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SENATE BILL 514

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO THE PRACTICE OF MEDICINE; AMENDING AND ENACTING  
CERTAIN SECTIONS OF THE MEDICAL PRACTICE ACT; PROVIDING AN  
EXCEPTION TO THE PROHIBITION OF DISCLOSURE IN THE REVIEW  
ORGANIZATION IMMUNITY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-6-7.2 NMSA 1978 (being Laws 1997,  
Chapter 187, Section 3, as amended) is amended to read:

"61-6-7.2. INACTIVE LICENSE.--

A. A physician assistant license shall expire every  
two years on a date established by the board.

B. A physician assistant who notifies the board in  
writing on forms prescribed by the board may elect to place  
[his] the physician assistant's license on an inactive status.

A physician assistant with an inactive license shall be excused

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1 from payment of renewal fees and shall not practice as a  
2 physician assistant.

3 C. A physician assistant who engages in practice  
4 while ~~[his]~~ the physician assistant's license is lapsed or on  
5 inactive status is practicing without a license, and ~~[this is~~  
6 ~~grounds for discipline pursuant to the Physician Assistant Act]~~  
7 is subject to disciplinary action and penalties.

8 D. A physician assistant requesting restoration  
9 from inactive status shall pay the current renewal fee and  
10 fulfill the requirement for renewal pursuant to the Physician  
11 Assistant Act.

12 E. The board may, in its discretion, summarily  
13 suspend for nonpayment of fees the license of a physician  
14 assistant who has not renewed ~~[his]~~ the physician assistant's  
15 license within ninety days of expiration.

16 F. A physician assistant who has not submitted an  
17 application for renewal on or before the license expiration  
18 date, but who has submitted an application for renewal within  
19 forty-five days after the license expiration date, shall be  
20 assessed a late fee.

21 G. A physician assistant who has not submitted an  
22 application for renewal between forty-six and ninety days after  
23 the expiration date shall be assessed a late fee."

24 Section 2. Section 61-6-10 NMSA 1978 (being Laws 1973,  
25 Chapter 361, Section 6, as amended) is amended to read:

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1 "61-6-10. SUPERVISING LICENSED PHYSICIAN--  
2 RESPONSIBILITY.--

3 A. As a condition of licensure, all physician  
4 assistants practicing in New Mexico shall inform the board of  
5 the name of the licensed physician under whose supervision they  
6 will practice. All supervising physicians shall be licensed  
7 under the Medical Practice Act and shall be approved by the  
8 board.

9 B. Every licensed physician supervising a licensed  
10 physician assistant shall be individually responsible and  
11 liable for the performance of the acts and omissions delegated  
12 to the physician assistant, [~~Nothing in this section shall be~~  
13 ~~construed to relieve the physician assistant of responsibility~~  
14 ~~and liability for the acts and omissions of the physician~~  
15 ~~assistant]~~ provided that the physician assistant is also  
16 responsible and liable for the physician assistant's own acts  
17 omissions."

18 C. A licensed physician [~~shall not~~] may supervise  
19 [~~more than two physician assistants; except, where a physician~~  
20 ~~is working in a health facility providing health service to the~~  
21 ~~public primarily on a free or reduced fee basis, that is funded~~  
22 ~~in whole or in part out of public funds or the funds of private~~  
23 ~~charitable institutions or for good cause shown, the board may~~  
24 ~~authorize a greater number upon a finding that the program~~  
25 ~~provides adequate supervision of the physician assistants]~~ that

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1 number of physician assistants as permitted by the board."

2 Section 3. Section 61-6-10.6 NMSA 1978 (being Laws 2001,  
3 Chapter 311, Section 6) is amended to read:

4 "61-6-10.6. INACTIVE LICENSE.--

5 A. An anesthesiologist assistant who notifies the  
6 board in writing on forms prescribed by the board may elect to  
7 place ~~[his]~~ the anesthesiologist assistant's license on  
8 inactive status. An anesthesiologist assistant with an  
9 inactive license shall be excused from payment of renewal fees  
10 and shall not practice as an anesthesiologist assistant.

