



Legislative History for Connecticut Act

SB 245 PA 446 1980

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JOINT  
STANDING  
COMMITTEE  
HEARINGS

JUDICIARY  
PART 2  
309-577

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HB5502

MR. FLEISCHMANN: (continued)

They had watchmakers busy constructing tremendous models of circles within circles whirling around in order to produce the same results that the very simple solar system model produced with a single sun at the center and all the planets around. As a very complicated model and you have to have the watchmaker make an adjustment to every planet every every time a new observational datum came in.

That's what this statute is. It is a multiple complexity piled upon complexity and the reason it is so complicated is because everytime the legislature recognizes that an adjustment is necessary to create another exception. That kind of problem was solved in the world of science by the replacement of the simple logical model for what has become an unwieldy and very clearly unscientific and unjustifiable model.

I suggest that the goal is clearly a desirable goal for the protection of the consumer but that goal is not usefully met by imposing a fixed limitation. The 18% limit which was drafted became in the course of week an unworkable limit and that in itself demonstrates -- I'm suggesting exactly that. I'm suggesting precisely that. Exactly. They came in. The word to the best of my knowledge came in about the twelfth century with St. Thomas Aquinas. That's the art and goes back that far. And a modern economy operates only on wholly different premises and it's time that this is important.

I believe that there are a variety of them. I believe that there are a great many which have none. I don't want to specify certain ones in general. That is the trend. Probably can be worked out in some research center. But I believe in a general statement there are many.

SEN. DE PIANO: Robert Brunell.

MR. ROBERT J. BRUNELL: My name is Robert J. Brunell. And I reside at 91 Barnett Street in New Haven. I am here as the Assistant Executive Director for Education and Science of the Connecticut Medical Society and my remarks are made on behalf of the society in reference to raised committee bill No. 245, an act concerning medical review committees.

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MR. BRUNELL: (continued)

We have a position of opposition to this bill as it is written. Reluctant opposition because the Connecticut State Medical Society has in past sessions supported bills that were designed to strengthen peer review immunity by -- Yes

SEN. DE PIANO: The Connecticut Medical Society (speaker inaudible).

MR. BRUNELL: We have supported bills that would strengthen peer review immunity by the substitution of the word opinion in the bill -- exactly as it is here. And in fact the stated purpose of the bill is to do just this. And in fact were all the bill involved we certainly would be inclined to support it. We feel that this was the clear legislative intent of the law as it was passed in 1976 but we are back again as a result of the laws having received interpretations in the lower courts subsequently.

As part of the written testimony (speaker inaudible) the legislative history that few immunity acts in the society journal are -- makes this intent evident from the testimony on the floor of the legislature. However, the scientific intent also has language in the latter part of it who's impact on the peer review process and extremely delicate process is difficult to predict and we fear would be impaired.

In providing for the use of data discussed and developed during peer review proceedings in actions concerning licensure as is proposed in the last part of the bill it would appear that as a result the standards of evidence and the quality of due process in the period you're preceding not quite informal would have to be drastically upgraded and formalized to the level provided for in the six position act in the proceedings concomitant to the disciplining of positions upon establishing the marital complaints.

If this were done, the peer review were to be used in this setting then at the hospital level peer review for purposes of patient evaluation, purposes of cost containment, utilization review, the delineation of physician's privileges in the hospitals would become unworkable, impractical and unpopular among professionals.

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SEN. DE PIANO: That's what the hospitals wanted.

MR. BRUNELL: I'm speaking for the State Medical Society.

SEN. DE PIANO: Well. Do I understand this bill correctly. That what this bill does is the peer review committee looks over the charts of the various people admitted to the hospital.

MR. BRUNELL: Yes.

SEN. DE PIANO: If they find that the care for that particular patient is not up to the standards that they feel it should be that they'd like to be able to take some action against that particular physician. Like in the old days when everyone is having their appendix out and they all turned out to be normal and there were a few abusers of that --

MR. BRUNELL: Yes and the ultimate sanction might be the removal or the -- Of course but the delineation of privileges from the hospital's point of view is in itself an internal process to the hospital and is itself a peer review process. We have no problem with that.

SEN. DE PIANO: Okay. All you're doing is taking that same peer review and going over not only for purposes of malpractice, loss of license or loss of staff liberty. That's all this is doing.

MR. BRUNELL: My point is that the at present peer review processes are not conducted under standards of evidence and standards of due process. That wouldn't be fair to the physician if his license were to depend on it. The fact is the --

SEN. DE PIANO: There is only one bit of evidence to be used under the due process to take away somebody's privileges.

MR. BRUNELL: I agree with that. We don't have any argument with that and, as a matter of fact, I think the State Department of Health could well enforce more rigidly its requirements to hospitals report termination and restriction of privileges and then under its own act it has the investigatory authority to do in there and get as those original documents and x-rays and whatever else. Set up its own panel of experts and likes and come to the same conclusion.

