

WASHINGTON STATE MEDICAL ASSOCIATION
HOUSE OF DELEGATES

Subject: C-5 Fair and Professional Medical Staff Peer Review

Introduced by: Yakima County Medical Society

WHEREAS, after five years of litigation, Smigaj vs. Yakima Valley Memorial Hospital was settled in 2014, in favor of the plaintiff physician. This is the only such case in Washington in the 25 year history of the current peer review statute. The hospital's actions were particularly egregious, but have not been disavowed by the Washington State Hospital Association, which submitted an amicus brief to the Washington Supreme Court on the hospital's behalf. This courageous physician lost her practice and spent four years in bankruptcy. The case misspent greater than \$1 million in attorney fees and created a bitter polarization in the Yakima medical community. This could happen in other communities¹; and

WHEREAS, Resolution B-4, A Directive for WSMA to Take a More Active Role in Protecting the Integrity of Medical Staff Peer Review, was adopted unanimously by the 2012 House of Delegates and directs the WSMA to "actively promote legislation to specify what constitutes a fair and professional peer review process". That mandate is not fulfilled. Senate Bill 5666 (2013) specified that hospital QI processes must be conducted according to medical staff bylaws and hospital bylaws. However, the legislation did not require that the process be fair, and did not alter the "reasonable belief" evidence standard which is inadequate to insure fairness; and

WHEREAS, Resolution B-5, Medical Staff Bylaws and Physician Contracts, adopted by the 2012 House of Delegates, established as HOD policy that WSMA will oppose unfair and inappropriate hospital retaliation against physicians for "disruptive behavior", and oppose the use of the term "disruptive physician" when the physician's behavior meets the standards of the WSMA Model Medical Staff Bylaws. That mandate is not fulfilled, even though the Law and Justice Committee of the Washington State Senate wisely struck the term "disruptive physician" from SB 5666, requested a statewide standard definition of "disruptive physician behavior", and wrote model language that would exclude acts of whistleblowing and acts of conscience²; and

WHEREAS, Resolution B-1 (A-13), Fair and Professional Medical Staff Peer Review, adopted by the 2013 House of Delegates, even more explicitly directs that the Washington State Medical Association "will

¹ **Settlement is Landmark for Medical Peer Review**, Yakima Herald-Republic, July 18, 2014

<http://www.yakimaherald.com/news/yhr/friday/2345048-8/settlement-is-landmark-for-medical-peer-review#print>

² **1436 AMS LAW S2454.2**

<http://apps.leg.wa.gov/documents/billdocs/2013-14/Pdf/Amendments/Senate/1436%20AMS%20LAW%20S2454.2.pdf>

continuously advocate for state law which will protect the right of physicians to a fair and professional Peer Review process” as a necessary condition for hospital immunity from physician suit (Reaffirm HOD Policy), and specifies six necessary elements of fairness. WSMA failed to act on that mandate; and

WHEREAS, instead, the WSMA Board of Trustees created a Peer Review Committee which began educational efforts, but did not include lobbying for the legislation necessary to fulfill the House of Delegates policy mandate. This committee created the 2014 WSMA survey of Washington physicians which returned 722 electronic responses and 35% of those answered “Yes” to the question: “Do you feel that there is a problem with the peer review process in your community?”; demonstrating the broad concern that Washington physicians have with the integrity of hospital Peer Review. As part of their education mission, this committee organized a *WSMA Medical Staff Leaders Peer Review Workshop*. The course fee was set at \$850 for 6 CME credits and the course was subsequently canceled because of inadequate registration. No other education has been offered.

WHEREAS, the WSMA bylaws explicitly state that the House of Delegates sets the policies of the organization and that the Board of Trustees is "subject...to the provisions of the Bylaws and all resolutions...of the House of Delegates"³ ; therefore, WSMA failure to fulfill the mandate of Resolution B-1 is a violation of WSMA bylaws. And,

WHEREAS, in 2015, the WSMA House of Delegates passed Resolution B-3, instructing that *“the WSMA request that the Judicial Council evaluate pertinent peer review cases, particularly Smigaj vs Yakima Valley Memorial Hospital, according to the six elements of fairness of Resolution B-1 (A-13) and educate WSMA members on what constitutes fair and professional peer review with affordable fees for CME (Directive to Take Action”*. And,

WHEREAS, after the 2015 House of Delegates, it was revealed that WSMA did not have a 10 member Judicial Council as required by the WSMA Bylaws, but had only 4 members, with no new members added at the 2015 Annual Meeting. Six new members were nominated and confirmed at the Jan 2016 Board of Trustees meeting, but this was not done according to the procedure in the WSMA Bylaws. Subsequently, the Judicial Council declined to review pertinent peer review cases, including Smigaj vs Yakima Valley Memorial Hospital. Therefore, be it...

RESOLVED, that WSMA will write, and find legislative sponsors to introduce into the 2017 Washington Legislature, a bill to amend RCW 7.71 to protect the right of physicians to fair and professional Peer Review, according to the six criteria of current WSMA policy, as a necessary condition for hospital immunity from physician suit. (Reaffirm HOD Policy and Directive to Take Action) And be it further

RESOLVED, WSMA leadership recognizes a duty to operate and abide by WSMA Bylaws. (Reaffirm WSMA Bylaws) And be it further

³ **WSMA Bylaws. ARTICLE VIII BOARD OF TRUSTEES, Section 1. General Powers**
https://www.wsma.org/doc_library/AboutWSMA/Policies/Bylaws_12.pdf

RESOLVED, WSMA will contract with a panel of 3 physician experts, experienced in physician defense testimony and independent from hospital administration interests, for a review of the clinical facts of Smigaj vs Yakima Valley Memorial Hospital. The panel will review the documents according to the six criteria of current WSMA policy and report their findings, which will be used in the education of physicians doing peer review, in order to prevent a repetition of this worst case scenario. (Directive to Take Action)

