CHAPTER 23-34
MEDICAL PEER REVIEW RECORDS

23-34-01. Definitions.

As used in this chapter:

1. "Health care organization" means:
   a. A hospital;
   b. A hospital medical staff;
   c. A clinic;
   d. A long-term or extended care facility;
   e. An ambulatory surgery center;
   f. An emergency medical services unit;
   g. A physician;
   h. A group of physicians operating a clinic or outpatient care facility;
   i. A pharmacist;
   j. A pharmacy;
   k. An association or organization, whether domestic or foreign, of medical institutions or medical professionals;
   l. A nonprofit corporation, whether domestic or foreign, that owns, operates, or is established by any entity set forth in subdivisions a through i;
   m. Any combination of entities set forth in subdivisions a through j;
   n. Any federally designated state peer review organization; or
   o. Any state designated multi-disciplinary peer review entity designated to evaluate controlled substance practices in a referred case.
2. "Health care provider" means a physician or other individual licensed, certified, or otherwise authorized by the law of this state to provide health care services.
3. "Peer review organization" means:
   a. A health care organization; or
   b. A committee of a health care organization which:
      (1) Is composed of health care providers, employees, administrators, consultants, agents, or members of the health care organization's governing body; and
      (2) Conducts professional peer review.
4. a. "Peer review records" means:
      (1) Data, information, reports, documents, findings, compilations and summaries, testimony, and any other records generated by, acquired by, or given to a peer review organization as a part of any professional peer review, regardless of when the record was created; and
      (2) Communications relating to a professional peer review, whether written or oral, between:
         (a) Peer review organization members;
         (b) Peer review organization members and the peer review organization's staff; or
         (c) Peer review organization members and other individuals participating in a professional peer review, including the individual who is the subject of the professional peer review.
   b. The term does not include original patient source documents.
5. "Professional peer review" means all procedures a peer review organization uses or functions it performs to monitor, evaluate, and take action to review the medical care provided to patients by health care organizations or health care providers and includes procedures or functions to:
   a. Evaluate and improve the quality of health care;
   b. Obtain and disseminate data and statistics relative to the treatment and prevention of disease, illness, or injury;
   c. Develop and establish guidelines for medical care and the costs of medical care;

d. Provide to other affiliated or nonaffiliated peer review organizations information that is originally generated within the peer review organization for the purposes of professional peer review;
e. Identify or analyze trends in medical error, using among other things a standardized incident reporting system; and
f. Provide quality assurance.

23-34-02. Peer review records - Confidentiality.

1. Peer review records are confidential and may be used by a peer review organization and the organization members only for conducting a professional peer review.
2. A health care organization may release reports, data compilations, analyses, and summaries, which are prepared by a peer review organization and which identify or analyze trends in medical errors to the department of health and human services, the North Dakota hospital association, and the North Dakota hospital foundation.
3. The department of health and human services, the North Dakota hospital association, and the North Dakota hospital foundation may release any information provided under subsection 2 to the public.
4. This section does not prohibit access of the department of health and human services to peer review records to determine compliance with requirements of federal or state law for the survey and certification of a health care facility or for trauma center designation and as authorized under any rules issued under section 23-01.2-01 or 23-01-11 to enable the state to be in compliance with any federal laws to qualify for any federal funds related to medical facilities or agencies licensed by the department of health and human services.

23-34-02.1. Peer review organization reports - Admissibility.

Any report, data, data compilation, analyses, or summary that is generated by a peer review organization and made available to the department of health and human services or the public by the department of health and human services, the North Dakota hospital association, or the North Dakota hospital foundation, may not be introduced into evidence, for any purpose, in any civil or administrative proceeding.

23-34-03. Peer review records - Privileged - Exceptions.

1. Peer review records are privileged and are not subject to subpoena or discovery or introduction into evidence in any civil or administrative action, except:
   a. Records gathered from an original source that is not a peer review organization;
   b. Testimony from any person as to matters within that person's knowledge, provided the information was not obtained by the person as a result of the person's participation in a professional peer review; or
   c. Peer review records subpoenaed in an investigation conducted by an investigative panel of the North Dakota board of medicine pursuant to chapter 43-17.1 or subpoenaed in a disciplinary action before the North Dakota board of medicine pursuant to section 43-17-30.1.
2. Any peer review records provided to an investigative panel of the North Dakota board of medicine or introduced as evidence in any disciplinary action before the board are confidential and are not subject to subpoena, discovery, or admissibility into evidence in any civil or administrative action, and are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

23-34-04. Peer review organization - Mandatory reports - Penalty.

1. A peer review organization shall report to an investigative panel of the North Dakota board of medicine any information that indicates a probable violation of subdivision d, e, p, or q of subsection 1 of section 43-17-31.
2. A health care organization is guilty of a class B misdemeanor if its peer review organization fails to make any report required by this section.

23-34-05. Liability of health care provider to patient.

This chapter does not relieve any health care provider of any liability that the provider has incurred or may incur to a patient as a result of furnishing health care services to the patient.

23-34-06. Limitation of liability.

1. A person furnishing peer review records to a peer review organization with respect to any patient examined or treated by a health care provider is not, by reason of furnishing the records, liable in damages to any person or for willful violation of a privileged communication.
2. A health care organization, health care provider, or member of a peer review organization is not liable in damages to any person for any action taken or recommendation made regarding a professional peer review, if the health care organization, health care provider, or member of the peer review organization acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the health care organization, health care provider, or member of the peer review organization.