

MEDICAL SOCIETY
of the
STATE OF NEW YORK

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Senior Vice President /
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Division of Governmental Affairs
MEMORANDUM IN SUPPORT

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A.3138 (GOTTFRIED)

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S.2071 (HANNON)

AN ACT to amend the public health law and the education law, in relation to quality assurance and peer review activities

This measure would extend the confidentiality provisions relating to discovery of testimony to apply to statements made by any person in attendance at peer-review committee that is a party to an action the subject matter of which was reviewed at such meeting. **The Medical Society of the State of New York supports enactment of this measure.**

The objective of the existing discovery exclusions under section 2805-m of the Public Health Law and section 6527 of the Education Law is to enhance the objectivity of the review process and to assure that medical peer review committees may frankly and objectively analyze the quality of health services rendered. This exclusion from discoverability, however, contains a narrow and yet potent exception that permits disclosure of statements given at an otherwise privileged peer-review meeting by a party (medical provider) to a lawsuit which involves the same underlying conduct that is the topic of discussion at the meeting. As a result of this narrow exception, any statements or information volunteered as part of the peer-review process could be discovered and used against them in such proceedings. It is believed that incidents involving medical errors can go undetected and are under-reported because physicians and other health care providers understand that they would potentially be exposed to future civil actions even though the particular event did not involve negligence. Moreover, it should be noted that New York is one of only a small number of states that actually permits statements in peer-review proceedings to be disclosed. Most other states do not permit such disclosure.

This legislation would improve the peer-review process and the clear benefits to be derived therefrom through the increased willingness of providers to submit information without fear of misuse in subsequent legal proceedings.

For the above stated reasons, the Medical Society supports enactment of this legislation.

Respectfully submitted,

2/1/13
LDK

ELIZABETH DEARS, ESQ.