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SEN. DE PIANO: They can still do this under this bill. All this is saying is that whatever the peer review committee in that hospital who does not have the right to suspend anybody or the right to take anyone's life. That that information is going to be made available to a licensure hearing. That's all it does.

MR. BRUNELL: The law already requires that the hospital report a physician who appears to be a danger to the patients. And again we have never objected to that bill at all. The problem is the peer review process is a valuable one for the purposes that I've mentioned in which when the doctors feel that by their frankness and free wheeling discussion within this staff they are exposing themselves to possible surfaces beyond what there is.

SEN. DE PIANO: If that's the Connecticut Medical Association standards they are somewhat concerned about the whole bill because, in fact, what you're saying is if you commit malpractice the information that the peer review level is not available to the person who's had the injury from the malpractice. On the other hand, if it's going to affect some doctor's license that committed that act of malpractice we don't want it used.

MR. BRUNELL: You're saying that's what I said.

SEN. DE PIANO: Is that what you said.

MR. BRUNELL: No. I didn't say that. I said that the law provides all the authority that the medical examining board needs for the investigation of reports for the litigation of privileges. I'm not saying it hurts the doctor. It's not going to hurt any doctor that doesn't have a reason to be hurt. It hurts the peer review process by formalizing it to the extent that physicians if they feel that by their free wheeling comments in the quality of care evaluation which is strictly educational for the improvement of patient care. What it does is make the educational process a disciplinary one and the two do not mix within a professional setting.

SEN. DE PIANO: Peer review is not for educational purposes out in California.

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MR. BRUNELL: No it's for the litigation of privileges as well.

SEN. DE PIANO: We're also trying to correct bad medicine.

MR. BRUNELL: And the restriction of privileges is the reportable to the State Department of Health and the State Department of Health is authorized to investigate and arrive at the reasons for that litigation.

SEN. DE PIANO: What are the records of the Connecticut Medical Association. Who took a vote to give this position. That's what I'm curious about.

MR. BRUNELL: The position of this is based on our past positions on peer review to keep the process within the hospital setting for specific purposes which are not disciplinary.

SEN. DE PIANO: Which division of the Connecticut Medical Association voted to take this stand you don't have the right to make a mistake. That's all I'm asking. Because I'd like to be able to tell the people who are in favor of this bill and which are doctors this is the position and this is the Executive Board, Directors, whoever it might be.

MR. BRUNELL: This is based on existing policies of similar bills that have come before us in past years which have voted on and expressed the intent and the necessity to try to insulate the peer review process from the disciplinary process not in order to shield doctors but in order to make the examination of patient care the promotion of education and upgrading of standards within a practice within hospitals a practical reality. Obviously if immunity is in question physicians are not going to be as free wheeling and as aggressive as they should be in criticizing care that might be delivered. And that's the only reason.

The reason for the opposition to this particular part of the bill the rest of which we could easily support is that the last provision would impair the integrity and feasibility of this very process for the many important services it now serves and I do not think it would do this without enhancing the effectiveness of the disciplinary powers of the State Medical Examining Board. And nevertheless in spite of this we would express support for the strengthening of language

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MR. BRUNELL: (continued)

proposed in the first part of the bill and indeed for specifying that such immunity would not shield original documents that happen to be used during the peer review process. This was part of previous bills and I think it's a valid one. No one wants to shield documents that should be available to plaintiffs or defendants in later civil cases. This applies only to the proceedings of the committee itself and not its documentary sources.

SEN. DE PIANO: Okay. Thank you very much.

MR. BRUNELL: Your welcome.

SEN. DE PIANO: Robert Madresh.

MR. RICHARD MADRESH: Chairman, I am Richard W. Madresh, Northeast Region Manager, Commercial Loan Financing of the General Electric Credit Corporation. Headquarters in Stamford, Conn. I'm accompanied this morning by Lobbyist Green, Associate General Counsel for the credit corporation.

We endorse the earlier comments made by Mr. Reisman on behalf of the NCFC referencing bill 5502. While GECC applauds your efforts and the efforts of this committee of it to address the needs of the Connecticut Bar we're convinced that the raised committee bill no. 5502 as recorded cannot accomplish those goals. Accordingly, GECC supports the bill with an amendment permits the charge of interest rates above 18% on commercial loans to quote the bar.

SEN. DE PIANO: Not if you keep the same ratio you have now.

MR. MADRESH: Yes.

SEN. DE PIANO: Are you suggesting 24%.

