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Patient Safety, Peer Review, and Credentialing: Navigating Sovereign Immunity and Balancing State and Federal Law in your Quality Department

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PATIENT SAFETY, PEER REVIEW, AND CREDENTIALING

Navigating Sovereign Immunity And Balancing State And Federal Law In Your Quality Department

Eighth Annual Native American Healthcare Conference November 5 - 7, 2017



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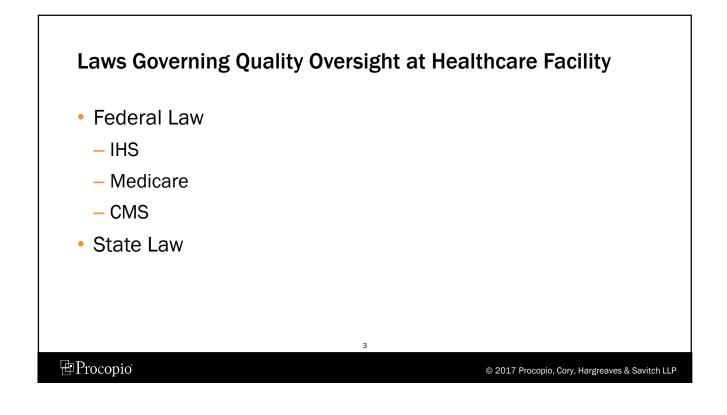
Richard D. Barton Partner richard.barton@procopio.com Natalie V. Mueller Associate natalie.mueller@procopio.com

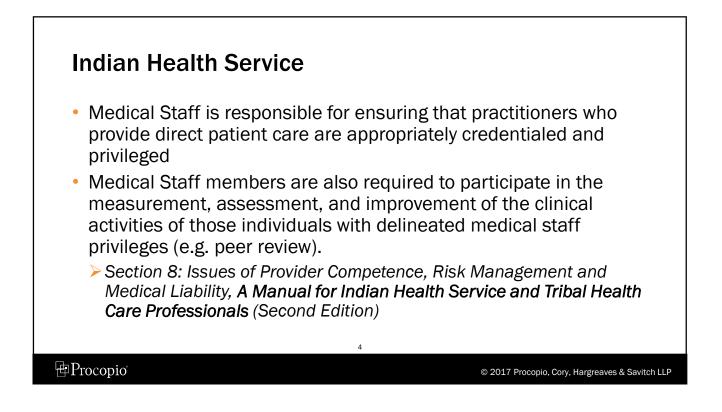
Quality Oversight at Healthcare Facilities

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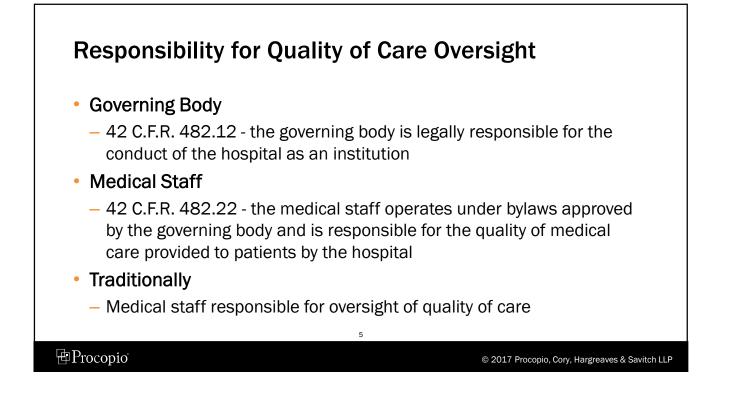
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Federal Law- Health Care Quality Improvement Act ("HCQIA")

- Requires that every hospital have an organized medical staff operating under bylaws approved by governing body that is responsible for the quality of care rendered to patients in the healthcare facility
 - 42 USC Section 11101 et seq.
 - 42 CFR 482.22 Conditions of Participation for Medicare



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California Law

- Requires that every hospital have an organized medical staff responsible to the governing body
 - California Health & Safety Code Section 1250(a)
 - Title 22 California Code of Regulations § 70703

