Medical Peer Review in Florida: Is the Privilege Under Attack?

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I. INTRODUCTION

In a time when quality health care is essential and medical malpractice befalls patients on a daily basis,¹ peer review has become an institutionalized practice,² while information generated in the process has become a hot and controversial commodity in legal discovery proceedings.³ As an integral part

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of today's health care industry, "[p]eer review serves as one of medicine’s most effective risk management and quality improvement tools."4 By engaging physicians in a review process of their colleagues' work,5 the "incompetence in the medical profession" is weeded out, inevitably leading to better patient care and a decrease in health and medical expenses.6 Serving to applaud excellent medical care and uncover that which is inferior and sub par,7 peer review has truly made a name for itself in the medical community.8

It is with the help of statutory protection that this practice has become a reality.9 Peer review statutes are geared toward guaranteeing participants confidentiality, immunity, and/or privileges,10 so as to stimulate sincere and reliable discussions.11 However, this security is gradually starting to erode as information, documents, and records linked to the peer review sessions reach the public through the discovery process.12

While the purpose of peer review statutes appear to be sound and guileless, courts are still laboring to stabilize the particulars regarding discovery

4. Lisa M. Nijm, Pitfalls of Peer Review: The Limited Protections of State and Federal Peer Review Law for Physicians, 24 J. LEGAL MED. 541, 541 (2003). Peer review occurs in other areas besides just hospitals. Susan O. Scheutzow, State Medical Peer Review: High Cost But No Benefit—Is It Time for a Change?, 25 AM. J.L. & MED. 7, 7 n.1 (1999). The process is also administered "by nonhospital institutional providers such as freestanding surgery centers, and by third-party payers of health care expenses." Id. Nevertheless, hospitals still make the most frequent use of the process. Id.


8. See Scheutzow & Gillis, supra note 2, at 169.


10. Nijm, supra note 4, at 546.

11. Love II, 599 So. 2d at 114.

[The purpose of a statute that shields medical review committee records and materials from discovery and prevents their use as evidence in certain civil actions is to promote candor and frank exchange in peer-review proceedings, and that a statute protecting the proceedings, records, and files of medical review committees from discovery in civil actions was intended to provide broad statutory protection and was based on legislative appreciation that a high level of confidentiality is necessary for effective medical peer review.

81 AM. JUR. 2D Witnesses § 537 (2004).

12. See Brandon Reg’l Hosp. v. Murray, 957 So. 2d 590, 590 (Fla. 2007) (holding that a hospital’s list of a physician’s privileges is discoverable). "[P]eer review information might fall vulnerable to discovery for claims brought under federal law, because no federal peer review privilege exists." Nijm, supra note 4, at 542.
of peer review documents and records as to be employed in legal actions. Naturally, there are those who advocate for peer review and the good they believe it brings while there are those who criticize the process for the negative effects they allege it causes. As a result, “an aura of controversy has surrounded the idea of allowing health care personnel to police themselves.”

To date, a peer review statute of some kind has been passed in almost every state. Notwithstanding the fact that most statutes are read and interpreted differently, they still uniformly strive to further the same goals. Historically, Florida peer review statutes have been construed extremely broadly. Litigants seeking materials during discovery that were generated in peer review sessions were hard pressed to recover anything. Such a statutory interpretation allowed physicians and hospitals to freely partake in the peer review process without the looming fear of litigation and liability haunting them in the future.

Recently, however, these consistent Florida rulings of denying production of materials associated with peer review during discovery have suddenly come to a standstill. Bending the shield of statutory protection, the Supreme Court of Florida has taken an atypical approach in resolving a recent case. Widening the eyes of both proponents and critics of peer review, the Supreme Court of Florida granted the release of hospital records containing physician privileges. In addition to serving as a great stride for litigants

14. See Moore et al., supra note 7, at 1177.
15. Bassler, supra note 6, at 695.
17. Bassler, supra note 6, at 694; see also Scheutzow & Gillis, supra note 2, at 198–217. These pages provide a list of each state that furnishes a statute relating to peer review. See Scheutzow & Gillis, supra note 2, at 198–217. The chart accompanying the list provides a “[s]ummary of [s]tate [p]eer [r]eview [s]tatutes” and includes information about the state, their statute, and whom and what it protects. Id.
18. See Nijm, supra note 4, at 546.
21. Moore et al., supra note 7, at 1178.
22. See Brandon Reg’l Hosp. v. Murray, 957 So. 2d 590, 595 (Fla. 2007). The Supreme Court of Florida granted the release of a hospital’s list of physician privileges during discovery. Id. at 590. In the past, it has restricted discovery of most materials related to peer review. See, e.g., Cruger v. Love (Love II), 599 So. 2d 111, 114 (Fla. 1992).
23. Murray, 957 So. 2d at 590.
seeking certain discovery materials in medical malpractice suits, this case awakens attention to the split between the district courts in Florida.

This article will examine peer review in Florida, focusing on a recent case from the Supreme Court of Florida that has generated a split among the district courts. The first section discusses the history, background, and general statutory protection surrounding peer review. It will additionally probe into the opinions of both proponents and critics of the process. Part III specifically outlines the history of peer review in Florida and looks at the relevant statutes that govern the process today. Additionally, this section explores the case of Brandon Regional Hospital v. Murray. Part IV discusses the split among the Florida district courts and explicitly looks into the holdings of certain cases. Part V considers the implications of each side of the split, scrutinizing both the benefits and consequences.

II. THE PEER REVIEW PROCESS

Peer review is a process whereby specifically qualified medical associates of a hospital evaluate "the qualifications, training, and experience" of other practicing medical physicians and personnel, as well as monitor their "medical outcomes and professional conduct." The medical review staff seeks to ascertain whether the aforesaid physicians and personnel are capable and competent to practice medicine in the hospital and, in the event that they are, what the boundaries and limitations of their practice consist of. Despite the fact that a hospital makes the final judgment as to whether or not a doctor may practice and, if so, to what extent, it is peer review reports and analysis which provide the foundation for such a hospital decision. Consequently, a hospital’s choice to authorize admittance to their medical staff, as

25. Murray, 957 So. 2d at 591–93.
26. Id. at 590.
27. Nijm, supra note 4, at 543.
28. Scheutzow, supra note 4, at 13. The initial portion of the process is generally known as "credentialing." Id. at 14. Once a physician has been granted privileges and they begin practicing, the peer review process additionally includes an evaluation of "quality assurance data, diagnostic and laboratory utilization reports, and other information regarding each staff member's actual practice at the hospital." Id. Typically, a physician must undergo peer review of their hospital privileges every two years; nevertheless, if concerns arise regarding their behavior before said time, a review will be in order. Id.
29. Id. at 7.
30. Newton II, supra note 9, at 725.
well as grant or deny certain privileges, is largely influenced by the peer review process, committee, and their findings.\textsuperscript{31}

