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## **EMT's statements at peer review process might admissible in court**

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Many ambulance services and emergency medical technicians are under the false impression that statements made by an E.M.T. at a peer review or quality review process of an incident are confidential. Persons asked to testify before a review board should be very cautious of giving testimony or in what they state if they have any reason to believe that their actions will be the subject of a lawsuit. Ambulance services should also be wary, as they are liable for the actions or omissions of their employees and volunteers.

The law does not protect and keep confidential the statements made by a person testifying if that person later becomes a defendant in a lawsuit involving the incident before the review committee.

Public Health Law 3006 provides, in part, that "every ambulance service and advanced life support, first response service shall establish or participate in a quality improvement program, which shall be an ongoing system to monitor and evaluate the quality and appropriateness of the medical care provided by the ambulance service or advanced life support first response service, and which shall pursue opportunities to improve patient care and to resolve identified problems."

The review committee has the power to "to review the care rendered by the service, as documented in pre-hospital care reports and other materials".

Many persons believe that the information and testimony provided to the committee is confidential, because state statute provides that "The information required to be collected and maintained, including information from the pre-hospital care reporting system which identifies an individual, shall be kept confidential..."

The law further provides that "none of the records, documentation, or committee actions or records required pursuant to this section shall be subject to disclosure under article six of the public officers law or article thirty-one of the civil practice law and rules..."

However, persons that were the subject of the review should use extreme caution when testifying before the peer review committee. Public Health Law 3006(4) provides, "The prohibition related to disclosure of testimony shall not apply to the statements made by any person in attendance at such a meeting who is a party to an action or proceeding the subject of which was reviewed at the meeting."

A careful review of this exception to the rule of confidentiality is important.

An almost exact provision is present in the laws regarding a physician's testimony before a peer review process. This state's highest court has held, with regard to the exception, as follows:

"The exception is narrow and limited to statements given at an otherwise privileged peer review meeting by a party to a lawsuit which involves the same underlying conduct that is the topic of discussion at the meeting. The evident purpose of this provision is to permit discovery of statements given by a physician or other health care professional in the course

of a hospital's review of the facts and circumstances of an earlier incident which had given rise to a malpractice action."

Logue v. Valez, 92 NY2d 13 (1998).

The courts have held that the statute was not intended to provide protection to persons who are the subject of the review. Courts permit the discovery and admission into court of any statements made by individual party defendants regarding the subject of the action before the peer review board.

Therefore, statements of persons who testify about an incident who later become a defendant to a malpractice or negligence action are discoverable and admissible! Even written statements given to a peer review committee, in lieu of an appearance are admissible.

Ambulance services should also realize that they will be liable for their employees' and volunteers' actions. Thus, the testimony of those persons will be admissible and could be detrimental to an ambulance service in defending a lawsuit.

Plaintiff attorneys are likely to subpoena a list of all persons in attendance at the peer review committee to testify as to what the subject of the review stated at the hearing.

Ambulance services should also be cautious about instituting a policy which requires participation of an E.M.T. to such a proceeding.

What should the E.M.T. and the ambulance service do about participating in the peer review process? Although the law does not require an E.M.T. to give testimony at a peer review hearing, it does require the ambulance service to participate in a general peer review process. What transpires at that hearing and who participates is best left up to the ambulance service and the service's attorney.

Therefore, should any E.M.T. or ambulance service believe that certain actions or omissions may become the subject of a lawsuit, the E.M.T. and the service should both consult with their attorney prior to participating in or conducting peer review.