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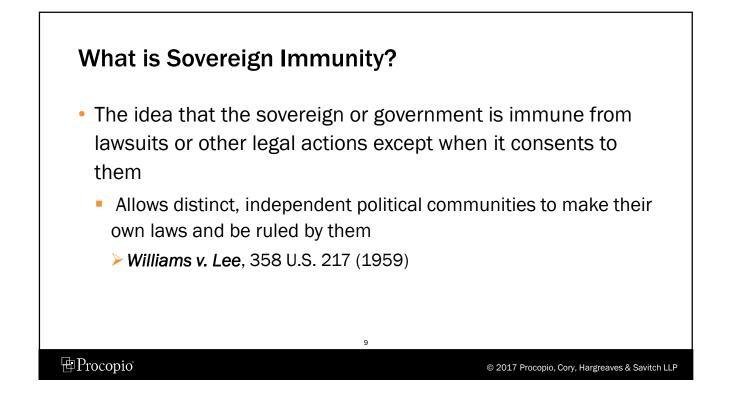
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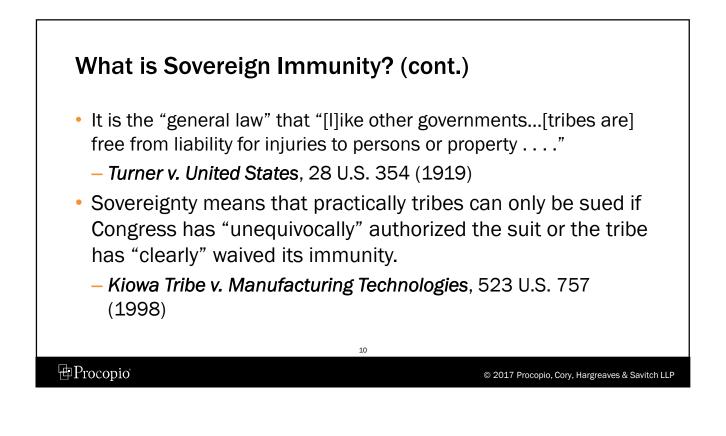
Sovereign Immunity

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Pink v. Modoc

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- Pink, a Native American, was hired by Modoc in November 1983 as the coordinator of the Indian Child Welfare Act Program.
- Pink alleged that from July 1991 until her termination in October 1993, her former supervisor subjected her to sexual harassment, sexual assault and a hostile workplace environment. Pink brought suit under federal and state law in tort, for employment discrimination and breach of contract
- Also brought claims against Modoc pursuant to the Civil Rights Act

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Pink v. Modoc (cont.)

- Case turned on whether Modoc was a "tribe" and whether it qualified for an exception pursuant to the Civil Rights Act
 - Although the Ninth Circuit had not specifically addressed whether a nonprofit organization incorporated by two Indian tribes is a "tribe" for purposes of Title VII exemption, the Tenth Circuit had addressed a similar question.
 - In <u>Dille v. Council of Energy Resource Tribes</u>, 801 F.2d 373 (10th Cir.1986), the court held that a council comprised of thirty-nine Indian tribes that had joined together to collectively manage energy resources was a "tribe" within the scope of Title VII's Indian tribe exemption. The Dille Court held that Congress intended to exempt individual Indian tribes as well as collective efforts by Indian tribes.

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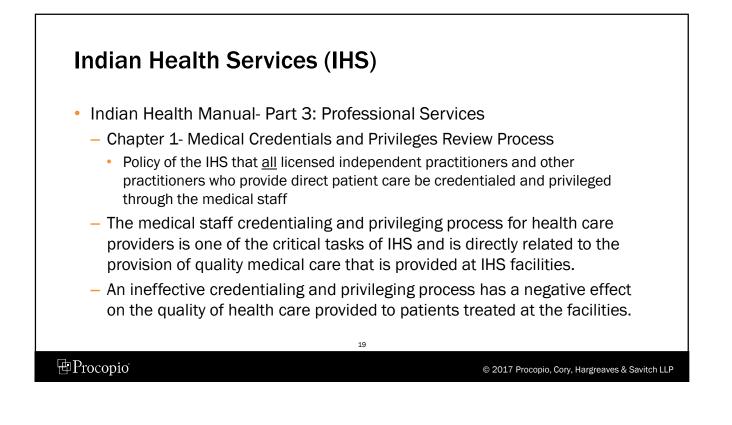
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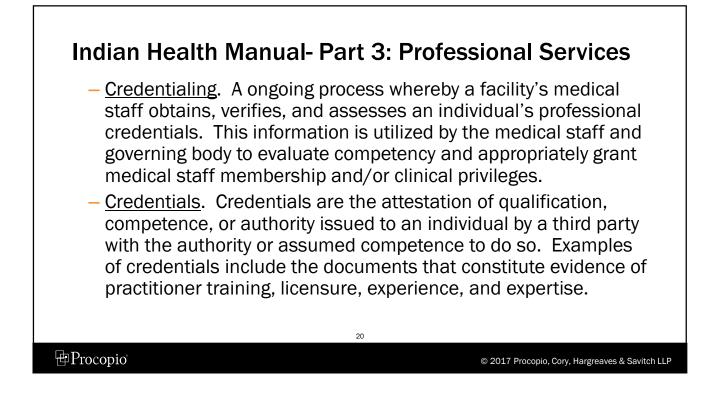