A. History of Peer Review

A general survey of medical peer review history reveals that in 1918, the American College of Surgeons established the Hospital Accreditation Program, which ultimately grew into the Joint Commission on Accreditation of Health Care Organizations (JCAHO).\textsuperscript{32} JCAHO mandates that hospitals have an abiding system by which physicians are to be evaluated.\textsuperscript{33} "[T]o receive JCAHO accreditation, hospitals must" partake in certain procedures which will ensure quality health care, including but not limited to, peer review.\textsuperscript{34} "Accreditation plays a vital role in the economic survival of a hospital, as eligibility for federal funds, such as Medicare and Medicaid, depends upon it."\textsuperscript{35}

In addition to JCAHO and the assistance it provides in attempting to improve the health care industry,\textsuperscript{36} Congress has addressed the issue by passing federal legislation known as the Health Care Quality Improvement Act of 1986 (HCQIA).\textsuperscript{37} Concerned with the "overriding national need to provide incentive and protection for physicians engaging in effective professional peer review,"\textsuperscript{38} Congress enacted HCQIA as an initial step toward a solution.\textsuperscript{39} Operating with the specific function of promoting "good faith peer review,"\textsuperscript{40} and medical care, the Act fosters two chief objectives.\textsuperscript{41} Fore-
most, HCQIA grants immunity from damages to those individuals actively involved and contributing in the peer review process.\textsuperscript{42} However, it “does not grant a federal evidentiary privilege to the records and deliberations of the peer review process.”\textsuperscript{43} Furthermore, HCQIA was implemented to generate the National Practitioner Data Bank (NPDB), a “national clearinghouse of information.”\textsuperscript{44} By making it obligatory that hospitals submit reports concerning physicians and medical staff who have had disciplinary problems\textsuperscript{45} and clinical privileges reduced or removed, NPDB prevents incompetent individuals from moving to other hospitals without exemption from punishment.\textsuperscript{46}

B. Statutory Scheme Overview

For peer review to be an effective tool in the health care industry there must be regulations that accompany its use.\textsuperscript{47} While the purpose of peer review is to generate better patient care and improve the quality of physi-

\textsuperscript{42} Scheutzow, supra note 4, at 9. The peer review board must satisfy four procedural criteria to become eligible for immunity from damages. 42 U.S.C. § 11111(a)(1) (2000). First, the board’s actions must have been exercised with a sound belief that it was fostering quality health care. Id. § 11112(a)(1). Second, in acquiring the facts, the board must have employed a reasonable effort. Id. § 11112(a)(2). Third, the board must provide the physician with sufficient notice and a hearing or other measures which under the circumstances are just. Id. § 11112(a)(3). Last, after complying with the aforementioned requirements, the board must believe that the actions they took were reasonably justifiable. Id. § 11112(a)(4). It is presumed that the peer review board’s actions satisfy the four procedural criteria; however, this is a “rebuttable presumption.” Anthony W. Rodgers, Procedural Protections During Medical Peer Review: A Reinterpretation of the Health Care Quality Improvement Act of 1986, 111 PENN ST. L. REV. 1047, 1053 (2007). If it can be illustrated through a preponderance of the evidence that at least one of the four criteria have not been complied with, a physician may disprove this presumption. Id. at 1053–54; see also 42 U.S.C. § 11112(a).

\textsuperscript{43} Scheutzow, supra note 4, at 9–10. The question of whether the “‘peer review privilege’ applies to the discovery of documents created during the peer review process” is still lingering as unanswered. Graham, supra note 3, at 112.

\textsuperscript{44} Scheutzow, supra note 4, at 10.

\textsuperscript{45} Moore et al., supra note 7, at 1180. Disciplinary actions include when a physician’s privileges are reduced, temporarily withdrawn, or entirely recalled. Id.

\textsuperscript{46} Scheutzow, supra note 4, at 10. In addressing the nationwide quandary of incompetent physicians traveling from state to state to practice medicine, HCQIA demands that hospitals and other medical personal report to the NPDB “peer review actions resulting in limitations to a physician’s medical staff or clinical privileges and to report when physicians voluntarily surrender their medical staff privileges in lieu of facing a peer review investigation.” Id. Additionally, the punitive and corrective measures that a physician is sanctioned with must be communicated to the NPDB. Graham, supra note 3, at 112.

\textsuperscript{47} See 42 U.S.C. § 11101(5).
cians practicing, this will only occur with honest and outspoken discussions. "It is obvious that both complaints and free discussion about the activities of physicians would be markedly discouraged if their contents were to be held open to public perusal." Accordingly, without some definitive security guaranteed to those who participate, this practice will never become a reality.

In the past, physicians have been averse to participating in peer review. While currently, the process appears to be sound, the possibility of future consequences is a brewing fear. Physicians do not want to find themselves entangled in a web of legal action initiated by an unhappy medical associate who was given poor reviews or had privileges revoked. The negative repercussions that may strike a physician after a substandard review can have lasting effects, including but not limited to, a damaged reputation, loss of income, patients, and malpractice insurance, the stigma of having received negative reviews, and possibly the inability to find employment elsewhere. The aforesaid reasons are all ammunition for future lawsuits and no physicians would choose to partake in a process that would leave them behind the barrel of a loaded gun. "While a physician may be willing to chastise a physician in private and, for example, suggest sanctions such as remedial training, the physician almost assuredly would not like his comments aired on the six o’clock news."

As a result, almost every state has fashioned some version of a peer review statute in which they guarantee privileges, immunity, and/or confidentiality. "In granting these protections, legislatures have determined that limiting the rights of physicians to seek damages for peer review actions and denying malpractice plaintiffs and other litigants information relevant to their lawsuits are justified in order to encourage effective peer review."

49. See 81 AM. JUR. 2d Witnesses § 537 (2004).
51. See 42 U.S.C. § 11101(5).
52. Newton II, supra note 9, at 726.
53. Scheutzow, supra note 4, at 16.
54. See Newton II, supra note 9, at 727.
55. Rodgers, supra note 42, at 1049–51.
56. Scheutzow & Gillis, supra note 2, at 174.
58. Nijm, supra note 4, at 546.
59. Scheutzow, supra note 4, at 8.
1. Privileges

An authorized privilege in law safeguards particular information from discovery and use in civil litigation. The court assumes the role of “balanc[ing] privilege against a plaintiff’s right to due process and the judicial need for the fair administration of justice.” Accordingly, a court acknowledging the existence of a privilege is essentially saying, without speaking, that “it values that social policy goal [of keeping information free from discovery or use in civil litigation] over and above the potential impact of the privilege on the truth-seeking process.” As a result, a judicially granted privilege functions as an exemption from the everyday liability one would incur in having to provide information during a judicial proceeding.