11 B. An anesthesiologist assistant who engages in  
12 practice while ~~[his]~~ the anesthesiologist assistant's license  
13 is lapsed or on inactive status is practicing without a license  
14 and is subject to disciplinary action ~~[pursuant to the~~  
15 ~~Anesthesiologist Assistants Act]~~ and penalties.

16 C. An anesthesiologist assistant requesting  
17 restoration from inactive status shall pay the current renewal  
18 fee and fulfill the requirement for renewal pursuant to the  
19 Anesthesiologist Assistants Act."

20 Section 4. Section 61-6-10.10 NMSA 1978 (being Laws 2001,  
21 Chapter 311, Section 10) is amended to read:

22 "61-6-10.10. SUPERVISING ANESTHESIOLOGIST--  
23 RESPONSIBILITIES.--

24 A. Supervising anesthesiologists shall be licensed  
25 to practice pursuant to the Medical Practice Act and shall be

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1 approved by the board.

2 B. The anesthesiologist actually supervising the  
3 licensed anesthesiologist assistant at the time is individually  
4 responsible and liable for the acts and omissions that the  
5 anesthesiologist assistant performs in the scope of ~~[his]~~ the  
6 anesthesiologist assistant's duties; ~~[Nothing in the~~  
7 ~~Anesthesiologist Assistants Act relieves a supervising~~  
8 ~~anesthesiologist of the responsibility and liability of his own~~  
9 ~~acts or omissions]~~ provided that the anesthesiologist assistant  
10 is also responsible and liable for the anesthesiologist  
11 assistant's own acts and omissions.

12 C. An anesthesiologist may ~~[have]~~ supervise that  
13 number of anesthesiologist assistants ~~[under his supervision]~~  
14 as permitted by the board."

15 Section 5. Section 61-6-15 NMSA 1978 (being Laws 1969,  
16 Chapter 46, Section 6, as amended) is amended to read:

17 "61-6-15. LICENSE MAY BE REFUSED, REVOKED OR  
18 SUSPENDED--LICENSEE MAY BE FINED, CENSURED OR REPRIMANDED--  
19 PROCEDURE--PRACTICE AFTER SUSPENSION OR REVOCATION--PENALTY--  
20 UNPROFESSIONAL AND DISHONORABLE CONDUCT DEFINED--FEES AND  
21 EXPENSES.--

22 A. The board may refuse to license and may revoke  
23 or suspend a license that has been issued by the board or a  
24 previous board and may fine, censure or reprimand a licensee  
25 upon satisfactory proof being made to the board that the

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1 applicant for or holder of the license has been guilty of  
2 unprofessional or dishonorable conduct. The board may also  
3 refuse to license an applicant who is unable to practice  
4 medicine, or practice as a physician assistant or an  
5 anesthesiologist assistant, pursuant to Section 61-7-3 NMSA  
6 1978. All proceedings shall be as required by the Uniform  
7 Licensing Act or the Impaired Health Care Provider Act.

8 B. The board may, in its discretion and for good  
9 cause shown, place the licensee on probation on the terms and  
10 conditions it deems proper for protection of the public, for  
11 the purpose of rehabilitation of the probationer or both. Upon  
12 expiration of the term of probation, if a term is set, further  
13 proceedings may be abated by the board if the holder of the  
14 license furnishes the board with evidence that the licensee is  
15 competent to practice, is of good moral character and has  
16 complied with the terms of probation.

17 C. If evidence fails to establish to the  
18 satisfaction of the board that the licensee is competent and is  
19 of good moral character or if evidence shows that the licensee  
20 has not complied with the terms of probation, the board may  
21 revoke or suspend the license. If a license to practice in  
22 this state is suspended, the holder of the license may not  
23 practice during the term of suspension. A person whose license  
24 has been revoked or suspended by the board and who thereafter  
25 practices or attempts or offers to practice in New Mexico,

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1 unless the period of suspension has expired or been modified by  
2 the board or the license reinstated, is guilty of a felony and  
3 shall be punished as provided in Section 61-6-20 NMSA 1978.