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Accreditation Body Guidelines

- Credentialing, Privileging, and Peer Review also governed by Accreditation Body
 - Require ongoing physician peer review
 - Also require development of peer review policies and procedures
 - Examples
 - Joint Commission
 - Accreditation Association for Ambulatory Health Care, Inc. (AAAHC)

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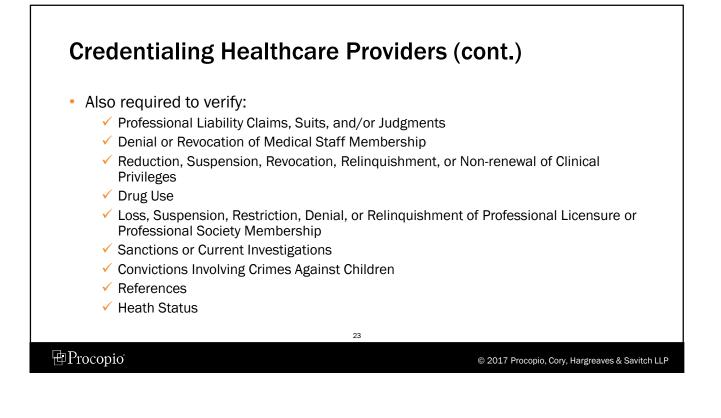
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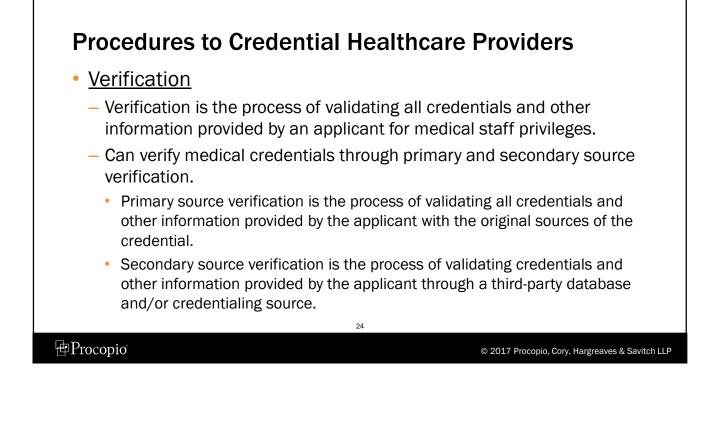
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Credentialing Healthcare Providers Applicant for initial medical staff membership and/or clinical privileges must complete a comprehensive credentials review before delivering any healthcare services to any patient in an IHS facility Burden is on applicant to produce information for adequate evaluation of his/her gualifications and current competence Medical staff must verify that the practitioner has the appropriate credentials to provide healthcare services Required to Verify: Professional Education ✓ Post-Graduate Training Experience Board Certification and Professional Affiliations Licensure 22 Procopio © 2017 Procopio, Cory, Hargreaves & Savitch LLP