2. Confidentiality

Confidentiality mandates that a party abstain from revealing any and all information pertaining to, and discussed in, the peer review process, outside a court of law. A party may be obliged “to keep information confidential” by means of law or contract. This requirement absolves physicians of the fear that their direct and blunt communications will be exposed to those be-

60. Nijm, supra note 4, at 546. To be specific, “forty-eight states and the District of Columbia have” passed statutes dealing with the peer review privilege. Bassler, supra note 6, at 694. In the discovery process, when a party to a lawsuit asserts the peer review privilege the burden of proof rests on them to demonstrate that the information requested is statutorily protected. 81 AM. JUR. 2D Witnesses § 537 (2004).

61. 81 AM. JUR. 2D Witnesses § 537 (2004).

62. Nijm, supra note 4, at 547. In Trammel v. United States, the United States Supreme Court proclaimed that “[t]estimonial exclusionary rules and privileges contravene the fundamental principle that ‘the public . . . has a right to every man’s evidence.’” 445 U.S. 40, 50 (1980) (quoting United States v. Bryan, 339 U.S. 323, 331 (1950)). As a result, the United States Supreme Court has warned courts dealing with privileges to be prudent, as granting them endorse a strong social message. See Schuetzow & Gillis, supra note 2, at 180. “Even in discussing the widely accepted attorney-client and priest-penitent privileges, the Court has urged caution in their application.” Id.

63. Schuetzow & Gillis, supra note 2, at 179.


65. Schuetzow & Gillis, supra note 2, at 192. While many states claim to protect confidential information through statutory law, they provide no punishment or remedy should such information be revealed. Nijm, supra note 4, at 548–49. Nonetheless, there are eight states which do impose sanctions for a violation of confidentiality statutes. Id. at 549.
ing reviewed.\textsuperscript{66} Generally, information which is privileged is also confidential.\textsuperscript{67}

3. Immunity

Immunity operates as a shield for participants from civil litigation that may emerge in the future.\textsuperscript{68} When a physician is unhappy with the outcome of his or her peer review session, his actions are unpredictable and may result in a lawsuit.\textsuperscript{69} As such, the grant of immunity may range from hospitals, to the peer review board, and anyone who may submit evidence to the board.\textsuperscript{70} However, while immunity may protect participants from civil suits, it does not automatically protect the information generated in the session.\textsuperscript{71}

C. Two Sides to Every Story

For as long as it has been around, peer review has been an issue of dispute.\textsuperscript{72} The discipline and regulation of medical professionals is a sensitive matter and must be handled with the utmost justice.\textsuperscript{73} Debates surrounding whether peer review is the correct and best way to manage the health care industry have been argued at length.\textsuperscript{74} Debates surrounding the discoverability of peer review materials are more recent arguments but nonetheless seem to be the new black of medical malpractice disputes.\textsuperscript{75} As with everything, there are two sides to every story!

1. Proponents of Peer Review

Advocates of medical peer review urge that "physicians possess the specialized knowledge necessary to make accurate medical judgments and

\begin{itemize}
  \item \textsuperscript{66} See Newton II, supra note 9, at 729.
  \item \textsuperscript{67} Scheutzow & Gillis, supra note 2, at 192.
  \item \textsuperscript{68} Scheutzow, supra note 4, at 17. To be specific, forty-seven states and the District of Columbia have passed statutes dealing with peer review immunity. Id. at 28.
  \item \textsuperscript{69} See id. at 10–11.
  \item \textsuperscript{70} Newton II, supra note 9, at 730.
  \item \textsuperscript{71} Cate, supra note 48, at 483–84. "While the notion of immunity is somewhat consistent in the law, the status of peer review information as privileged information is not." Id. at 484.
  \item \textsuperscript{72} Moore et al., supra note 7, at 1182.
  \item \textsuperscript{73} See id.
  \item \textsuperscript{74} Scheutzow, supra note 4, at 16.
  \item \textsuperscript{75} See Graham, supra note 3, at 111; see also infra notes 110, 112 and accompanying text.
\end{itemize}
can routinely observe one another in the workplace setting." 76 It is this proficient and expert knowledge that makes the peer review process superior to other procedures, such as, "lay review boards or judicial oversight." 77 The judgments rendered during these sessions inexorably lead to first rate patient care, safer medical procedures, and doctors who are truly equipped to practice medicine. 78 Additionally, peer review impels doctors to practice with a greater and more sophisticated degree of care and attention. 79

Peer review offers an incentive for similarly trained physicians working in the same environment to identify colleagues with knowledge gaps or deficiencies in technical skills, facilitate their remediation, and monitor their progress and performance, in preference to external parties assuming this responsibility. In addition, when serious problems are identified, appropriate steps can be taken to limit doctors' contact with patients well before government agencies are involved or can act. Peer review may also lead physicians to seek and accept help for medical, psychiatric, or impairment issues. Finally, peer review groups can promptly refer safety and quality issues they identify to committees or authorities empowered to address them within an institution. 80

Above and beyond the aforementioned benefits of peer review is that of protecting a hospital's reputation. 81 Although hospitals open themselves up "to antitrust liability when" they engage in the peer review process, 82 the salutary effect it has in discovering and controlling "incompetent physicians" before a medical malpractice suit is filed is sensational. 83 Consequently, a hospital can deal with the physician accordingly, before problems escalate and the hospital begins to build a horrible reputation or worse, finds itself vicariously liable in a lawsuit. 84

76. Nijm, supra note 4, at 543.
77. Morter, supra note 16, at 1118.
78. Jorstad, supra note 5, at 693.
79. Moore et al., supra note 7, at 1177.
80. Id. at 1177-78.
82. Id. at 409.
83. Id. at 411.
84. Id. at 410.
2. Critics of Peer Review

In spite of the rah-rah that surrounds peer review there are still those who have their doubts. Arguing that peer review performs a great disservice to the general public, critics base their reasoning on “a ‘conspiracy of silence’ that [they believe] enables health care practitioners to cover up evidence of neglect.” Subsequently, the court system feeds into this conspiracy by denying those patients seeking to prosecute ill practicing hospitals and physicians, materials produced during peer review. As a result, peer review and its accompanying statutes end up concealing information during discovery, which could make or break a medical malpractice case. Additionally, those opposed to peer review contend that it “does not adequately improve healthcare quality and safety” as the process does not tackle true areas of concern and is never fully followed through with. Quite often two situations present themselves: 1) physicians facing severe consequences simply resign instead of complying with the peer review board’s disciplinary orders; or 2) a hospital will recognize a doctor’s resignation as quid pro quo for silence. To add insult to injury, many times when a hospital accepts a physician’s resignation they fail to inform the NPDB about such incidents, consequently eliminating its purpose. Moreover, many critics urge that peer review “is used as a tool for economic or political motives—in essence a review performed in bad faith, or with malice.” However, despite such opposition to the peer review process and the limitations it places on discoverable material, critics are slowly getting what they wished for as the barriers blocking information generated in peer review are collapsing little by little.