MR. MADRESH: 24 - 26% that Mr. Reisman indicated earlier when the original bill was approved there was a spread between prime and corporate rate and it was somewhere in the range of 8 or 9 1/2. That would put it today about 26%. As you know, prime candidates for commercial loans are the small and medium size manufacturers, wholesalers and distributors.

MR. J. Q. TILSON: Mr. Chairman. I am J. Q. Tilson, 195 First Street, New Haven. General Counsel for the Connecticut Hospital Association and I'm speaking in support of committee bill 245 which is a medical review committee proceedings bill.

SEN. DE PIANO: Let's see now. The Connecticut Hospital Association is for this bill and the Connecticut Medical Association is against it.

MR. TILSON: Well, I was astonished at the position of the State Medical Society on this bill. I think if I had known this in advance when the bill was being drafted the bill could easily have stopped at the end of line 27. It is the final clause that the Connecticut Medical Association is objecting too.

In drawing up the bill in its original form I consolidated to ask two or three other states but there was no intention to do anything that would in any way harm the doctors and I did not and do not think that the provided clause can anyway adversely affects them. But as far as the basic thrust of the bill is concerned what we're concerned with is that down through the end of line 27 which is in effect to change the word opinions to proceedings and make all the proceedings of the medical review committee unsuptionable in court.

This is similar to a bill that Rep. Anastasia introduced last session. It was brought about by a case involving St. Vincent's Hospital where in a malpractice action the court held that the word opinions was rather narrow in context and that the only thing that was protected under the states as it now exists were opinions and that other proceedings of the peer review committee could be subpoenaed in court.

This has caused a great deal of a problem in the hospital as I represent a number of hospitals individually as well as the association and I have had a string of calls over the last two or three years at hospitals seriously considering wiping their peer review committees. I said -- my own advise has been I think that that would be a mistake. I hope that the legislature will --

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- SEN. DE PIANO: If the doctors think that their opinions should be contained within themselves for peer review and yet not to use against a particular who may have come up with three or four acts of malpractice. Makes me look twice at this bill. I mean it's you against the general public and not against the doctors.
- MR. TILSON: The reason for the proviso clause in there and as I say it's taken from the acts of one or two other states is that it permits the hospital in the disciplinary actions to review the activities of such a committee and I frankly did not know of any objection to such a proceeding and it frankly seems entirely harmless to me. But I would not want the --
- SEN. DE PIANO: But I don't think they can have it both ways. I don't think they can protect themselves against the person who is subject to malpractice and then say we don't want that same protection against us.
- MR. TILSON: We consider a very important bill. The proceedings a part of it. And as I say I don't think anybody's going to be hurt in the medical profession by the last proviso but in the final analysis if that's the reason that the bill would stand to fall I would favor taking it out. I do think that it's too bad that we didn't have this information well in advance in the medical society. Perhaps we could have sat down and worked out a bill that would have not brought this particular reaction from the society.
- And I would be very happy to sit down with representatives of your committee and the society and see what the revamping problem is. Frankly, we thought that this was a bill that they were enthusiastically for and I gather they are in favor of it up to the end of line 27.
- SEN. DE PIANO: As long as it doesn't touch them.
- MR. TILSON: Well, I think --
- SEN. DE PIANO: Let's be honest with one another.
- MR. TILSON: I don't represent the society but I don't think that really is with Mr. Brunell was saying. I think he's concerned

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- MR. TILSON: (continued)  
perhaps with the procedure aspects of it.
- SEN. DE PIANO: He said it would be impractical and unpopular among practitioners. To have them use the peer review materials in a suspension proceeding.
- MR. TILSON: As I say I think it's important to hospitals. It's important to the medical profession to have a good knock down drag out session in its peer review committee where people can take positions that they might not otherwise take if they thought they were going to be subpoenaed in the middle of a malpractice case. And that is what the bill is designed for. The last part of it was to keep it simply part of the regular hospital disciplinary procedure.
- Maybe it doesn't belong there. Maybe the state licensing laws --
- SEN. DE PIANO: What you're saying is that the first part would protect the doctors and the inconvenience of his opinions being given in a malpractice case. On the other hand, the second part of this protects -- is not a protection for the public really. It's a protection for better medical in the hospital I suppose. Protected by here is not protection for the public.
- MR. TILSON: The first part of the bill is I think a protection not only to the doctors but to the hospitals. We need the committees. We are finding that in the way the law is written now where only the opinions are protected --
- SEN. DE PIANO: What good is that committee if they can't do something to change the proper doctors --
- MR. TILSON: There are other ways to approach in a hospital. What happens is if a doctor is felt to be engaging in practices there are hospital disciplinary procedures to handle that situation. That will prevail whether or not this bill is passed, whether or not the proviso is in there. I have participated in a considerable number of those proceedings. They are usually worked out through a committee of the medical staff of the hospital. There is a Credentials Committee. They conduct full-fledged hearings into it and that will go on, I can assure you regardless of

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MR. TILSON: (continued)

whether the proviso clause is put in here or not. I think what worries the doctors is that somehow or other this is an extra kind of a proceeding. We have fully adequate ways of getting at this thing internally and I don't think the doctors could have any objection to that.

