**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44‑7‑390 SO AS TO PROVIDE THAT THERE IS NO MONETARY LIABILITY, AND NO CAUSE OF ACTION IS CREATED, BY A HOSPITAL UNDERTAKING OR PERFORMING CERTAIN ACTS IF NOT DONE WITH MALICE; BY ADDING SECTION 44‑7‑392 SO AS TO PROVIDE THAT CERTAIN HOSPITAL PROCEEDINGS AND DATA, DOCUMENTS, RECORDS, AND INFORMATION RESULTING FROM THESE PROCEEDINGS ARE CONFIDENTIAL AND NOT SUBJECT TO DISCOVERY OR SUBPOENA AND MAY NOT BE USED AS EVIDENCE IN A CIVIL ACTION UNLESS THE HOSPITAL HAS WAIVED CONFIDENTIALITY OR THE DATA, DOCUMENTS, RECORDS, OR INFORMATION ARE OTHERWISE AVAILABLE AND SUBJECT TO DISCOVERY; TO PROVIDE THAT THE OUTCOME OF A PRACTITIONER’S APPLICATION FOR HOSPITAL STAFF MEMBERSHIP OR CLINICAL PRIVILEGES IS NOT CONFIDENTIAL BUT THAT THE APPLICATION AND SUPPORTING DOCUMENTS ARE CONFIDENTIAL; TO PROVIDE THAT DISCLOSURE OF CERTAIN INFORMATION BY A HOSPITAL THROUGH REPORTS TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, THE JOINT COMMISSION, OR THE BOARD OF MEDICAL EXAMINERS IS NOT A WAIVER OF ANY PRIVILEGE OR CONFIDENTIALITY; AND TO PROVIDE THAT AN AFFECTED PERSON MAY FILE AN ACTION TO ASSERT A CLAIM OF CONFIDENTIALITY AND TO ENJOIN THE HOSPITAL, THE JOINT COMMISSION, OR THE BOARD OF MEDICAL EXAMINERS FROM RELEASING SUCH INFORMATION, AND IF THE COURT FINDS THAT THE PERSON ACTED UNREASONABLY IN ASSERTING THIS CLAIM, THE COURT SHALL ASSESS ATTORNEY’S FEES AGAINST THAT PERSON; BY ADDING SECTION 44‑7‑394 SO AS TO PROVIDE THAT IF IN A JUDICIAL PROCEEDING THE COURT FINDS DOCUMENTS, OVER WHICH THE HOSPITAL ASSERTED A CLAIM OF CONFIDENTIALITY, ARE NOT SUBJECT TO CONFIDENTIALITY AND THAT THE HOSPITAL ACTED UNREASONABLY IN ASSERTING THIS CLAIM, THE COURT SHALL ASSESS ATTORNEY’S FEES AGAINST THE HOSPITAL FOR COSTS INCURRED BY THE REQUESTING PARTY TO OBTAIN THE DOCUMENTS; AND TO AMEND SECTION 40‑71‑10, RELATING TO THE EXEMPTION FROM TORT LIABILITY FOR MEMBERS OF CERTAIN PROFESSIONAL COMMITTEES, SO AS TO DELETE FROM THE EXEMPTION AN APPOINTED MEMBER OF A COMMITTEE OF A MEDICAL STAFF OF A HOSPITAL IF THE STAFF OPERATES PURSUANT TO WRITTEN BYLAWS APPROVED BY THE GOVERNING BOARD OF THE HOSPITAL.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 3, Chapter 7, Title 44 of the 1976 Code is amended by adding:

“Section 44‑7‑390. There is no monetary liability on the part of, and no cause of action for damages arising against, a hospital licensed under this article, its parent, affiliates, directors, officers, agents, employees, or a member of any committee of a licensed hospital, whether permanent or ad hoc, including the hospital’s governing body, for any act or proceeding undertaken or performed without malice relating to:

(1) sentinel event investigations or root cause analyses, or both, as prescribed by the joint commission or any other accrediting body;

(2) medical staff disciplinary proceedings or fair hearings, provided the hospital governing body has adopted medical staff bylaws;

(3) quality assurance reviews;

(4) peer reviews, including the medical staff credentialing process, provided the hospital governing body has adopted medical staff bylaws;

(5) specific medical case reviews;

(6) reports to insurance companies;

(7) self evaluations; or

(8) incident reports.

Section 44‑7‑392. (A)(1) All proceedings of, and all data, documents, records, and information prepared or acquired by, a licensed hospital relating to the following are confidential:

(a) sentinel event investigations or root cause analyses, or both, as prescribed by the joint commission or any other accrediting body;

(b) medical staff disciplinary proceedings or fair hearings;

(c) quality assurance reviews;

(d) peer reviews, including the medical staff credentialing process;

(e) specific medical case reviews;

(f) reports to insurance companies;

(g) self evaluations; and

(h) incident reports.