85. Bassler, supra note 6, at 695.
87. Moore et al., supra note 7, at 1182.
88. See id. at 1183; see also Columbia/JFK Med. Ctr. Ltd. P’ship v. Sanguonchitte, 920 So. 2d 711, 712 (Fla. 4th Dist. Ct. App. 2006).
89. Moore et al., supra note 7, at 1186.
90. Id.
91. Newton II, supra note 9, at 732.
92. Moore et al., supra note 7, at 1186.
94. Graham, supra note 3, at 114.
95. See Brandon Reg’l Hosp. v. Murray, 957 So. 2d 590, 590 (Fla. 2007).
III. PEER REVIEW IN FLORIDA

Having been legislatively cultivated, the peer review privilege is not acknowledged as being a product of any common law principles. Consequently, the protection afforded to hospitals and physicians are rooted in the statutory protection that each state provides. Currently, such statutory security is “inconsistent” among the states. Where some states impart a heavy safeguard against peer review information being accessed during discovery, others provide mild assurance that confidential information will not be readily available to the public.

As it stood until recently, Florida acquiesced to the group of states which yielded strong protection against peer review information, or that related to it, being procurable during discovery. Pioneering the idea of the “expansive privilege approach” with regard to the peer review statute, Florida has been a forerunner in the enactment of legislation concerning this matter. Long before peer review legislation was a thought in the mind of Congress or other states, Florida had already passed statutes pertaining to the subject; these statutes have since been restructured and revised.

Historically, case law in Florida has supported the proposition of broadly construing peer review statutes. Insisting that peer review records, information, and documents remain privileged and confidential, it has been difficult for anyone bringing a lawsuit against a hospital, physician, or peer review committee to gain access to said information in the discovery process. The Supreme Court of Florida in Holly v. Auld stated, “[w]e must

96. Scheutzow & Gillis, supra note 2, at 181.
97. Nijm, supra note 4, at 546.
98. Scheutzow & Gillis, supra note 2, at 171.

While there appears to be widespread belief that information presented in peer review proceedings and the deliberation of such committees are privileged and are to remain confidential, the reality is that peer review proceedings are afforded very little privilege and confidentiality protection pursuant to federal law and very inconsistent protection by state law.

Id.

99. See JONATHAN P. TOMES, MEDICAL STAFF PRIVILEGES AND PEER REVIEW: A LEGAL GUIDE FOR HEALTHCARE PROFESSIONALS 133 (1994); Scheutzow & Gillis, supra note 2, at 198–217; Bassler, supra note 6, at 694; see also supra note 17 and accompanying text.
100. Emmanuel, supra note 19, at 61; Graham, supra note 3, at 125–26; see also infra note 112 and accompanying text.
101. Graham, supra note 3, at 125.
102. Id.
103. Emmanuel, supra note 19, at 64.
104. Hillsborough County Hosp. Auth. v. Lopez, 678 So. 2d 408, 409 (Fla. 2d Dist. Ct. App. 1996) (holding that even though the information was not kept confidential by the hospital, the records of the medical peer review committee were privileged); Love v. Cruger (Love I), 570 So. 2d 362, 362–63 (Fla. 4th Dist. Ct. App. 1990), aff’d 599 So. 2d 111, 114 (Fla.}

https://nsuworks.nova.edu/nlr/vol32/iss1/8
assume that the legislature balanced this potential detriment [of preventing disclosure of material in discovery] against the potential for health care cost containment offered by effective self-policing by the medical community and found the latter to be of greater weight. However, as will be seen in the later analysis of Brandon Regional Hospital v. Murray, this steady cornerstone of Florida judicial case law is slowly starting to change, permitting the discovery of certain information.

A. Statutory Protection

*Florida Statutes* section 766.101 provides for the peer review privilege. Moreover, sections 395.0191 and 395.0193 encompass information which serves to protect “hospital investigations and proceedings pertaining to medical staff membership, clinical privileges, and disciplinary actions by hospitals against members of its medical staff.” The pertinent part of *Florida Statutes* section 766.101 states:

The investigations, proceedings, and records of a committee as described in the preceding subsections shall not be subject to discovery or introduction into evidence in any civil or administrative action against a provider of professional health services arising out of the matters which are the subject of evaluation and review by such committee, and no person who was in attendance at a meeting of such committee shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such committee or as to any findings, recommendations, evaluations, opinions, or other actions of such committee or any members thereof.

1992) (holding that a physician’s application to the hospital for staff privileges were undisc
coverable); Holly v. Auld, 450 So. 2d 217, 221 (Fla. 1984) (holding that the records of a cre
dentialing committee were privileged from discovery as well as an investigation into those participants involved in the decision-making process of whether or not to grant privileges).

105. 450 So. 2d 217 (Fla. 1984).
106. *Id.* at 220.
107. Brandon Reg’l Hosp. v. Murray, 957 So. 2d 590, 595 (Fla. 2007).
110. *Fla. Stat.* § 766.101(5). Subsection five of this statute also states that:

[Information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil action merely because they were presented during proceedings of such committee, nor should any person who testifies before such committee or who is a member of such committee be prevented from testifying as to matters within his or her knowledge, but the said witness cannot be asked about his or her testi-
Florida Statutes section 395.0191 states:

The investigations, proceedings, and records of the board, or agent thereof with whom there is a specific written contract for the purposes of this section, as described in this section shall not be subject to discovery or introduction into evidence in any civil action against a provider of professional health services arising out of matters which are the subject of evaluation and review by such board, and no person who was in attendance at a meeting of such board or its agent shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such board or its agent or as to any findings, recommendations, evaluations, opinions, or other actions of such board or its agent or any members thereof.111

The aforesaid two statutes have been utilized by hospitals and peer review committees as a perpetual weapon to combat discovery requests made by malpractice victims.112 Because Florida’s past interpretation of these stat-

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111. FLA. STAT. § 395.0191(8). Subsection eight of this statute also states that:

"[T]he aforesaid two statutes have been utilized by hospitals and peer review committees as a perpetual weapon to combat discovery requests made by malpractice victims."