I think what they fear in this is having a second kind of a committee to it. If that is their worry. It was certainly not intentional. And I don't think it's necessary

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SEN. DE PIANO: Rep. Anastasia.

REP. LAWRENCE ANASTASIA: Thank you, Mr. Chairman. Mr. Tilson, as you are well aware as everybody else is, the time that the Public Health Committee has spent on this particular issue. I myself personally feel we've got to do a lot more study in this particular area. If so, I understand your feelings. Are you saying that if in fact we eliminate line 27 through 20, well 28 that you would still be in favor of the bill.

MR. TILSON: Yes.

REP. ANASTASIA: And feel that it will be in fact effective in some regards.

MR. TILSON: I think it will be very effective and will fulfill immediate needs the proviso clause maybe it needs some further study at another time. But if we put a period at the end of proceedings in the 27th line it would do what we ask the bill to do.

REP. ANASTASIA: But you do agree that further study is necessary on this particular subject matter.

MR. TILSON: I don't really think necessary with the exception of the last three lines.

REP. ANASTASIA: Thank you.

SEN. DE PIANO: Thanks very much. John -- I can't read the last name - Jevne. It looks like Jevne. Am I correct.



## The Connecticut State Medical Society

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### POSITION STATEMENT OF THE CONNECTICUT STATE MEDICAL SOCIETY

160 ST. RONAN STREET  
NEW HAVEN, CONNECTICUT 06511  
865-0587

Raised Committee Bill #245

AN ACT CONCERNING MEDICAL REVIEW COMMITTEES

POSITION: OPPOSED

The Connecticut State Medical Society has in past sessions supported bills to strengthen peer review immunity by the substitution of "proceedings and records" for the word "opinions" in subsection (d) of Section 38-19a. The stated purpose of this bill is to do the same, and if that were all it involved, we would be inclined to support it. This was the clear legislative intent of the law as passed in 1976, but it has received varying interpretations in the lower courts subsequently. We submit a legislative history of Connecticut's Peer Review Immunity Statute published last fall in the CSMS Journal, which makes this intent evident. (Attached)

However, this bill also has language whose impact on the peer review process is difficult to predict. In providing for the use of data discussed or developed during peer review proceedings in actions concerning licensure, it would appear that standards of evidence and of due process in the peer review proceeding would have to be drastically upgraded and formalized to the levels provided in the "Sick Physician Act." This would make peer review for purposes of patient care evaluation, cost containment, delineation of privileges, etc., impractical and unpopular among practitioners.

It hardly seems necessary to confuse processes proper to education, quality control, or utilization review, or privilege delineation, with the ultimate legal disciplinary process. After all, the law already mandates the reporting by hospitals to the State Health Department of termination or restriction of privileges of any physician.

We believe that this latter provision will impair the integrity and feasibility of the peer review process for the many important purposes it now serves, without enhancing the effectiveness of the disciplinary powers of the state Medical Examining Board.

Nevertheless, we at least express support for the strengthening of language proposed in line 21, changing the word "opinions" now open to widely varying definition, to "proceedings."

## Connecticut's Peer Review Immunity Statute: A Legislative History of P.A. 76-413

ROBERT J. BRUNELL, M.A.

Connecticut's Peer Review Immunity Statute, CGS 38-19a-d, is recognized by those knowledgeable in the insurance field as one of the strongest in the nation, covering a multitude of different kinds of professional peer review activities, and giving strong legal support and protection to the frank, open discussions and freewheeling hypothesizing that characterize a confidential, but authentic search for truth in a sea of complex details and circumstances of patient care. The purpose of such committees may be quality of care evaluation, utilization review, cost-control, renewal of privileges, continuing education, malpractice review, complaint-investigation, or still others. These purposes are frustrated if fear of future litigation or liability hampers the free expression and interchange among professionals who are searching for the truth that can build future excellence on the well-examined fragments of past failure. The continued integrity of this process is essential to the progress of patient-care and of medical knowledge.

As may be expected, the Peer Review Immunity Statute comes under occasional attack in the courts by plaintiffs' attorneys who seek a shortcut in constructing a chain of evidence in support of their allegations, or who seek to supplement a dearth of facts and documents with the heady wine of hypothesis. It has been contended that the word "opinions" in the statute should be narrowly construed to permit discovery of the documentary or factual products of these committees' deliberations. Since the word "opinions" had been inserted in Section d just before the bill's passage, in place of "proceedings and records," doubt as to the legislative intent was raised with respect to such

immunity from discovery. In this respect, the statute has seldom been interpreted by the courts, and has never been subject to appellate review.

