

The following are written responses about peer review from Karen C. Owens, a Phoenix attorney who represents the University of Arizona Medical Center. The responses are from May 14, prior to Poston's settlement with the hospital.

1. Dr. Poston is scheduled to appeal his case in person May 22. Do you have any more details about the presiding body over that appeal? Who has final say?

Arizona law is extremely clear that it is unlawful for anyone to disclose the names of peer review participants. The Arizona Court of Appeals has held that the names of participants are confidential. The court pointed out that "Review by one's peers within a hospital is not only time consuming, unpaid work, it is also likely to generate bad feelings and result in unpopularity." (This quote is from a case called Yuma Regional v Superior Court) The court understood that there always are going to be people who support physicians under review, sometimes passionately, and those individuals may incorrectly attribute bad motives to the hospital and the physicians undertaking the arduous and uncomfortable process of review of another physician. The court saw that those physicians will not do that arduous, time consuming and uncomfortable work without privacy.

All hospitals conduct peer review – it is required by the Medicare rules and by state laws all across the country. It is a method to identify problems and improve the clinical care rendered at the hospital. It is a necessary tool to protect patients. In virtually every state, peer review is confidential.

All that said, peer review confidentiality means you in the press and the public only hear one side of the story. The hospital and participants in peer review are prohibited by law from explaining reasons for specific peer review activities or even saying anything about them. It can be frustrating not only for the press, but also for the hospital, which cannot tell its side of the story. But that's the law.

The Board of this private nonprofit hospital always has the final say in peer review matters, as in all hospitals. That is also required by both state and federal law.

2. A lot of critics of hospital peer review say its confidentiality requirement can hurt doctors rather than ensure patient safety. Is that true?

In a situation like this, it's the hospital that is at a disadvantage, at least in the court of public opinion. Peer review confidentiality actually was enacted in part across

the United States in order to allow review by fellow physicians without subjecting the doctor under review to claims in malpractice cases based on that peer review. And of course physicians appreciate that function of confidentiality. Confidentiality is mainly in place, however, to assure that physicians can perform the review without retaliation. There are reasons enough for physicians not to want to take time out of their busy work schedules to undertake these tasks. In the absence of confidentiality, who would be there to protect the public?

Unfortunately, one-sided, partial and terribly inaccurate public statements like the ones being issued here may have the effect of undermining the willingness of physicians to volunteer to conduct peer review. That effect undoubtedly is detrimental to our community, because if physicians become unwilling to participate in peer review, then hospitals will lose their primary means of policing the physicians on their medical staffs.

3. Is anyone there able to tell our readers anything about your peer review process, like how people get on the panel, how many are on it and how long are terms? Same for Medical Executive Committee, which I understand is the governing body with final say.

After all of the due process is complete, the hospital board makes a final determination.

The Medical Executive Committee in most hospitals, including this one, is the governing committee of the medical staff, and the medical staff is part of the hospital. The Medical Executive Committee is made up of more than a dozen physicians representing all the clinical services in the hospital, plus four elected members. The Chief of Staff, who chairs the Medical Executive Committee, is elected by the entire medical staff. This is also typical for private nonprofit hospitals like this one.

The University of Arizona Medical Center – University Campus has an extensive program of peer review. We can supply you with general information about that process, but not with information about any particular case. Generally speaking, cases and issues can be raised through the Quality Management Department. Issues come to that Department from a variety of sources, ranging from patients to nursing staff and others, including physicians in the community and in the hospital. The Department

reviews all such issues and cases, and it also reviews cases for concerns like unanticipated returns to surgery and returns to the hospital.

If quality of care concerns or physician conduct issues are identified, the Quality Management Department typically will forward the matter for physician review. The doctor is given a chance to respond to concerns that are raised. Again, speaking generally, if there is any action to limit a physician's practice, it is usually only after a pattern of poor care or behavior has emerged over a period of time. Of course, to protect patients, immediate action can be taken that limits a physician's ability to treat patients in the hospital if needed to protect the life or wellbeing of patients or to reduce a substantial and imminent likelihood of significant impairment to patient life, health or safety. Either way, the affected doctor is always notified and afforded a chance to challenge the limitation before a committee of other physicians in the hospital. After that proceeding and further review by the Medical Executive Committee, a formal appeal is available. Ultimately the Board makes the final decision.

4. Any other comment about the Poston case?

Unfortunately, the law prohibits us from making any comment related to any specific peer review proceeding that might be underway. This hospital takes very seriously our obligations under the law, to our patients, to physicians under review, and to our physician reviewers. We would only say that while the confidentiality provisions in the law have important purposes, they also mean that the public cannot know both sides of the story in any given situation. Even if a physician chooses to publicly allege that the hospital and anyone critical of his or her practice has bad motives, we cannot respond. We do ask the public to consider that in these situations, there generally are two sides to the story.

We also want to make it very clear that this Hospital stands by its physicians, who so generously give of their precious free time to assist the public by participating in the peer review process, even in the face of unwarranted criticism. We also stand by our processes, which are very fair and provide ample due process.