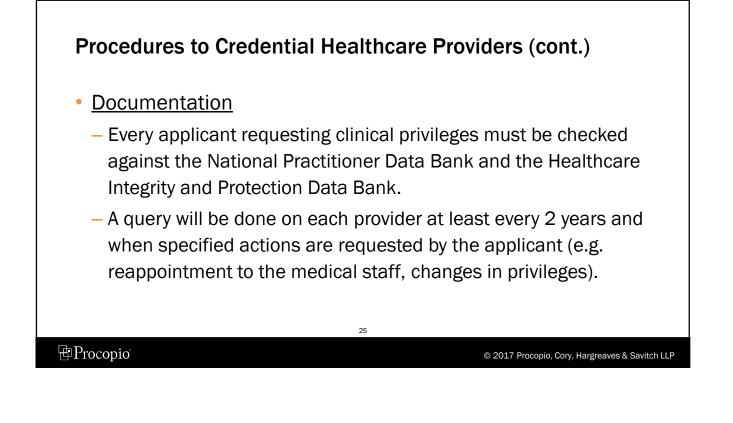
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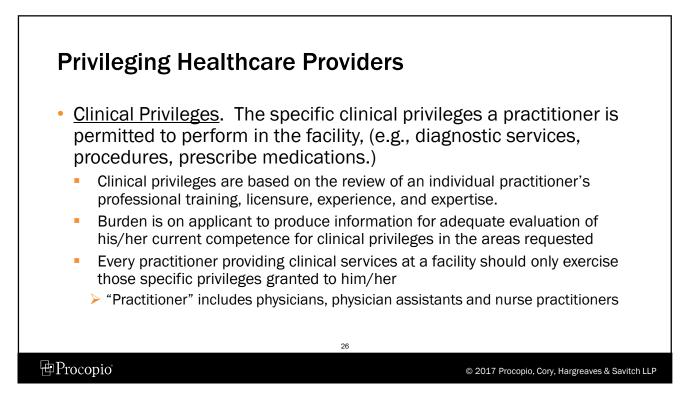




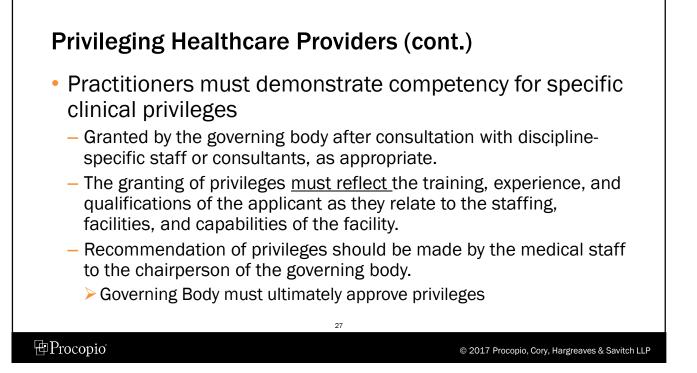


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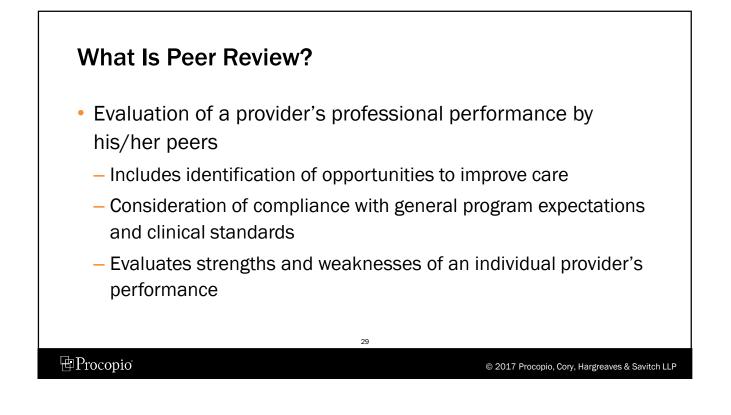












Why Peer Review Is Performed?

- Quality assurance
- Credentialing
- Education
- Utilization review

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Why are Healthcare Providers Required to Perform Peer Review?

- IHS
- Federal Law (HCQIA, CMS)
- Accreditation Body Requirements
 - >AAAHC, Joint Commission
- Insurance Coverage
- State Law
 - > Joint responsibility of both healthcare facility and staff

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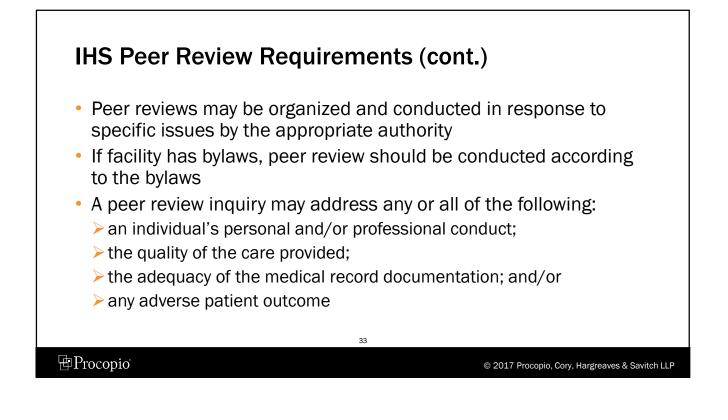
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IHS Peer Review Requirements Medical staff members are required to participate in the measurement, assessment, and improvement of the clinical activities of those individuals with delineated medical staff