The history of Connecticut's Peer Review Immunity Statute (Public Act 76-413) begins in the 1975 session of the State Legislature, when Senate Bill 776 received support from the Connecticut State Medical Society, the Connecticut Hospital Association, and the Hartford County PSRO (Professional Standards and Review Organization). There was no opposition. The bill received a joint favorable report, came up on the Senate floor May 19, 1975, and was recommitted to the Public Health and Safety Committee without comment and without objection. Neither Senator Lieberman (who asked for recommittal) nor his Administrative Assistant Steve Heintz later remembered why the bill had been killed.<sup>1</sup>

Between the 1975 and 1976 sessions, an Interim Study Subcommittee Regarding Medical Malpractice, co-chaired by Senator Joseph Flynn and Rep. James Palmieri of the Insurance and Real Estate Committee, met and produced a number of bills, one of which was similar to the old S.B. 776. It made reference to "*proceedings and records*" not being "subject to discovery or introduction into evidence in any civil action against a health care provider arising out of the matters which are subject to evaluation and review by such [peer review] committee." The bill went on to specify that "information, documents or records otherwise available from original sources shall not be construed as immune from discovery or use . . . merely because they were presented during the proceedings of such [peer review] committee."<sup>2</sup> (See Exhibit 1)

This bill was raised by the Committee as House Bill 5826. A similar, but partial bill was also raised by the Committee on Public Health and Safety as S.B. 56. S.B. 56 was heard on January 21, 1976 and supported

ROBERT J. BRUNELL, M.A., is Connecticut State Medical Society's Assistant Executive Director for Educational and Scientific Affairs, and staffs the Committee on Professional Liability.

EXHIBIT 1

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Sec. 4 of H.B. 5826, 1976 Session  
Connecticut General Assembly  
(File 399)

Section 4. The proceedings and records of a medical review committee shall not be subject to discovery or introduction into evidence in any civil action against a health care provider arising out of the matters which are subject to 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 or as to any findings, recommendations or evaluations, opinions, or other actions of such committees or any members thereof. Information, documents, or records otherwise available from original sources shall not be construed as immune from discovery or use in any such

action merely because they were presented during the proceedings of such committee, nor shall any person who testifies before such committee or who is a member thereof be prevented from testifying as to matters within his knowledge, but such witness shall not be asked about his testimony before such committee or about opinions formed by him as a result of such hearings.

STATEMENT OF PURPOSE: To provide immunity from civil liability for any member of a medical review committee and any witness appearing before such committee for any action taken by such committee, and to further provide that all proceedings and records of such committee shall be confidential.

by CSMS, CHA and the State Department of Health. There was no objection expressed. H.B. 5826 was heard on March 10, 1976, and was endorsed in principle by Attorney Maxwell Heiman, representing the Board of Governors of the American Bar Association, whose only objection was to the prohibition of a peer review committee member-physician's testifying about his own role in the Committee. It was feared that there would be no way of knowing if a doctor had testified one way in the committee, and perhaps a different way in a litigation. The bill was also characterized by Richard Silver, a plaintiff's attorney, as an "excellent . . . model bill," but who cautioned that hospital incident reports should be construed as original source documents, and not privileged by reason of having been introduced in a peer review committee.<sup>3</sup>

Substitute Senate Bill 56, without further change, received a joint favorable report and proceeded to the floor of the Senate where on March 20, 1976 it was amended to incorporate H.B. 5826, and was moved to the consent calendar. On April 21, 1976, s.S.B. 56 came up in the House, where it was adopted with Senate Amendment Schedule A; and a second amendment, House Amendment Schedule A (inserting "optometry") was also adopted. On April 28, 1976, s.S.B. 56 came up in the Senate again, where House Amendment Schedule A was rejected, and the bill was sent to a conference committee.

At this point, the bill still included the words "proceedings and records" in Section 4, and *not* "opinions."

The conference committee met, and the bill next came up in the House on May 3, 1976, which adopted

the conference committee recommendation to reject both House Amendment Schedule A and Senate Amendment Schedule A, and to insert House Amendment Schedule B instead, which substituted the word "opinions" for "proceedings and records." Representative Healey of the 72nd District summarized the report of the conference committee as follows:

"Mr. Speaker, House "B" recommended by the Committee on Conference as to Sections 1, 2, and 3, is identical to your file No. 399 (s.S.B. 56).

