

## Guaranteeing Emergency Physician Due Process Rights

The best interests of our 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 they are not always employed directly by the hospital itself. In fact, emergency physicians work in a wide variety of employment or contractual arrangements, which can include small- or mid-size independent physician-owned practices; local, regional, or large national staffing companies; or direct employment by an institution.

Trends in the health care sector have led to more hospitals and facilities contracting with emergency physician groups to cover the many needs of the emergency department (ED). Unfortunately, the contracts that are then offered to emergency physicians under these arrangements are not required to include due process protections; and, in many cases, even require the physician to *wave* their rights to due process entirely. Often, one staffing group may cover most or all of the EDs in a given region or hospital system, leaving emergency physicians with no alternative employment opportunities as they are essentially forced to accept the conditions of the contracts offered to them.

*"The group's contract with the hospital eliminated our rights to due process so that we no longer had the same rights as other members of the hospital medical staff to a fair hearing before the medical staff's executive committee."*

-anonymous emergency physician

This results in a two-tiered scenario where in the same hospital, one set of physicians of other specialties has due process protections and the other (the emergency physicians) does not, purely due to the nature of their employment. This leaves emergency physicians 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.

While this has been an issue for many years, the COVID-19 pandemic shed new light on the problem of health care workers being threatened or silenced for speaking out about patient safety or a lack of PPE to protect themselves. During the greatest public health crisis of our time, some physicians were even removed from their duties when they were needed most.

Safeguarding the right to due process helps sustain and advance quality patient care and safety. All emergency physician contracts should include a due process clause, regardless of whether they are directly employed by a hospital or they provide emergency medical services through a group or individual contract.

The "ER Hero and Patient Safety Act", previously introduced by Senator Roger Marshall, MD, (R-KS), and Representative Raul Ruiz, MD, (D-CA), ensures that due process rights are protected for all emergency physicians, regardless of who employs them directly. Expected to be reintroduced soon, this straightforward legislation requires the Department of Health and Human Services (HHS), through rulemaking, to extend due process rights to emergency physicians employed by a third-party contractor.

**ACEP urges legislators to cosponsor the "ER Hero and Patient Safety Act" when introduced to guarantee due process protections for emergency physicians, ensuring that those who provide our nation's health care safety net can effectively advocate for our patients without fear of retaliation or termination.**