2 limited to medical malpractice actions, actions arising out of review of credentials  
3 or retrospective review and evaluation as referred to in subsection (1) of this  
4 section, and actions by an applicant for or grantee of staff privileges as referred  
5 to in subsection (1) of this section, or in any administrative proceeding before any  
6 board, body, or committee, whether federal, state, county, or city, except as  
7 specifically provided with regard to the board in KRS 311.605(2). The  
8 confidentiality and privilege protections of this subsection shall only be available  
9 to a person or entity that attests to participating in a patient safety and quality  
10 improvement initiative, including the program established by the Patient Safety  
11 and Quality Improvement Act of 2005, 42 U.S.C. secs. 299b-21 to 299b-26. This  
12 subsection shall not apply to any proceedings or matters governed exclusively by  
13 federal law or federal regulation.

14 (3) Nothing in subsection (2) of this section shall be construed to restrict or limit the  
15 right to discover or use in any civil action or other administrative proceeding any  
16 evidence, document, or record which is subject to discovery independently of the  
17 proceedings of the entity to which subsection (1) of this section refers.

18 (4) No person who presents or offers evidence in proceedings described in subsection  
19 (2) of this section or who is a member of any entity before which such evidence is  
20 presented or offered may refuse to testify in discovery or upon a trial of any civil  
21 action as to any evidence, document, or record described in subsection (3) of this  
22 section or as to any information within his own knowledge, except as provided in  
23 subsection (5) of this section.

24 (5) No person shall be permitted or compelled to testify concerning his testimony or the  
25 testimony of others except that of a defendant given in any proceeding referred to in  
26 subsection (2) of this section, or as to any of his opinions formed as a result of  
27 the~~such~~ proceeding.

- 1 (6) In any action in which the denial, termination, or restriction of staff membership or  
2 privileges by any health care facility shall be in issue, agents, employees, or other  
3 representatives of a health care entity may with the consent of ~~the~~the ~~[such]~~ health care  
4 entity testify concerning any evidence presented in proceedings related to the  
5 facility's denial of ~~[such]~~ staff membership or privileges.
- 6 (7) Nothing in this section shall be construed to restrict or prevent the presentation of  
7 testimony, records, findings, recommendations, evaluations, opinions, or other  
8 actions of any entity described in subsection (1) of this section, in any statutory or  
9 administrative proceeding related to the functions or duties of ~~the~~the ~~[such]~~ entity.
- 10 (8) In addition to the foregoing, the immunity provisions of the federal Health Care  
11 Quality Improvement Act of 1986, P.L. 99-660, shall be effective arising under state  
12 laws as of July 15, 1988.