"The difference between House "B" and file No. 399 has to do with Section 4. Section 4 gave many of us, particularly in the House, a great deal of technical problems because it would appear on a reading of Section 4 to create a method whereby certain evidence could be washed through a Peer Review group and thereby be immunized from utilization in any other proceedings. What House "B" does is insert a new Section 4 which restricts this to the opinions of the Medical review committee—that no person who is in attendance at a meeting of such committee shall be permitted or required to testify in civil actions as to any opinions of said committee. It makes it crystal clear that the evidence itself has not been surrounded with the immunity."<sup>4</sup>

The amended bill passed by a vote of 135-0 following this clarification.

The Senate gave final passage to the bill in this form the next day, May 4, 1976, without objection. (See Exhibit 2: Sec. 38-19d) (Optometrists were included by a later technical amendment P.A. 435, Sec. 80, 82.)

Although for a long time, the reason for this last

EXHIBIT 2

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CHAPTER 675a  
PEER REVIEW AND MALPRACTICE  
SCREENING PANEL

Sec. 38-19a. (Formerly Sec. 52-197a). Peer review immunity. Opinions not subject to discovery. (a) For the purposes of this section:

(i) "Health care provider" means any person, corporation, facility or institution licensed by this state to provide health care or professional services, or an officer, employee or agent thereof acting in the course and scope of his employment.

(ii) "Peer review" means the procedure for evaluation by health care professionals of the quality and efficiency of services ordered or performed by other health care professionals, including practice analysis, inpatient hospital and extended care facility utilization review, medical audit, ambulatory care review and claims review.

(iii) "Professional society" includes medical, psychological, nursing, dental, natureopathic, osteopathic, optometric, pharmaceutical, chiropractic and podiatric organizations having as members at least a majority of the eligible licentiates in the area or health care facility or agency served by the particular society.

(iv) "Medical review committee" shall include any committee of a state or local professional society or a committee of any health care institution established pursuant to written bylaws, and any utilization review committee established pursuant to Public Law 89-97, and a professional standards review organization or a statewide professional standards review council, established pursuant to Public Law 92-603, engaging in peer review, to gather and review information relating to the care and treatment of patients for the purposes of (1) evaluating and improving the quality of health care rendered; (2) reducing morbidity or mortality; or (3) establishing and enforcing guidelines designed to keep

within reasonable bounds the cost of health care. It shall also mean any hospital board or committee reviewing the professional qualifications or activities of its medical staff or applicants for admission thereto.

(b) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person who provides testimony, information, records, documents, reports, proceedings, minutes or conclusions to any hospital, hospital medical staff, professional society, medical or dental school, professional licensing board or medical review committee when such communication is intended to aid in the evaluation of the qualifications, fitness or character of a health care provider and does not represent as true any matter not reasonably believed to be true.

(c) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any member of a medical review committee for any act or proceeding undertaken or performed within the scope of any such committee's functions provided that such member has taken action or made recommendations without malice and in the reasonable belief that the act or recommendation was warranted.

(d) The opinions of a medical review committee shall not be subject to discovery or introduction into evidence in any civil action for or against a health care provider arising out of the matters which are subject to 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 opinions of said committee presented during the proceedings.

(P.A. 76-413, S. 1-4; 76-435, S. 80, 82.)

minute change to "opinions" in Section 4 appeared to be inexplicable, this analysis makes it clear that the legislative intent for the change was to resolve objections involving the feared laundering of original source documents through peer review committees, thus making them immune from discovery in later civil actions. Such chicanery, of course, was never the intent of the bill's supporters, who felt that the statement in Sec. 4, of H.B. 5826, (See Exhibit 1, sentence 2) later S.B. 56, fully covered this potential problem, as did the Interim Subcommittee, and also the similar language of peer review immunity statutes in other states.<sup>5</sup>

It should be likewise clear that the word "opinions," in the context of Rep. Healey's remarks, includes a peer review group's own proceedings, findings, testimony, and the records of its own proceedings and

decisions. It is this immunity that is necessary to preserve the integrity of the peer review process, not the shielding of original source documents from civil litigants and their counsel.

REFERENCES

1. Memo of January 23, 1976 from the Office of Legislative Research to Sen. Flynn and Rep. Palmieri, by Stuart Lefkovich, Health Research Specialist.
2. Interim Study Report, Insurance and Real Estate Committee, Interim Study Subcommittee Regarding Medical Malpractice, pp. 30-34
3. Proceedings, Insurance and Real Estate Committee, March 10, 1976.
4. Proceedings, House of Representatives, May 3, 1976 pp. 4092-4095.
5. Memo of January 23, 1976 from Office of Legislative Research to Subcommittee Studying Malpractice in Connecticut by John Juliano, Research Specialist, Section 1.

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File 436. Substitute for Senate Bill 245, from Pass Retaining its Place to go. Is there any comment on that motion? Are there any objections to that motion? Hearing none, it is so ordered. The bill is now properly before us. Senator DePiano.