4 D. "Unprofessional or dishonorable conduct", as  
5 used in this section, means, but is not limited to because of  
6 enumeration, conduct of a licensee that includes the following:

7 (1) procuring, aiding or abetting a criminal  
8 abortion;

9 (2) employing a person to solicit patients for  
10 the licensee;

11 (3) representing to a patient that a  
12 manifestly incurable condition of sickness, disease or injury  
13 can be cured;

14 (4) obtaining a fee by fraud or  
15 misrepresentation;

16 (5) willfully or negligently divulging a  
17 professional confidence;

18 (6) conviction of an offense punishable by  
19 incarceration in a state penitentiary or federal prison or  
20 conviction of a misdemeanor associated with the practice of the  
21 licensee. A copy of the record of conviction, certified by the  
22 clerk of the court entering the conviction, is conclusive  
23 evidence;

24 (7) habitual or excessive use of intoxicants  
25 or drugs;

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1 (8) fraud or misrepresentation in applying for  
2 or procuring a license to practice in this state or in  
3 connection with applying for or procuring renewal, including  
4 cheating on or attempting to subvert the licensing  
5 examinations;

6 (9) making false or misleading statements  
7 regarding the skill of the licensee or the efficacy or value of  
8 the medicine, treatment or remedy prescribed or administered by  
9 the licensee or at the direction of the licensee in the  
10 treatment of a disease or other condition of the human body or  
11 mind;

12 (10) impersonating another licensee,  
13 permitting or allowing a person to use the license of the  
14 licensee or practicing as a licensee under a false or assumed  
15 name;

16 (11) aiding or abetting the practice of a  
17 person not licensed by the board;

18 (12) gross negligence in the practice of a  
19 licensee;

20 (13) manifest incapacity or incompetence to  
21 practice as a licensee;

22 (14) discipline imposed on a licensee by this  
23 state or another state, including denial, probation, suspension  
24 or revocation, based upon acts by the licensee similar to acts  
25 described in this section. A certified copy of the record of

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1 suspension or revocation of the state making the suspension or  
2 revocation is conclusive evidence;

3 (15) the use of a false, fraudulent or  
4 deceptive statement in a document connected with the practice  
5 of a licensee;

6 (16) fee splitting;

7 (17) the prescribing, administering or  
8 dispensing of narcotic, stimulant or hypnotic drugs for other  
9 than accepted therapeutic purposes;

10 (18) conduct likely to deceive, defraud or  
11 harm the public;

12 (19) repeated similar negligent acts;

13 (20) employing abusive billing practices;

14 (21) failure to report to the board any  
15 adverse action taken against the licensee by:

16 (a) another licensing jurisdiction;

17 (b) a peer review body;

18 (c) a health care entity;

19 (d) a professional or medical society or  
20 association;

21 (e) a governmental agency;

22 (f) a law enforcement agency; or

23 (g) a court for acts or conduct similar  
24 to acts or conduct that would constitute grounds for action as  
25 defined in this section;

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1 (22) failure to report to the board surrender  
2 of a license or other authorization to practice in another  
3 state or jurisdiction or surrender of membership on any medical  
4 staff or in any medical or professional association or society  
5 following, in lieu of and while under disciplinary  
6 investigation by any of those authorities or bodies for acts or  
7 conduct similar to acts or conduct that would constitute  
8 grounds for action as defined in this section;

9 (23) failure to furnish the board, its  
10 investigators or representatives with information requested by  
11 the board;

12 (24) abandonment of patients;

13 (25) being found mentally incompetent or  
14 insane by a court of competent jurisdiction;

15 (26) injudicious prescribing, administering or  
16 dispensing of a drug or medicine;

17 (27) failure to adequately supervise, as  
18 provided by board rule, a medical or surgical assistant or  
19 technician or professional licensee who renders health care;

20 (28) sexual contact with a patient or person  
21 who has authority to make medical decisions for a patient,  
22 other than the spouse of the licensee;

