

SECOND REGULAR SESSION

# HOUSE BILL NO. 2406

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BLACK.

5163H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

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

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*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Section A. Section 537.035, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 537.035, to read as follows: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, or a dentist licensed under the provisions of chapter 332, or a podiatrist licensed under the provisions of chapter 330, or an optometrist licensed under the provisions of chapter 336, or a pharmacist licensed under the provisions of chapter 338, or a chiropractor licensed under the provisions of chapter 331, or a psychologist licensed under the provisions of chapter 337, or a nurse licensed under the provisions of chapter 335, **or a physician assistant licensed under the provisions of chapter 334**, or a social worker licensed under the provisions of chapter 337, or a professional counselor licensed under the provisions of chapter 337, or a mental health professional as defined in section 632.005, while acting within their scope of practice;

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

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

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

19 (2) Comprised of, and appointed by, the partners, shareholders, or employed health  
20 care professionals of a partnership or professional corporation of health care professionals, or  
21 employed health care professionals of a university or an entity affiliated with a university  
22 operating under chapter 172, 174, 352, or 355;

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

28 (4) Any other organization formed pursuant to state or federal law authorized to  
29 exercise the responsibilities of a peer review committee and acting within the scope of such  
30 authorization;

31 (5) Appointed by the board of directors, chief executive officer or the medical  
32 director of the licensed health maintenance organization.

33 3. Each member of a peer review committee and each person, hospital governing  
34 board, health maintenance organization board of directors, and chief executive officer of a  
35 licensed hospital or other hospital operating under constitutional or statutory authority, chief  
36 executive officer or medical director of a licensed health maintenance organization who  
37 testifies before, or provides information to, acts upon the recommendation of, or otherwise  
38 participates in the operation of, such a committee shall be immune from civil liability for such  
39 acts so long as the acts are performed in good faith, without malice and are reasonably related  
40 to the scope of inquiry of the peer review committee.

41 4. Except as otherwise provided in this section, the interviews, memoranda,  
42 proceedings, findings, deliberations, reports, and minutes of peer review committees, or the  
43 existence of the same, concerning the health care provided any patient are privileged and shall  
44 not be subject to discovery, subpoena, or other means of legal compulsion for their release to  
45 any person or entity or be admissible into evidence in any judicial or administrative action for  
46 failure to provide appropriate care. Except as otherwise provided in this section, no person  
47 who was in attendance at any peer review committee proceeding shall be permitted or  
48 required to disclose any information acquired in connection with or in the course of such  
49 proceeding, or to disclose any opinion, recommendation, or evaluation of the committee or  
50 board, or any member thereof; provided, however, that information otherwise discoverable or  
51 admissible from original sources is not to be construed as immune from discovery or use in  
52 any proceeding merely because it was presented during proceedings before a peer review  
53 committee nor is a member, employee, or agent of such committee, or other person appearing

54 before it, to be prevented from testifying as to matters within his personal knowledge and in  
55 accordance with the other provisions of this section, but such witness cannot be questioned  
56 about testimony or other proceedings before any health care review committee or board or  
57 about opinions formed as a result of such committee hearings. The disclosure of any  
58 interview, memoranda, proceedings, findings, deliberations, reports, or minutes to any person  
59 or entity, including but not limited to governmental agencies, professional accrediting  
60 agencies, or other health care providers, whether proper or improper, shall not waive or have  
61 any effect upon its confidentiality, nondiscoverability, or nonadmissibility.

62 5. The provisions of subsection 4 of this section limiting discovery and admissibility  
63 of testimony as well as the proceedings, findings, records, and minutes of peer review  
64 committees do not apply in any judicial or administrative action brought by a peer review  
65 committee or the legal entity which formed or within which such committee operates to deny,  
66 restrict, or revoke the hospital staff privileges or license to practice of a physician or other  
67 health care providers; or when a member, employee, or agent of the peer review committee or  
68 the legal entity which formed such committee or within which such committee operates is  
69 sued for actions taken by such committee which operate to deny, restrict or revoke the  
70 hospital staff privileges or license to practice of a physician or other health care provider.

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

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