(2) These proceedings and data, documents, records, and information relating to these proceedings may be shared with a parent, affiliates, directors, officers, employees, and agents of the hospital and if shared, remain confidential. These proceedings and data, documents, records, and information relating to these proceedings are not subject to discovery, subpoena, or introduction into evidence in any civil action unless the hospital and any affected person who is a party to such action waives the confidentiality in writing. Notwithstanding the foregoing, however, in the event an affected person asserts a claim in any civil action against a hospital, its parent, affiliates, directors, officers, agents, employees, or member of any committee of a licensed hospital, relating to any proceeding identified in subsection (A)(1), the hospital may decide without consultation with the affected person whether to waive confidentiality in that civil action. Likewise, if a hospital asserts a claim in any civil action against an affected person relating to any proceeding identified in subsection (A)(1), the affected person may use information in the affected person’s possession that is otherwise confidential under this section in that civil action. Data, documents, records, or information which are otherwise available from original sources are not confidential and immune from discovery or use in a civil action merely because they were acquired by the hospital, and a person must not be prevented from testifying in a civil action as to matters of which he has knowledge independent of the matters described in this subsection.

(3) This subsection does not make confidential the outcome of a practitioner’s application for medical staff membership or clinical privileges. However, the practitioner’s application for medical staff membership or clinical privileges, including all supporting documentation submitted or requested for the application are confidential.

(4) If a practitioner is the subject of a medical staff disciplinary proceeding or fair hearing, this subsection does not prohibit the practitioner from receiving data, documents, records, and information that is relevant to the proceeding or fair hearing, even if the data, documents, records, and information are otherwise confidential under this subsection. Such a disclosure to a practitioner in a medical staff disciplinary proceeding or fair hearing must not be considered a waiver of any privilege or confidentiality provided for in this subsection. The practitioner must not, however, without the written consent of the hospital, publish to any third party, other than legal counsel or a person retained for the purposes of representing the practitioner in a medical staff disciplinary proceeding or fair hearing, the data, documents, records, or information that were disclosed to him as part of the disciplinary proceeding or fair hearing. This subsection does not apply to data, documents, records, or information which are otherwise available from original sources.

(B) The confidentiality provisions of subsection (A) do not prevent committees appointed by the Department of Health and Environmental Control from issuing reports containing solely nonidentifying data and information.

(C) Nothing in this section affects the duty of a hospital licensed by the department to report accidents or incidents pursuant to the department’s regulations. However, anything reported pursuant to the department’s regulations must not be considered a waiver of any privilege or confidentiality provided in subsection (A).

(D) Any data, documents, records or information that is reported to or reviewed by the joint commission or other accrediting bodies must not be considered a waiver of any privilege or confidentiality provided for in subsection (A).

(E) Any data, documents, records, or information of an action by a hospital to suspend, revoke, or otherwise limit the medical staff membership or clinical privileges of a practitioner that is submitted to the South Carolina Board of Medical Examiners pursuant to a report required by Section 44‑7‑70 or the National Practitioner Data Bank must not be considered a waiver of any privilege or confidentiality provided for in subsection (A).

(F) An affected person may file a civil action to assert a claim of confidentiality before a court of competent jurisdiction and file a motion to request the court to issue an order to enjoin a hospital from releasing any data, documents, records, or information to the department, the South Carolina Board of Medical Examiners, the National Practitioner Data Bank, and the joint commission or other accrediting bodies that are not required by law or regulation to be released by a hospital. The data, documents, records, or information in controversy must be filed under seal with the court having jurisdiction over the pending action and are subject to judicial review. If court finds that a party acted unreasonably in unsuccessfully asserting the claim of confidentiality under this subsection, the court shall assess attorney’s fees against that party.

(G) For purposes of this section an ‘affected person’ means a person who is a subject of a proceeding enumerated in subsection (A)(1).

Section 44‑7‑394. (A) If a hospital or affected person asserts a claim of confidentiality over documents pursuant to Section 44‑7‑392 and the party seeking the documents objects, the documents must be filed under seal with the court having jurisdiction over the pending action and are subject to judicial review by the circuit court. If the court determines that any of the documents are not subject to confidentiality pursuant to Section 44‑7‑392 and are otherwise discoverable, the court shall provide the documents to the requesting party. If the court finds that a hospital or affected person acted unreasonably in unsuccessfully asserting the claim of confidentiality, the court shall assess attorney’s fees against that party for any fees incurred by the requesting party in obtaining the documents.

(B) For purposes of this section an ‘affected person’ means a person who is a subject of a proceeding enumerated in Section 44‑7‑392(A)(1).”

SECTION 2. Section 40‑71‑10(B) of the 1976 Code is amended to read:

“(B) There is no monetary liability on the part of, and no cause of action for damages arising against, a member of an appointed committee which is formed to maintain professional standards of a state or local professional society as defined in this section or ~~an appointed member of a committee of a medical staff of a licensed hospital, provided the medical staff operates pursuant to written bylaws that have been approved by the governing board of the hospital, or~~ a committee appointed by the Department of Health and Environmental Control to review patient medical and health records in order to study the causes of death and disease for any act or proceeding undertaken or performed within the scope of the functions of the committee if the committee member acts without malice, has made a reasonable effort to obtain the facts relating to the matter under consideration, and acts in the belief that the action taken by him is warranted by the facts known to him.”

SECTION 3. This act takes effect upon approval by the Governor.

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