

Guaranteeing Emergency Physician Due Process Rights

The best interests of all patients are served when emergency physicians practice in a fair, equitable, and supportive environment. The right to due process provides the foundation for this supportive environment, ensuring that emergency physicians can fully advocate for their patients without the fear of retribution or termination by employers.

Emergency physicians are typically hospital-based physicians but are not always employed directly by the hospital itself. A wide variety of employment or contractual arrangements exists, including small- or mid-size independent physician-owned practices; local, regional, or large national staffing companies; direct employment by an institution; or other arrangements.

- Hospitals and facilities often contract with emergency physician groups to cover the many needs of the emergency department (ED).
- Unfortunately, the contracts that are offered to emergency physicians are not required to include due process protections afforded to physicians employed directly by the hospital or facility.
- In many cases, these contracts require the physician to waive their rights to due process entirely.

Often, one staffing group may cover most or all EDs in a given region or hospital system, leaving emergency physicians with no alternative employment opportunities, so they are essentially forced to accept the conditions of the contracts offered to them. This results in a two-tiered scenario wherein the one set of physicians of other specialties has due process protections and the other set (emergency physicians) does not, within the same hospital.

- Emergency physicians are left uniquely vulnerable to unfair disciplinary or retaliatory practices, as they are not protected by and subject to the same medical staff bylaws that cover physicians that are directly employed by the hospital.
- A hospital or facility can request that the ED group terminate an emergency physician without due process protections, limiting — or effectively ending — an emergency physician’s ability to continue their career.

Safeguarding the right to due process for emergency physicians helps sustain and advance quality patient care and safety. All emergency physician contracts should include a due process clause.

The “Physician and Patient Safety Act,” bipartisan legislation sponsored by Senators Roger Marshall, MD (R-KS) and Elizabeth Warren (D-MA) and Representatives Raul Ruiz, MD, (D-CA) and John Joyce, MD (R-PA), will ensure that due process rights are protected for all physicians regardless of who employs them directly. The bill requires the Department of Health and Human Services (HHS), through rulemaking, to ensure that physicians who have been granted medical staff privileges at a hospital have a fair hearing and appellate review through appropriate medical staff mechanisms before any termination, restriction, or reduction of their professional activity or staff privileges.

ACEP urges legislators to cosponsor the “Physician and Patient Safety Act” to guarantee due process protections for emergency physicians, ensuring that those who provide our nation’s health care safety net can effectively advocate for all patients without fear of retaliation or termination.