 Peer review consists of an evaluation by medical staff to retrospectively determine if a clinician's practice of medicine is within accepted standards of care

privileges



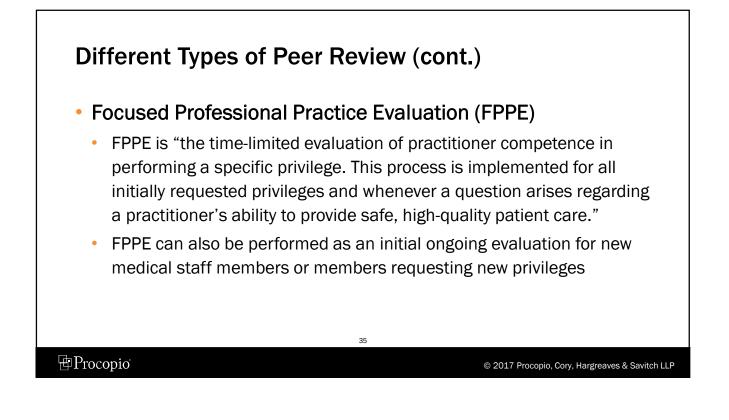


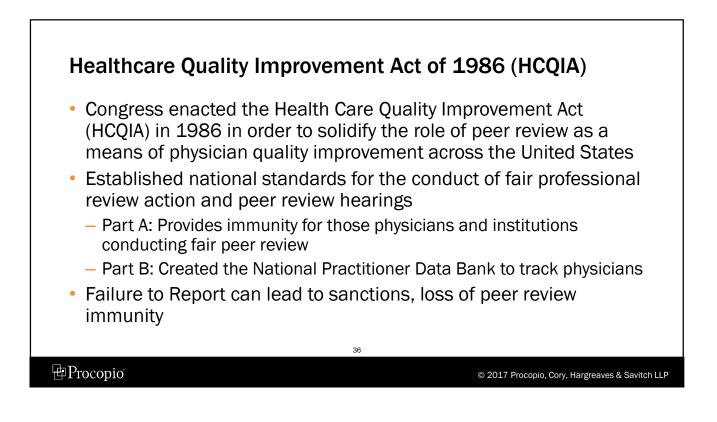
Different Types of Peer Review

- Ongoing Professional Practice Evaluation ("OPPE")
 - OPPE is defined as "a document summary of ongoing data collected for the purpose of assessing a practitioner's clinical competence and professional behavior. The information gathered during this process is factored into decisions to maintain, revise, or revoke existing privilege(s) prior to or at the end of the two-year license and privilege renewal cycle."
 - The routine monitoring and evaluation of current competency for current medical staff
 - The Joint Commission created in 2007
 - Example: quarterly chart review

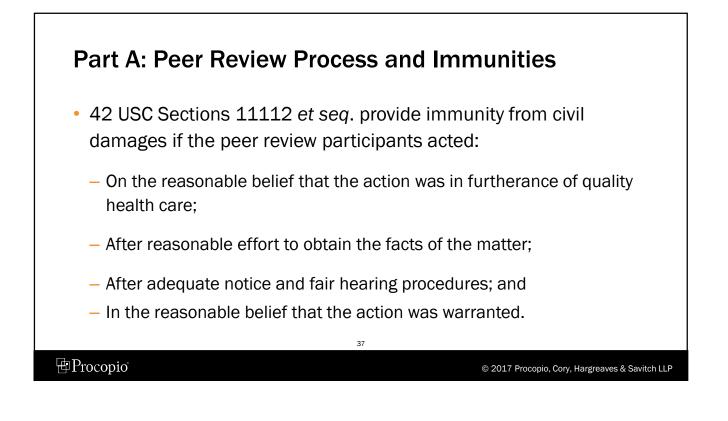
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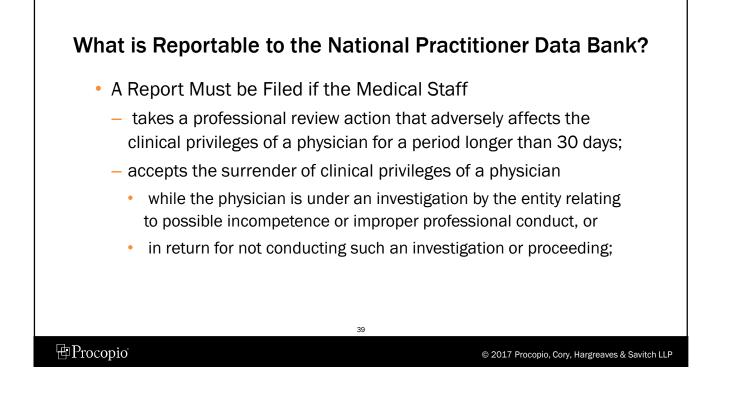


