Whereas, The Health Care Quality Improvement Act of 1986 (HCQIA) intended to protect the public from incompetent physicians by allowing those physicians on peer review committees to communicate in an open and honest environment and thus weed out incompetent physicians, without the specter of a retaliatory lawsuit by the reviewed physician; and

Whereas, Most states have passed statutes that broaden the protections afforded by the HCQIA in order to further promote peer review while severely limiting whistleblower protections to very limited specific situations; and

Whereas, A number of states have specific whistleblower protections; however, California’s Health and Safety Code 1278.5(b)(1)(A) states that no health care facility shall discriminate or retaliate against any person who has "presented a grievance, complaint or report to the facility"; and

Whereas; Common law protections are usually limited to situations where the offensive action violates a clearly articulated public policy; and

Whereas; Many, if not most, physicians are now either employed or controlled by hospital conglomerates; therefore, the threat of a retaliatory lawsuit is far less threatening than termination of employment or elimination of hospital privileges; and

Whereas; Our AMA policy does not seem to reflect the dramatic recent change in workplace arrangements nor protect employed physicians from retaliation as a result of effective peer review; therefore be it

RESOLVED, That our American Medical Association study the current environment for effective peer review, on both a federal and state basis, in order to update its current policy to include strategies for promoting effective peer review by employed physicians as well consider a national strategy for protecting all physicians from retaliation as a result from participating in effective peer review. (Directive to Take Action)

Fiscal Note: Not yet determined

Received: 10/13/16
RELEVANT AMA POLICY

Principles for Incident-Based Peer Review and Disciplining at Health Care Organizations
H-375.965
AMA policy is that:
(1) Summary suspension of clinical privileges is an extraordinary remedy which should be used only when the physician's continued practice presents an "imminent danger to the health of any individual." The decision to summarily suspend a member's medical staff membership or clinical privileges should be made by the chief of staff, chair or vice-chair of the member's clinical department, or medical executive committee. The medical executive committee (MEC) must meet as soon as possible, but in no event more than 14 days after the summary suspension is imposed, or before the time in which a report would be required to the state licensing agency if applicable, whichever is shorter, to review and consider the summary suspension. The MEC shall then promptly modify, continue or terminate the summary suspension. The suspended physician must be invited to attend and make a statement concerning the issues under investigation, but the meeting with the MEC shall not constitute the physician's fair hearing. If the MEC sustains the suspension, said action will trigger the fair hearing procedures contained in these policies.
(2) At the request of a medical staff department or of a member under review, or at its own initiative if needed for adequate and unbiased review, the medical executive committee may arrange, through the state or local medical society, the relevant specialty society or other appropriate source, for an external hearing panel to hear the case in order to assure professional and impartial clinical assessment.
(3) Prior to any disciplinary hearing, the physician should be provided with a clear, and if applicable, clinically supported basis for the proposed professional review action. A hearing panel of a health care organization should be guided by generally accepted clinical guidelines and established standards in its review actions.
(4) Physician health and impairment issues should be identified and managed by a medical staff committee, which should operate separately from the disciplinary process.
(5) Summary suspension reports that do not adhere to these principles should not be circulated or posted without confirmation by a state medical board or other appropriate authority allowing due process.
(6) Summary suspension reports should be immediately retracted or removed from posting if reversed or where a physician is exonerated.
(7) Physicians who are the subject of a summary suspension report should be afforded the right to add a statement or notice of dispute to the report that is of reasonable length.
BOT Action in response to referred for decision BOT Rep. 23, A-05; BOT Action in response to referred for decision Res. 220, I-08
http://www.ama-assn.org/meetings/public/annual05/bot23a05.doc