112. See Columbia/JFK Med. Ctr. Ltd. P’ship v. Sanguonchitte, 920 So. 2d 711, 713 (Fla. 4th Dist. Ct. App. 2006) (holding in a suit for medical malpractice that section 766.101(5) protects information and documents regarding a physician’s credentials); Tenet HealthSystem Hosps., Inc. v. Taitel, 855 So. 2d 1257, 1258 (Fla. 4th Dist. Ct. App. 2003) (holding in medical malpractice action that blank forms created by the peer review committee for examining and assessing a nurse’s capability to practice medicine were protected by Florida Statute section 766.101(5)); Columbia Hosp. Corp. of So. Dade v. Barrera, 738 So. 2d 505, 505-06 (Fla. 3d Dist. Ct. App. 1999) (holding that under section 766.101(5) and section 395.0191(8) a hospital is not required to produce a physician’s application for staff privileges in discovery); Ornda Healthcorp. v. Berghof, 722 So. 2d 961, 962 (Fla. 3d Dist. Ct. App. 1998) (holding that in the discovery proceedings of a malpractice case the hospital was not obliged to produce the doctor’s application for staff privileges or malpractice insurance according to section 766.101(5)); Munroe Reg’l Med. Ctr., Inc. v. Rountree, 721 So. 2d 1220, 1223 (Fla. 5th Dist. Ct. App. 1998) (holding that under section 766.101(5) a doctor was not required to respond to deposition questions pertaining to his interim suspension of staff privileges as his answers could only have been materialized from peer review committee knowledge and information); Palm Beach Gardens Cmty. Hosp., Inc. v. O’Brien, 651 So. 2d 783, 784 (Fla. 4th Dist. Ct. App. 1995) (holding in a malpractice action that a list of complaints regarding the physician’s medical staff privileges was privileged and not subject to discovery).
utes has been all encompassing, hospitals and peer review committees are able to shield information they deem to be private and confidential, regardless of the fact that such information may be pertinent, and many times indispensable, to a fair and just trial. Furthermore, on the off chance that a court does not find for protecting the requested information pursuant to Florida Statutes section 766.101 and/or section 395.0191, the public policy argument in favor of doing so has found its way to the top of justifications for nondisclosure.

B. Amendment 7

Because Florida has always taken such an active role in the peer review process and the legislation that accompanies it, it came as no surprise when one of its citizens, in 2004, proposed Amendment 7 on the Florida ballot. Amendment 7, also known as the “Patients' Right-to-Know About Adverse Medical Incidents Act,” is intended to authorize patients “access to any records made or received in the course of business by a health care facility or provider relating to any adverse medical incident.” However, with care of other patients were privileged from discovery under § 766.101(5)); Mount Sinai Med. Ctr. of Greater Miami, Inc. v. Bernstein, 645 So. 2d 530, 533 (Fla. 3d Dist. Ct. App. 1994) (holding that a request for specific information pertaining to the medical peer review committee was inappropriate and not discoverable); Tarpon Springs Gen. Hosp. v. Hudak, 556 So. 2d 831, 832 (Fla. 2d Dist. Ct. App. 1990) (holding that a physician’s application for staff privileges was protected by section 766.101).

113. O'Brien, 651 So. 2d at 784 (stating that the “inability to get this information will make it difficult for [the claimants] to prosecute a claim.”); Sanguonchitte, 920 So. 2d at 712 (stating that it was irrelevant that the plaintiffs would have an arduous time prosecuting their claim without peer review and hospital documents and information).

114. Sanguonchitte, 920 So. 2d at 712. “[T]here is an overwhelming public policy in favor of maintaining the privilege to encourage self-regulation by the medical profession.” Id.

115. See Graham, supra note 3, at 125.

116. Amendment 7: The Patients’ Right to Know Flexes It’s Muscle in Florida, LAW WATCH (Foley & Lardner LLP, Orlando, Fla.), May 25, 2006, at 1 [hereinafter Amendment 7].

117. FLA. CONST. art. X, § 25(a). For purposes of this statute, “have access to any records” signifies the standard procedures for procuring records in addition to “making the records available for inspection and copying upon . . . request by the patient . . . provided that current records which have been made publicly available by publication or on the Internet may be ‘provided’ by reference to the location at which the records are publicly available.” FLA. CONST. art. X, § 25(c)(4). “Records” describe the ultimate and finished report of an adverse medical incident. FLA. STAT. § 381.028(3)(j) (2007). This does not include drafts, outlines, or rough copies of documents. Id. Anything which is protected by the attorney-client privilege or the attorney-client work product will not be deemed a record. Id. Adverse medical incidents as defined in the statute constitute “medical negligence, intentional misconduct, and any other act, neglect, or default of a health care facility or health care provider that caused or could have caused injury to or death of a patient.” FLA. CONST. art. X, § 25(c)(3).
that said, the Florida Legislature also explicitly maintained the position that Amendment 7 was not designed to abolish or alter current peer review laws.\textsuperscript{118}

The enactment of Amendment 7 in Florida triggered a whirlwind of litigation.\textsuperscript{119} In \textit{Florida Hospital Waterman, Inc. v. Buster},\textsuperscript{120} and \textit{Notami Hospital of Florida, Inc. v. Bowen},\textsuperscript{121} Florida courts addressed and responded to the confusion and questions which surrounded this new piece of legislation.\textsuperscript{122} A chief issue encasing Amendment 7 was the inquiry into whether or not it preempted the already established statutory privilege by now allowing the discoverability of peer review information that these statutes have sought to protect.\textsuperscript{123} The response by both courts was uniform in that Amendment 7 did preempt the statutory privilege.\textsuperscript{124}

Reading the provisions of Amendment 7 in \textit{parimateria} so it forms a congruous whole, and construing the provisions broadly and giving them a more liberal interpretation than we would a statute, we come to the conclusion that Amendment 7 preempts the statutory privileges afforded health care providers regarding their self-policing procedures to the extent that such information is obtainable through a formal discovery request made by a patient or patient's legal-representative during the course of litigation.\textsuperscript{125}

Amendment 7 is extremely explicit about what is and is not discoverable in litigation.\textsuperscript{126} As it stands today, the lingering question seems to be whether or not it can be applied retroactively.\textsuperscript{127} Both \textit{Buster} and \textit{Bowen} reached different conclusions concerning this matter.\textsuperscript{128} \textit{Buster} held that Amendment 7 does not apply retroactively\textsuperscript{129} while \textit{Bowen} held that it should be "prospective in operation" while applying retroactively to existing re-

\begin{footnotesize}
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\item 118. FLA. STAT. § 381.028(2). On account of the fact that Amendment 7 was not mentioned as an area of concern in the trial or appellate dealings of \textit{Murray} there is no reason to analyze or apply it. Brandon Reg'l Hosp. v. Murray, 957 So. 2d 590, 591–92 n.2 (Fla. 2007).
\item 119. \textit{Amendment 7, supra} note 116, at 1.
\item 120. 932 So. 2d 344 (Fla. 5th Dist. Ct. App. 2006).
\item 121. 927 So. 2d 139 (Fla. 1st Dist. Ct. App. 2006).
\item 122. \textit{See Amendment 7, supra} note 116, at 1; \textit{see also Bowen, 927 So. 2d at 143–44; Buster, 932 So. 2d at 348–51, 353–55.}
\item 123. \textit{Buster, 932 So. 2d at 348.}
\item 124. \textit{Amendment 7, supra} note 116, at 1; \textit{see also Bowen, 927 So. 2d at 143 n.1; Buster 932 So. 2d at 351.}
\item 125. \textit{Buster, 932 So. 2d at 350–51.}
\item 126. FLA. CONST. art. X, § 25; FLA. STAT. § 381.028 (2007).
\item 127. \textit{Bowen, 927 So. 2d at 144; Buster, 932 So. 2d at 353.}
\item 128. \textit{Amendment 7, supra} note 116, at 2.
\item 129. \textit{Buster, 932 So. 2d at 354.}
\end{itemize}
\end{footnotesize}
Currently, the Supreme Court of Florida has approved a hearing of both cases.