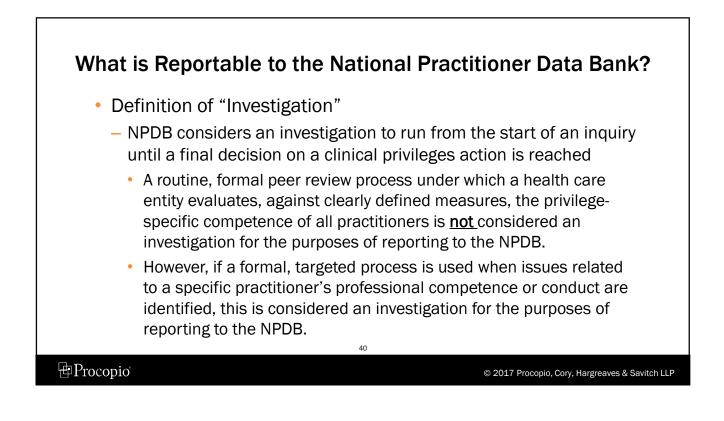
Part B: National Practitioner Data Bank

- National Practitioner Data Bank ("NPDB") is an electronic database that contains information about healthcare practitioners
- Healthcare facilities are required to report professional review actions which adversely affect the clinical privileges of a practitioner
 - "professional review action" means an action or recommendation of a professional review body which is based on the competence or professional conduct of an individual physician (which conduct affects or could affect adversely the health or welfare of a patient or patients)
 - "adversely affecting" includes reducing, restricting, suspending, revoking, denying, or failing to renew clinical privileges or membership in a health care entity

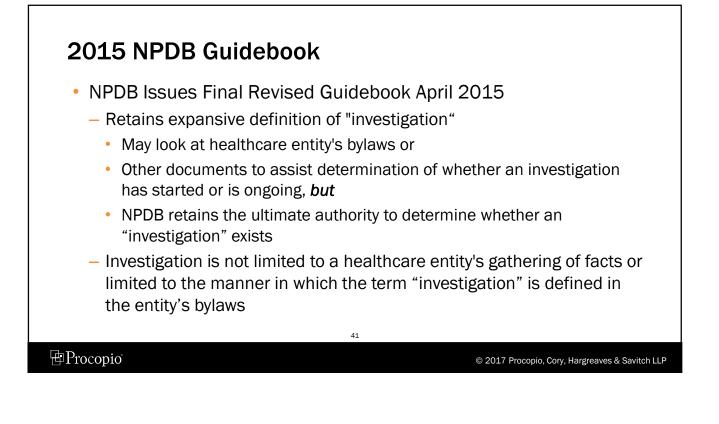
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California Law

- Requires reporting pursuant to California Business and Professions Code Section 805 of any of the following actions of a peer review body if based on "medical disciplinary cause or reason":
 - Denial of application for Medical Staff Membership or Privileges
 - Termination or Revocation of Medical Staff Privileges, Membership
 - Restrictions Imposed for a Cumulative Total of 30 days for any 12 Month Period
 - Restrictions include proctoring *only* if proctor may overrule proctored physician's treatment decision
 - Summary Suspension greater that 14 days

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<section-header><list-item><list-item><list-item><list-item> California Law (cont.) How does sovereign immunity affect reporting in California? Under 805, a "peer review body" is defined as a medical staff or peer review body of a health care facility licensed under the Health and Safety code or "a facility certified to participate in the federal Medicare program as an ambulatory surgical center" Is the medical staff of an IHS facility a "peer review body"? Does the IHS entity have to comply with California reporting requirements?

Peer Review Tips

- 1. Utilize External Reviewers
- 2. Follow Your Process
 - Consult Bylaws, Policies, HCQIA
 - Conduct internal investigation and review
- 3. Educate Your Board Regarding Their Role
 - Determine what materials are going to be provided to Board Members
- 4. Take Appropriate Action
 - Be mindful of reporting requirements and provider's rights

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Thank you!

Questions? Please feel free to contact us anytime for guidance.



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