23 (29) conduct unbecoming in a person licensed  
24 to practice or detrimental to the best interests of the public;

25 (30) the surrender of a license or withdrawal

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1 of an application for a license before another state licensing  
2 board while an investigation or disciplinary action is pending  
3 before that board for acts or conduct similar to acts or  
4 conduct that would constitute grounds for action pursuant to  
5 this section;

6 (31) sexual contact with a former mental  
7 health patient of the licensee, other than the spouse of the  
8 licensee, within one year from the end of treatment;

9 (32) sexual contact with a patient when the  
10 licensee uses or exploits treatment, knowledge, emotions or  
11 influence derived from the previous professional relationship;

12 (33) improper management of medical records,  
13 including failure to maintain timely, accurate, legible and  
14 complete medical records;

15 (34) failure to provide pertinent and  
16 necessary medical records to a physician or patient of the  
17 physician in a timely manner when legally requested to do so by  
18 the patient or by a legally designated representative of the  
19 patient;

20 (35) undertreatment of pain as provided by  
21 board rule;

22 (36) interaction with physicians, hospital  
23 personnel, patients, family members or others that interferes  
24 with patient care or could reasonably be expected to adversely  
25 impact the quality of care rendered to a patient;

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1                   (37) soliciting or receiving compensation by a  
2 physician assistant or anesthesiologist assistant from a person  
3 who is not an employer of the assistant; or

4                   (38) willfully or negligently divulging  
5 privileged information or a professional secret.

6                   E. As used in this section, "fee splitting"  
7 includes offering, delivering, receiving or accepting any  
8 unearned rebate, refunds, commission preference, patronage  
9 dividend, discount or other unearned consideration, whether in  
10 the form of money or otherwise, as compensation or inducement  
11 for referring patients, clients or customers to a person,  
12 irrespective of any membership, proprietary interest or co-  
13 ownership in or with a person to whom the patients, clients or  
14 customers are referred.

15                   F. Licensees whose licenses are in a probationary  
16 status shall pay reasonable expenses for maintaining  
17 probationary status, including laboratory costs when laboratory  
18 testing of biological fluids are included as a condition of  
19 probation."

20                   Section 6. A new section of the Medical Practice Act,  
21 Section 61-6-15.1 NMSA 1978, is enacted to read:

22                   "61-6-15.1. [NEW MATERIAL] SUMMARY SUSPENSION.--

23                   A. The board may summarily suspend or restrict a  
24 license without a hearing, simultaneously with or at any time  
25 after the initiation of proceedings for a hearing provided

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1 under the Uniform Licensing Act, if the board finds that  
2 evidence in its possession indicates that:

3 (1) the licensee poses a clear and immediate  
4 danger to the public health and safety if the licensee  
5 continues to practice;

6 (2) the licensee has been adjudged mentally  
7 incompetent or insane by a final order or adjudication by a  
8 court of competent jurisdiction; or

9 (3) the licensee has plead guilty to or been  
10 found guilty of a felony drug abuse offense or for any violent  
11 criminal offense in this state or a substantially equivalent  
12 criminal offense in another jurisdiction.

13 B. No licensee is required to comply with a summary  
14 action until service has been made or the licensee has actual  
15 knowledge of the order, whichever occurs first.

16 C. A person whose license is suspended or  
17 restricted under this section is entitled to a hearing by the  
18 board pursuant to the Uniform Licensing Act within fifteen days  
19 from the date the licensee requests a hearing."

20 Section 7. Section 61-6-16 NMSA 1978 (being Laws 1989,  
21 Chapter 269, Section 12, as amended) is amended to read:

22 "61-6-16. REPORTING OF SETTLEMENTS AND JUDGMENTS,  
23 PROFESSIONAL REVIEW ACTIONS AND ACCEPTANCE OF SURRENDERED  
24 LICENSE--IMMUNITY FROM CIVIL DAMAGES--PENALTY.--

25 A. All entities that make payments under a policy

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1 of insurance, self-insurance or otherwise in settlement or  
2 satisfaction of a judgment in a medical malpractice action or  
3 claim, hospitals, health care entities and professional review  
4 bodies shall report to the board all payments relating to  
5 malpractice actions or claims arising in New Mexico that  
6 involve a licensee, all appropriate professional review actions  
7 of licensees and the acceptance or surrender of clinical  
8 privileges by a licensee while under investigation or in lieu  
9 of an investigation. For the purposes of this section, the  
10 meaning of these terms shall be as contained in Section 431 of  
11 the federal Health Care Quality Improvement Act of 1986, 42  
12 USCA Section 11151.

