

1 AN ACT relating to privilege and confidentiality for peer review activities in health  
2 care.

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

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

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

24 (2) At all times in performing a designated professional review function, the  
25 proceedings, records, opinions, conclusions, and recommendations of any  
26 committee, board, commission, medical staff, professional standards review  
27 organization, or other entity, as referred to in subsection (1) of this section shall be

1 confidential and privileged and shall not be subject to discovery, subpoena, or  
2 introduction into evidence, in any civil action in any court, including but not limited  
3 to medical malpractice actions, actions arising out of review of credentials or  
4 retrospective review and evaluation as referred to in subsection (1) of this section,  
5 and actions by an applicant for or grantee of staff privileges as referred to in  
6 subsection (1) of this section, or in any administrative proceeding before any board,  
7 body, or committee, whether federal, state, county, or city, except as specifically  
8 provided with regard to the board in KRS 311.605(2). This subsection shall not  
9 apply to any proceedings or matters governed exclusively by federal law or federal  
10 regulation.

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

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

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

25 (6) In any action in which the denial, termination, or restriction of staff membership or  
26 privileges by any health care facility shall be in issue, agents, employees, or other  
27 representatives of a health care entity may with the consent of the~~[such]~~ health care

1           entity testify concerning any evidence presented in proceedings related to the  
2           facility's denial of ~~[such]~~ staff membership or privileges.

3       (7) Nothing in this section shall be construed to restrict or prevent the presentation of  
4           testimony, records, findings, recommendations, evaluations, opinions, or other  
5           actions of any entity described in subsection (1) of this section, in any statutory or  
6           administrative proceeding related to the functions or duties of ~~the~~the ~~[such]~~ entity.

7       (8) In addition to the foregoing, the immunity provisions of the federal Health Care  
8           Quality Improvement Act of 1986, P.L. 99-660, shall be effective arising under state  
9           laws as of July 15, 1988.