THE CLERK:

Cal. 316. File 436. Substitute for Senate Bill 245. AN ACT CONCERNING MEDICAL REVIEW COMMITTEE PROCEEDINGS. Favorable report of the Committee on Judiciary. The Clerk has an amendment.

THE PRESIDENT:

Senator DePiano.

SENATOR DEPIANO: (23rd)

Mr. President, I move acceptance of the joint committee's favorable report and passage of the bill.

THE PRESIDENT:

The Clerk has an amendment.

THE CLERK:

The Clerk has Senate Amendment Schedule A offered by Senator DePiano. LCO 4319. Copies have been distributed.

THE PRESIDENT:

Senator DePiano.

SENATOR DEPIANO:

Yes. Mr. President, the amendment clarifies the language to make it more refined as to meeting the objectives

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of this bill. If there is no objection, I move adoption of the amendment.

THE PRESIDENT:

Will you remark further on the amendment? All those in favor of the amendment signify by the usual sign Aye. Opposed. SENATE AMENDMENT A IS ADOPTED.

On the bill as amended, Senator DePiano.

SENATOR DEPIANO:

Yes. This bill clarifies the role of the medical review committee in regard to peer review in the hospital and the role that that peer review will play in subsequent proceedings in court action. I believe the bill is very clear on its face.

If there is no objection, I move it be placed on the Consent Calendar.

THE PRESIDENT:

Further remarks on the bill? Objection to placing the item on the Consent Calendar? Hearing none, so ordered.

THE CLERK:

Cal. 398. File 264. House Bill 5773. AN ACT CONCERNING EMERGENCY FUEL ASSISTANCE FOR GROUP HOMES AND HALFWAY HOUSES FUNDED BY THE CONNECTICUT STATE ALCOHOL AND DRUG ABUSE COUNCIL. Favorable report of the Committee on Energy and Public Utilities. The Clerk has an amendment.

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the session, and please come quickly so that we can do our business and then go on home.

THE PRESIDENT:

Thank you, Senator. Any other announcements at this time prior to the vote on the Consent Calendar. Hearing none, the machine is open. The machine is closed and the Clerk will take a tally.

The vote is 34 Yea - 0 Nay. THE CONSENT CALENDAR

IS ADOPTED, PASSED. SB 245, HB 5773, HB 5576, HB 5769, HB 5845, HB 5138, HB 5194, HB 5722, HB 5731, HB 5748, HB 5035, HB 5641,

Senator Lieberman. HB 5870, HB 5907, HB 6008, HB 5123, HB 5151, HB 5425, HB 5638, HB 5686, HB 5908, HB 5109,

SENATOR LIEBERMAN: (10th) HB 5317, HB 5322, HB 5419, HB 5422, HB 5827, HB 5974, HB 5931, HB 5574, HB 5740, SB 311,

Mr. President, I move ~~for~~ <sup>SB 669, SB 577</sup> suspension of the rules

to allow for immediate transmittal to the House of those items that should go to the House.

THE PRESIDENT:

Without objection, the rules are suspended and the items needing further House action shall be immediately transmitted.

SENATOR LIEBERMAN:

Mr. President, I ask that the Senate stand in recess pending the arrival of bills from the House which could be read in to our, ah, and tabled for the Calendar tonight.

THE PRESIDENT:

Those in favor indicate by saying Aye. Those in

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of disagreement pursuant to Rule 22 of the Joint Rules. It is my responsibility to appoint members to said, or to a Conference Committee for purposes of resolving differences on this Bill.

I appoint Representatives Rosso, Anderson and Osiecki and I ask these individuals to meet first thing Monday morning with their Senate conferees with the purpose of attempting a resolution of the problem.

Would the Clerk please return to the call of the Calendar.

CLERK:

Calendar Page 2, Calendar 728, File 436, Substitute for Senate Bill 245, AN ACT CONCERNING MEDICAL REVIEW COMMITTEE PROCEEDINGS as amended by Senate Amendment Schedule "A".

Favorable Report of the Committee on Judiciary.

REP. LAWLOR: (2nd)

Mr. Speaker.

SPEAKER ABATE:

Rep. Richard Lawlor.

REP. LAWLOR: (2nd)

Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the Bill in concurrence with the Senate.

SPEAKER ABATE:

The question is on acceptance of the Joint Committee's

Favorable Report and passage of this Bill in concurrence with the Senate. Will you remark, sir?

REP. LAWLOR: (2nd)

Yes, Mr. Speaker. The Clerk has Senate Amendment Schedule "A", LCO No. 4319. Would the Clerk please call and may I be allowed leave to summarize?

SPEAKER ABATE:

The Clerk has in his possession, an Amendment LCO No. 4219, previously designated Senate Amendment Schedule "A". Would the Clerk please call the Amendment?