13 B. The hospitals required to report under this  
14 section, health care entities or professional review bodies  
15 that provide such information in good faith shall not be  
16 subject to suit for civil damages as a result of providing the  
17 information.

18 C. A hospital, health care entity or professional  
19 review body failing to comply with the reporting requirements  
20 provided in this section shall be subject to civil penalty not  
21 to exceed ten thousand dollars (\$10,000)."

22 Section 8. Section 61-6-19 NMSA 1978 (being Laws 1989,  
23 Chapter 269, Section 15, as amended) is amended to read:

24 "61-6-19. FEES.--

25 A. The board shall impose the following fees:

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1 (1) an application fee not to exceed four  
2 hundred dollars (\$400) for licensure by endorsement as provided  
3 in Section 61-6-13 NMSA 1978;

4 (2) an application fee not to exceed four  
5 hundred dollars (\$400) for licensure by examination as provided  
6 in Section 61-6-11 NMSA 1978;

7 (3) a triennial renewal fee not to exceed four  
8 hundred fifty dollars (\$450);

9 (4) a fee of twenty-five dollars (\$25.00) for  
10 placing a physician's license or a physician assistant's  
11 license on inactive status;

12 (5) a late fee not to exceed one hundred  
13 dollars (\$100) for physicians who renew their license within  
14 forty-five days after the required renewal date;

15 (6) a late fee not to exceed two hundred  
16 dollars (\$200) for physicians who renew their licenses between  
17 forty-six and ninety days after the required renewal date;

18 (7) a reinstatement fee not to exceed six  
19 hundred dollars (\$600) for reinstatement of a revoked,  
20 suspended or inactive license;

21 (8) a reasonable administrative fee for  
22 verification and duplication of license or registration and  
23 copying of records;

24 (9) a reasonable publication fee for the  
25 purchase of a publication containing the names of all

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1 practitioners licensed under the Medical Practice Act;

2 (10) an impaired physician fee not to exceed  
3 one hundred fifty dollars (\$150) for a three-year period;

4 (11) an interim license fee not to exceed one  
5 hundred dollars (\$100);

6 (12) a temporary license fee not to exceed one  
7 hundred dollars (\$100);

8 (13) a postgraduate training license fee not  
9 to exceed fifty dollars (\$50.00) annually;

10 (14) an application fee not to exceed one  
11 hundred fifty dollars (\$150) for physician assistants applying  
12 for initial licensure;

13 (15) a licensure fee not to exceed one hundred  
14 fifty dollars (\$150) for physician assistants biennial  
15 licensing and registration of supervising licensed physician;

16 (16) a late fee not to exceed fifty dollars  
17 (\$50.00) for physician assistants who renew their licensure  
18 within forty-five days after the required renewal date;

19 (17) a late fee not to exceed seventy-five  
20 dollars (\$75.00) for physician assistants who renew their  
21 licensure between forty-six and ninety days after the required  
22 renewal date;

23 (18) a reinstatement fee not to exceed one  
24 hundred dollars (\$100) for physician assistants who reinstate  
25 an expired license;

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1 (19) a processing fee not to exceed fifty  
2 dollars (\$50.00) for each change of a supervising licensed  
3 physician for a physician assistant;

4 (20) a fee not to exceed three hundred dollars  
5 (\$300) annually for a physician supervising a clinical  
6 pharmacist; [~~and~~]

7 (21) an application and renewal fee for a  
8 telemedicine license not to exceed four hundred dollars (\$400);

9 (22) a reasonable administrative fee, not to  
10 exceed the current cost of application for a license, may be  
11 charged for reprocessing applications and renewals that include  
12 minor but significant errors, and would otherwise be subject to  
13 investigation and possible disciplinary action; and

14 (23) a reasonable fee as established by the  
15 department of public safety for nationwide and statewide  
16 criminal history screening of applicants and licensees.

