

The Procedural Difference Between the Health Care Quality Improvement Act and Due Process

The Health Care Quality Improvement Act of 1986, 42 USC 11101 et seq. (“HCQIA”) is the federal peer review statute. Courts have held that HCQIA does not provide a private right of action to aggrieved physicians. HCQIA provides that hospitals and other participants are immune from claims for damages in connection with a peer review if the action was taken: (1) in the reasonable belief that the action was in furtherance of quality health care; (2) after a reasonable effort to obtain the facts; (3) after adequate notice and hearing procedures; and (4) in the reasonable belief that the action was warranted by the facts. HCQIA immunity applies only to claims for monetary damages; other relief, such as a request for injunctive relief, is not covered by HCQIA immunity.

See, https://manteselaw.com/wp-content/uploads/2021/05/Representing_Physicians_in_Fair_Hearing_Proceedings-2.pdf

In a recent case, *Cunningham v. Blackwell*, 41 F.4th 530 (6th Cir. 2022), the University of Kentucky investigated two dentistry professors for entering false data about whether they, or their students, had performed services for patients at a university clinic and whether they, or the clinic, should be paid for those services. After the investigation, both professors left the University. The professors sued, alleging the University violated their due process rights and their free speech rights under the Fourteenth and First Amendments. The Court upheld the University’s measures as adequate and reversed the district court’s decisions, thus granting summary judgment to the University and dismissing the professors’ claims.

There is an important procedural difference between due process rights and HCQIA rights. Aggrieved physicians may have a cause of action for a violation of their constitutional due process rights, but they do not have a private cause of action for the violation of HCQIA rights. If there is a HCQIA violation during the peer review process, the hospital and participating physicians will lose their immunity from a damage claim for causes of action, such as tortious interference with contract, defamation, or breach of contract.



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