CLERK:

LCO No. 4319, offered by Sen. DePiano of the 23rd.

SPEAKER ABATE:

The gentleman has requested leave of the Chamber to summarize this Amendment in lieu of Clerk's reading. Is there objection? Is there objection? Hearing none, it is so ordered.

REP. LAWLOR: (2nd)

Mr. Speaker, explaining the Amendment, I am basically explaining the Bill as well and what this Bill does is allow for some confidentiality in peer review proceedings with regard to any hospitals and medical facilities, but, at the same time, it does allow that should there be a civil action with regard to any possible malpractice, that while protecting that peer

review confidentiality, anything gained, any knowledge gained really independent of that peer review proceeding, would be allowable in a civil action. And I therefore move adoption of the Amendment, Mr. Speaker.

SPEAKER ABATE:

The question is on adoption of Senate Amendment Schedule "A". Will you remark further on its adoption? Will you remark further on the adoption of Senate "A"?

If not, all those in favor of its adoption, please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER ABATE:

Those opposed nay. The ayes have it. It's adopted.  
Will you remark further on this Bill?

REP. BARNES: (21st)

Mr. Speaker.

SPEAKER ABATE:

Rep. Dorothy Barnes.

REP. BARNES: (21st)

For purposes of legislative intent, a question through you to the proponent of the Bill.

SPEAKER ABATE:

State your question, please, Madam.

REP. BARNES: (21st)

On line 20, Rep. Lawlor, or really starting on line 18, it says, "in any civil action the use of any writing which was recorded independently of such proceeding", I assume that what those words mean is that if journals, or if literature or something of that kind were introduced at the peer review conference, that that kind of literature could once again either be used in court, but that it could not mean that anyone that was involved in the peer review process could, at a later time, record independently any of the material that was discussed at those proceedings. Is that correct?

SPEAKER ABATE:

Rep. Lawlor.

REP. LAWLOR: (2nd)

Through you, Mr. Speaker, that is correct.

REP. BARNES: (21st)

Thank you very much, Mr. Speaker.

SPEAKER ABATE:

Will you remark further? Will you remark further on this Bill.

REP. RYBAK: (66th)

Mr. Speaker.

SPEAKER ABATE:

Rep. Michael Rybak.

REP. RYBAK: (66th)

Through you, Mr. Speaker, just one brief question to Rep. Lawlor. Under my understanding of the laws that was written before this Bill was introduced, the evidence adduced during peer review proceedings concerning the cost and necessity of health care were not admissible in any action involving insurance to show the patient and his or her insurer had been overcharged.

With the passage of this Bill, if it does pass, is it your understanding, Rep. Lawlor that the contents and proceedings of the peer review committees concerning the necessity and cost of health care would be admissible in actions involving insurance?

SPEAKER ABATE:

Rep. Lawlor.

REP. LAWLOR: (2nd)

Through you, Mr. Speaker, I don't believe that this Bill addresses that question at all.

REP. RYBAK: (66th)

Thank you, Mr. Speaker.

SPEAKER ABATE:

Will you remark further on the Bill as amended by Senate

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Amendment Schedule "A"?

REP. VAN NORSTRAND: (141st)

Mr. Speaker.

SPEAKER ABATE:

Rep. Van Norstrand.

REP. VAN NORSTRAND: (141st)

Just one question through you.

SPEAKER ABATE:

State your question please, Sir.

REP. VAN NORSTRAND: (141st)

Rep. Lawlor, I see the change and what follows consistently through the Bill is the use of the word proceedings where the law formerly talked in terms of opinions. Just for legislative history, for whatever it may be worth, is it your belief that opinions is encompassed within the term proceedings?

SPEAKER ABATE:

Rep. Lawlor.

REP. LAWLOR: (2nd)

Through you, Mr. Speaker, that's correct.

REP. VAN NORSTRAND: (141st)

Thank you, Mr. Speaker.

SPEAKER ABATE:

Will you remark further on this Bill? Would all the

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members please be seated. Would the members please be seated.  
Would all staff and guests please come to the Well of the House.  
The machine will be opened.

The House of Representatives is voting by roll at this  
time. Would the members please return to the Chamber immediately.  
The House of Representatives is voting by roll at this time,  
would the members please return to the Chamber immediately.

Have all the members voted? Have all the members voted?  
Would the members please check the roll call machine to  
determine if their vote is properly recorded?

The machine will be locked and the Clerk will take  
the tally.

The Clerk please announce the tally.

CLERK:

Senate Bill 245, as amended by Senate Amendment Schedule  
"A"

Total number Voting	137
Necessary for Passage	69
Those voting Yea	137
Those voting Nay	0
Those absent and not Voting	14

SPEAKER ABATE:

The Bill as amended passes.