17 B. All fees are nonrefundable and shall be used by  
18 the board to carry out its duties efficiently."

19 Section 9. Section 61-6-23 NMSA 1978 (being Laws 1989,  
20 Chapter 269, Section 19, as amended) is amended to read:

21 "61-6-23. INVESTIGATION--SUBPOENA.--

22 A. To investigate a complaint against a licensee,  
23 the board may issue investigative subpoenas prior to the  
24 issuance of a notice of contemplated action.

25 B. A review organization, acting pursuant to the

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1 Review Organization Immunity Act, shall comply with an  
2 investigative subpoena issued pursuant to this section, but  
3 only after the review organization has taken action against a  
4 health care provider that is licensed by the board. All  
5 records received by the board from a review organization:

6 (1) are confidential and not public records  
7 for the purposes of the Inspection of Public Records Act; and

8 (2) the review organization's compliance with  
9 the investigative subpoena shall not be deemed a waiver of any  
10 provision of the Review Organization Immunity Act by the review  
11 organization."

12 Section 10. Section 61-6-24 NMSA 1978 (being Laws 1989,  
13 Chapter 269, Section 20) is amended to read:

14 "61-6-24. LIMITATIONS ON ACTIONS.--

15 A. No action that would have any of the effects  
16 specified in Sections [~~61-6-8~~ and] 61-6-15 and 61-6-15.1 NMSA  
17 1978 may be initiated by the board later than two years after  
18 it is brought to the board's attention.

19 B. The time limitation contained in Subsection A of  
20 this section shall be tolled by any civil or criminal  
21 litigation in which the licensee or applicant is a party  
22 arising substantially from the same facts, conduct, transaction  
23 or transactions [~~which~~] that would be the basis of the board's  
24 decision."

25 Section 11. Section 61-6-35 NMSA 1978 (being Laws 1979,

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1 Chapter 40, Section 2, as amended) is amended to read:

2 "61-6-35. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--

3 The New Mexico medical board [~~of medical examiners~~] is  
4 terminated on July 1, 2009 pursuant to the Sunset Act. The  
5 board shall continue to operate according to the provisions of  
6 the Medical Practice Act until July 1, 2010. Effective July 1,  
7 2010, the Medical Practice Act is repealed."

8 Section 12. Section 41-9-5 NMSA 1978 (being Laws 1979,  
9 Chapter 169, Section 5) is amended to read:

10 "41-9-5. CONFIDENTIALITY OF RECORDS OF REVIEW

11 ORGANIZATION.--All data and information acquired by a review  
12 organization in the exercise of its duties and functions shall  
13 be held in confidence and, unless subpoenaed pursuant to  
14 Subsection B of Section 61-6-23 NMSA 1978, shall not be  
15 disclosed to anyone except to the extent necessary to carry out  
16 one or more of the purposes of the review organization or in a  
17 judicial appeal from the action of [~~a~~] the review organization.  
18 No person described in Section [~~4 of the Review Organization~~  
19 ~~Immunity Act~~] 41-9-4 NMSA 1978 shall disclose what transpired  
20 at a meeting of a review organization except to the extent  
21 necessary to carry out one or more of the purposes of [~~a~~] the  
22 review organization or in a judicial appeal from the action of  
23 [~~a~~] the review organization. Information, documents or records  
24 otherwise available from original sources shall not be immune  
25 from discovery or use in any civil action merely because they

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1 were presented during proceedings of a review organization, nor  
2 shall any person who testified before a review organization or  
3 who is a member of a review organization be prevented from  
4 testifying as to matters within ~~[his]~~ the person's knowledge,  
5 but a witness cannot be asked about opinions formed by ~~[him]~~  
6 the witness as a result of the review organization's hearings."

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