C. Brandon Regional Hospital v. Murray

Presently in Florida, the buffer of statutory protection that has been furnished to its citizens and institutions is slowly starting to crumble. Shying away from the routine and typical court decisions which prevent discovery of peer review information or that pertaining to it, the Supreme Court of Florida, in May 2007, rendered a verdict with an unusual holding. In Murray, the Court held that in discovery proceedings, a person bringing a medical malpractice action is empowered to procure from the hospital the privileges granted to a physician. However, claimants are “not entitled to the” concrete documents which the peer review credentialing committee utilized in aiding the hospital in their decisions to grant or deny such privileges. Therefore, even though the actual peer review documents themselves are still privileged, the ultimate result of what was decided in their meeting, which hospitals use as a guiding source, is discoverable.

In Murray, a medical malpractice suit was initiated against Brandon Regional Hospital (BRH). The Murrays contended that Dr. Wayne S. Blocker, the physician who operated on Mrs. Murray, was inappropriately credentialed to perform her surgery. As a result of his negligence in carrying out the operation, Mrs. Murray was gravely injured. The complications of the lawsuit arose during the discovery process when the Murrays sought to obtain a list of the privileges granted to Dr. Blocker by the hospital. Such privileges were based upon communications which took place.

130. Bowen, 927 So. 2d at 142.
131. Moore et al., supra note 7, at 1184.
132. See Brandon Reg’l Hosp. v. Murray, 957 So. 2d 590, 592 (Fla. 2007); see supra note 112 and accompanying text.
133. See Murray, 957 So. 2d at 590.
134. Id. The “clinical privileges” granted to a physician are defined by JCAHO as the ability to offer medical treatment or other such care to patients in a hospital. TOMES, supra note 99, at 13. Such treatment and care is founded upon the doctor’s experience, proficiency, and qualifications. Id.
135. Murray, 957 So. 2d at 590.
136. Id.
137. H.H. van Geertruyden, supra note 41, at 243–44.
138. Murray, 957 So. 2d at 590.
139. Id.
140. Id. at 590–91.
141. Id. at 591.
142. Id.
The core question facing the Court "is whether a list generated by a hospital, which includes a peer review committee recommendation delineating the privileges given to a member of a hospital staff, is protected from discovery under the confidentiality provisions of sections 395.0191 and 766.101, Florida Statutes." This inquiry merits an explanation from the Supreme Court of Florida as the opinions among the Florida district courts regarding this issue differ, creating a split. The Second District, which governed this case, is notably of the opinion that information resulting from peer review sessions currently in the hands of a hospital, in particular a physician's privileges, should be discoverable. That notion stands in stark contrast to the holdings emerging from the Third, Fourth, and Fifth Districts.

143. Murray, 957 So. 2d at 591.
144. Id. A protective order is "[a] court order prohibiting or restricting a party from engaging in conduct (esp. a legal procedure such as discovery) that unduly annoys or burdens the opposing party or a third-party witness." BLACK'S LAW DICTIONARY 1260 (8th ed. 2004).
145. Murray, 957 So. 2d at 591.
146. Id. Although the Supreme Court of Florida granted the production of documents in the discovery process, their rationale was different than that of the Second District. Id. at 595. The Second District's justification for reaching its decision was based upon the holding in Bayfront Medical Center, Inc. v. Agency for Health Care Admin. Id. at 593. In this case, the court held that while the records used by the peer review committee for the purpose of investigative research were privileged and undiscoverable, the final write up of their findings did not retain that same privilege and was therefore discoverable. Bayfront Med. Ctr., Inc. v. Agency for Healthcare Admin., 741 So. 2d 1226, 1229 (Fla. 2d Dist. Ct. App. 1999). However, it is important to note that this case centered on the Agency for Healthcare Administration (AHCA), which was already granted authority through certain statutes to examine particular records. Murray, 957 So. 2d at 594. The Second District in Murray amplified the reasoning in Bayfront to now permit the discovery of physician privileges in private lawsuits, which were based upon the communications and opinions of those in the peer review committee. Id. at 593.
147. Murray, 957 So. 2d at 591.
148. Id.
149. See id.
150. Id.
which are much more stringent regarding the discoverability of doctors’ privileges.\textsuperscript{151}

In first scrutinizing the rationale behind the decision in \textit{Murray}, it must be noted that the Court took the time to recognize the importance and history of peer review in Florida.\textsuperscript{152} Before rendering its justification for backing the Second District’s holding, the Court acknowledged its own consistency in finding for broad statutory protection,\textsuperscript{153} citing specifically to its decision of \textit{Cruger v. Love (Love II)},\textsuperscript{154} which has been referenced by countless other Florida decisions in the past.\textsuperscript{155} In \textit{Love II}, the Supreme Court of Florida rejected the holding in \textit{Jacksonville Medical Center, Inc. v. Akers},\textsuperscript{156} which held that a physician’s application for hospital privileges and those documents accompanying it were discoverable and not privileged.\textsuperscript{157} In recognizing the split, the Supreme Court of Florida referenced three specific district decisions, in contrast to that of the Second, and conceded that as a result of its past holdings, these district courts had followed suit and rendered similar decisions preventing the discovery of peer review materials.\textsuperscript{158} Per se, when the Second District strayed from the precedent Florida had set, it yielded the current clash.

After disagreeing with the Second District’s reasoning,\textsuperscript{159} the Court simply stated that there was “nothing in the legislative scheme for peer review that would prevent a patient from securing such information from a hospital that has granted a physician practice privileges within the hospi-

\begin{footnotes}
\item[151.] \textit{Id.} at 592; \textit{see also infra} note 196 and accompanying text. In March of 2006, The Fifth District of Florida rendered a decision in \textit{Florida Hospital Waterman, Inc. v. Buster}, in which it permitted the plaintiff during discovery to obtain hospital information and documents resulting from the peer review process. In the past, as seen in this article, the Fifth District, along with that of the Third and Fourth Districts, had been extremely steadfast in its decisions to prohibit medical malpractice victims from procuring peer review information during discovery. While this 2006 decision lends itself toward following the holding of the Second District in \textit{Brandon Regional Hospital v. Murray}, it by no means solidifies its position on the issue. \textit{See infra} note 194 and accompanying text.
\item[152.] \textit{Murray}, 957 So. 2d at 591–92.
\item[153.] \textit{Id.} at 592.
\item[154.] 599 So. 2d 111 (Fla. 1992).
\item[155.] \textit{Murray}, 957 So. 2d at 592.
\item[156.] 560 So. 2d 1313 (Fla. 1st Dist. Ct. App. 1990).
\item[157.] \textit{Murray}, 957 So. 2d at 592.
\item[158.] \textit{Id.}
\item[159.] \textit{Id.} at 594; \textit{see also supra} note 146 and accompanying text. The Supreme Court of Florida did not agree that the rationale in \textit{Bayfront Medical Center, Inc.} was appropriate and should be expanded to include malpractice litigation. \textit{Id.} The case at hand deals with parties in search of documents and information generated from peer review, as opposed to the latter which deals with AHCA. \textit{Id.} AHCA already has statutory permission to search these types of documents. \textit{Murray}, 957 So. 2d at 594.
\end{footnotes}
It was irrelevant that the peer review committee played a hand in determining which privileges were to be granted. Furthermore, the Court reasoned that the privileges granted to a physician play an elementary and vital role to any patient making the decision to permit performance of a medical procedure. Therefore, it is a patient’s right to be informed about the privileges his or her doctor possesses. Because there is nothing in the Florida Statutes that protects hospital records, even those which may be based upon peer review analysis, the Court was not willing to stretch the statutory protection to do so.

At the close of the trial, Murray’s attorney, George A. Vaka, enthusiastically stated, “[i]t just seems to me to be a huge win for patients on an issue that jumps out at me to be so basic and so fundamental.”

IV. FLORIDA DISTRICT COURT OF APPEALS SPLIT

Murray seems to be an aberration, especially at a time when Florida statutory protection has provided a strong safekeeping on peer review materials. While Florida courts seem to agree that documents, records, and information generated directly from the peer review committee are privileged, the same line of thinking has failed the Second District with regard to a hospital’s list of physicians’ privileges. As stated previously, the Second District’s holding regarding such a discovery request vastly differs from the holdings derived by the Third, Fourth, and Fifth Districts. These districts have stood strong in their almost always recurring decisions not to permit any information related to peer review to be recoverable in discovery. Murray continuously cited to the Supreme Court of Florida’s decision of Love II for support, where the Court there held that “a physician’s application for staff privileges is a record of the committee or board for pur-

160. Id.
161. Id. at 594–95.
162. Id. at 595.
163. See id.
164. Murray, 957 So. 2d at 595.
165. Ostrovsky, supra note 24. George A. Vaka is currently employed in Tampa at the law firm of Vaka, Larson & Johnson. Id.
168. Murray, 957 So. 2d at 592–93.
169. Id. at 592.
170. Id.; see also infra note 197 and accompanying text.
171. Murray, 957 So. 2d at 592.
poses of the statutory privilege.”\textsuperscript{172} Relying on past decisions such as that, the district courts in their own course of judgment have found that “[d]ocuments created or considered by a hospital peer review or credentialing committee are privileged.”\textsuperscript{173} Respectively, a list of hospital privileges granted to a physician “falls within the purview of this privilege as a matter of public policy.”\textsuperscript{174} As such, the rationale of these three districts simply does not coincide with that of the Second in \textit{Murray}.\textsuperscript{175}

The following analysis illustrates Florida cases which are in direct opposition to the decision the Supreme Court of Florida just rendered.

In \textit{Iglesias v. It’s a Living, Inc.},\textsuperscript{176} a doctor was assaulted and grievously wounded while on the property of the defendants.\textsuperscript{177} In an action for damages, the defendants sought in discovery a list of the doctor’s privileges at any hospital he was currently working at or had worked at in the past.\textsuperscript{178} The trial court granted the request for such information.\textsuperscript{179} The Third District Court of Appeals of Florida reviewed the case and held that such a decision by the trial court “departed from the essential requirements of law in ordering the discovery and that immediate relief [was] appropriate.”\textsuperscript{180} The Court’s rationale followed that these privileges were developed with the purpose of advocating outspokenness and openness in peer review communications.\textsuperscript{181} Disclosing a doctor’s privileges would destroy the candidacy of peer review and create a “‘chilling effect’” on the public.\textsuperscript{182} Because the defendants lacked a “‘showing of exceptional necessity’ or . . . ‘extraordinary circumstances’” they failed to legitimize why it was they needed such information.\textsuperscript{183}

A second illustration of a doctor’s privileges not being released in discovery was seen in \textit{Boca Raton Community Hospital v. Jones}.\textsuperscript{184} A medical malpractice suit was brought against a practicing physician, Dr. Rankin, in which claimants requested “Dr. Rankin’s applications for staff privileges,
reports of reviewing committees, and memoranda, correspondence and other
documentation indicating that the doctor was given staff privileges at the
hospital."  

Subsequent to denying protective orders, the trial court granted
the claimants' demand for the aforementioned information. On appeal, the
Fourth District Court of Appeals of Florida reversed, acknowledging the
confidentiality of that which was sought. The court held that the informa-
tion requested is not of a nature that should be disclosed and is accordingly
privileged.

In a similar case, Columbia Park Medical Center, Inc. v. Gibbs, the
husband of deceased patient, Gibbs, initiated a medical malpractice action
against the hospital. Gibbs requested production of the hospital privileges
of the two doctors who were responsible for his wife. Claiming that such
information was privileged pursuant to Florida Statute section 766.101(5),
the hospital refused to turn over the list of privileges. As per usual, the
trial court granted production of the privileges. The Fifth District Court of
Appeals of Florida reasoned that "committee reports, including documenta-
tion that a physician was given staff privileges and delineating the privileges
extended, [were] privileged from discovery.

Although the Supreme Court of Florida has already rendered a decision
regarding the discovery of a hospital's list of physician privileges, the rift
between the districts is still important. There will most certainly be analog-
gous cases in the future and, depending upon what district they originate in,
could impact the final decision of the case.

V. IMPLICATIONS OF THE DISTRICT SPLIT

Murray has left the discoverability of peer review information in Flor-
ida in a state of some abashment. Should future courts rely on the holding in
Murray and continue to presuppose that Florida peer review statutes do not
protect hospital based documents regardless of the fact that they are rooted in

185. Id.
186. Id.
187. Id.
188. See id.
189. 723 So. 2d 294 (Fla. 5th Dist. Ct. App. 1998).
190. Id. at 295.
191. Id.
192. Id.
193. Id.
194. Gibbs, 723 So. 2d at 295–96.
195. Brandon Reg'l Hosp. v. Murray, 957 So. 2d 590, 590 (Fla. 2007).
peer review communications?\textsuperscript{196} Or, do future courts trust in the past decisions of the Third, Fourth, and Fifth District Courts, and on occasion the Supreme Court of Florida, by supporting the broad construction of peer review statutes and the concealment of information in discovery proceedings?\textsuperscript{197} Regardless of whether Florida courts in the future follow the more liberal open door policy for peer review information in discovery or the iron clad non-disclosure tactic, there will be implications and benefits for both.

If future courts opt to continue in the footsteps of \textit{Murray}, medical malpractice claimants will be thrilled while hospitals and physicians will be distraught. Peer review works because the committee is comprised of experts and specialists in the field of medicine who understand what is required to practice appropriately and safely.\textsuperscript{198} These experts and specialists, usually physicians in the hospital, partake in peer review, many times against their better judgment, as statutory protection guarantees them some mode of security.\textsuperscript{199} With this in mind, if future courts yield to the holding in \textit{Murray}, and hospital information founded upon peer review decisions is leaked to the public in discovery, participating doctors will most likely entirely stop or seriously curb their involvement in this process.\textsuperscript{200} As it stands, they get paid minimally, and the risks are plentiful.\textsuperscript{201} Without complete protection, there will either be no doctors willing to participate in peer review,\textsuperscript{202} or those who do will inadequately perform and fail to speak out honestly.\textsuperscript{203} Either way, it is a catch-22.

On the upside, patients suffering from medical malpractice will benefit by having a fair and just trial with all the evidence.\textsuperscript{204} Following in the path of \textit{Murray} will no longer allow peer review boards to hide proof of hospital or physician mistakes and/or carelessness.\textsuperscript{205} Accordingly, injured patients

\textsuperscript{196} See id.
\textsuperscript{197} See Cruger v. Love (\textit{Love II}), 599 So. 2d 111, 114 (Fla. 1992) (holding that a doctor's application for staff privileges were protected by \textit{Florida Statutes} section 766.101(5)); see also Iglesias v. It's a Living, Inc., 782 So. 2d 963, 964 (Fla. 3d Dist. Ct. App. 2001) (holding that "[d]ocuments created or considered by a hospital peer review or credentialing committee are privileged"); Gibbs, 723 So. 2d at 295 (holding that a doctor's privileges at a hospital constitute privileged information); Boca Raton Cmty. Hosp. v. Jones, 584 So. 2d 220, 221 (Fla. 4th Dist. Ct. App. 1991) (holding that a doctor's application for staff privileges and evidence that he was actually given these privileges was confidential and not discoverable).
\textsuperscript{198} Hammack, supra note 57, at 439.
\textsuperscript{199} Scheutzow, supra note 4, at 16–17.
\textsuperscript{200} See Hammack, supra note 57, at 442–43.
\textsuperscript{201} Cate, supra note 48, at 480.
\textsuperscript{202} Id. at 482.
\textsuperscript{203} See Bassler, supra note 6, at 694.
\textsuperscript{204} See Moore et al., supra note 7, at 1183.
\textsuperscript{205} See Morter, supra note 16, at 1115.
will now be able to successfully asseverate their rights,\textsuperscript{206} without the discovery process interfering and hindering the growth of their case.\textsuperscript{207} Moreover, patients seeking operations will have access to the privileges their physicians possess, which will enable them to make more informed decisions about whether or not to proceed with the particular doctor they are seeing.\textsuperscript{208}

At the other end of the spectrum lie the decisions of the Third, Fourth, and Fifth District Courts.\textsuperscript{209} Should future courts choose to proceed in their footsteps, hospitals and physicians being sued for malpractice will continue to be greeted with strong statutory protection\textsuperscript{210} while those victimized will be left stranded with only bits and pieces of information supporting their claims.\textsuperscript{211} In the past, the system of peer review in Florida has generally operated according to this model of thinking.\textsuperscript{212} To rehash what has already been stated, solid statutory protection will continue to allow participants in peer review to veraciously speak their mind and formulate decisions in the best interest of the hospital and patients.\textsuperscript{213} Limiting their liability in lawsuits, physicians will maintain their active involvement in the process.\textsuperscript{214} Additionally, this type of security will permit peer review to continue operating to better the quality of hospital care and the treatment of patients.\textsuperscript{215}

Unfortunately, this approach leaves claimants with the short end of the stick. While courts have acknowledged that with strong statutory protection plaintiffs may have a difficult time prosecuting their claim, they nonetheless deem this to be irrelevant and an unconvincing justification for the disclosure of the information sought.\textsuperscript{216} As stated by critics, peer review will continue to shield vital information from patients who seek to sue hospitals thereby furthering injustice in today's judicial system.\textsuperscript{217} As such, the self policing tactic which is strongly guarded will continue to further the ""conspiracy of silence.""\textsuperscript{218}

\begin{itemize}
\item \textsuperscript{206} Cate, \textit{supra} note 48, at 482.
\item \textsuperscript{207} Newton II, \textit{supra} note 9, at 724.
\item \textsuperscript{208} Brandon Reg'l Hosp. v. Murray, 957 So. 2d 590, 595 (Fla. 2007).
\item \textsuperscript{209} \textit{See supra} note 197 and accompanying text.
\item \textsuperscript{210} \textit{See supra} note 112 and accompanying text.
\item \textsuperscript{211} \textit{See} Newton II, \textit{supra} note 9, at 724.
\item \textsuperscript{212} Murray, 957 So. 2d at 592.
\item \textsuperscript{213} Nijm, \textit{supra} note 4, at 542.
\item \textsuperscript{214} \textit{See} Moore et al., \textit{supra} note 7, at 1178.
\item \textsuperscript{215} \textit{See} Jorstad, \textit{supra} note 5, at 693.
\item \textsuperscript{216} \textit{See supra} note 113 and accompanying text.
\item \textsuperscript{217} Graham, \textit{supra} note 3, at 114.
\item \textsuperscript{218} Morter, \textit{supra} note 16, at 1115.
\end{itemize}
VI. CONCLUSION

There is a very fine line between that which Florida peer review statutes protect and that which they do not. As so clearly seen by the close of this paper, it has been the legislature's goal right from the outset to provide safe and effective medical care to patients while controlling rising health care costs. Florida peer review statutes incontestably protect records generated from the peer review process and any documents utilized in their considerations and decision-making. However, never does it state that this protection will linger long after the committee has reached their decision and new documents have been created by other medical bodies, even if based upon the committee's assessments. Murray was simply the first case in which it was acknowledged that the peer review process must end somewhere, and it starts with the privileges a doctor is granted by a hospital. As stated by the Supreme Court of Florida, this information is not of a nature that should be kept confidential as it is fundamental in any patient's decision to permit surgery. Although there is a split among the district courts, there has been limited rationale provided as to why, after a peer review committee convenes, newly generated documents founded upon some of their information or decisions should remain confidential. Perhaps after this case, physicians will be more cautious in practicing medicine in an area they are not privileged or prepared to do so as this information is now discoverable in civil litigation. Whilst the peer review process is a valuable tool to the healthcare industry, and should only continue to thrive as such, there must be boundaries. With that said, the Florida Statutes as they stand provide excellent protection for doctors participating in peer review, but it must stop there. Presently, only time will tell whether Murray was the first case in a new line of thinking or simply just an isolated decision.