**H.R. 6910, The Emergency Room (ER) Hero and Patient Safety Act**

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*Supported By: American Academy of Emergency Medicine, American College of Emergency Physicians, American Osteopathic Association, Society for Academic Emergency Medicine, American Academy of Emergency Medicine Resident and Student Association, Council of Residency Directors in Emergency Medicine, American College of Osteopathic Emergency Physicians, American College of Medical Toxicology*

**Issue**

Due process plays a [foundational role](https://www.aaem.org/resources/statements/position/due-process-white-paper) in ensuring a physician’s ability to keep his or her public promise to practice medicine ethically by establishing the right for physicians to have a fair hearing and appellate review by their peers. Guidelines and protocols are further outlined in a hospital’s bylaws and guidance, and organizations like the [American Medical Association](https://www.ama-assn.org/practice-management/payment-delivery-models/get-help-your-medical-staff-bylaws-ama-guide) provide additional guidelines. However, current hiring trends have left many Emergency Department (ED)  physicians unprotected from this fundamental right.

In recent history, in order to meet complex organizational challenges of EDs, many hospitals have turned to physician staffing companies to help them with their staffing needs, outsourcing the entire department. Unfortunately, these contracts are not required to include due process protections, unlike provider contracts with a hospital, which are required to include the protections in order to participate in Medicare and Medicaid. Because staffing through contracts is so commonplace, emergency physicians often have no alternative and have to go through a staffing company if they want employment. This leaves emergency doctors vulnerable to unfair discipline practices with no recourse.

A lack of due process distorts the practice of emergency medicine and [undermines](https://www.sciencedirect.com/science/article/abs/pii/S0736467912017258) a physician’s Hippocratic Oath. One [survey](https://www.sciencedirect.com/science/article/abs/pii/S0736467912017258) found that ED physicians put themselves at risk for adverse action and possible termination for speaking out about the quality of care and pressure regarding financial matters related to patient care. Another [study published this year](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7081866/) highlighted the importance of due process protections for medical students and trainees as they are needed to protect the educational integrity of a training program by being able to practice appropriately without fear of repercussion. [Legal arguments](https://www.bartonesq.com/wp-content/uploads/2018/03/ELB-0318-Did-EP-Override-Safety-Prompt-for-No-Apparent-March-2018.pdf) on lawsuits have also highlighted due process issues in citing adverse outcomes. A [letter to CMS](https://www.emra.org/be-involved/be-an-advocate/working-for-you/2018-cms-due-process/) also highlights the consensus among the medical community on the severity of this issue.

The COVID-19 outbreak has brought the issue to the surface and has received national attention. In major headline news, a [physician in Seattle](https://www.foxnews.com/us/washington-doctor-loses-job-criticizing-coranavirus-response) was abruptly fired for citing safety issues, and [other stories](https://www.google.com/search?biw=841&bih=927&tbm=nws&ei=JYa1Xvm9G_CE_QapvrGICg&q=Ming+Lin+doctor+fired&oq=Ming+Lin+doctor+fired&gs_l=psy-ab.3...26107.29317.0.29506.10.10.0.0.0.0.129.1022.7j3.10.0....0...1c.1.64.psy-ab..0.8.797...0j0i333k1j0i13k1j33i299k1.0.DGGNzaW6aUk) have highlighted hospitals [threatening](https://www.bloomberg.com/news/articles/2020-03-31/hospitals-tell-doctors-they-ll-be-fired-if-they-talk-to-press) to fire health care professionals for speaking out on quality control issues. The [New York Times](https://www.nytimes.com/2020/04/01/opinion/coronavirus-doctors-protective-equipment.html) has also covered how health care professionals are being punished for protecting themselves, while trying to focus on providing high quality care.

**Solution**

H.R. 6910, the ER Hero and Patient Safety Act will ensure that due process rights are protected for all ED physicians and ensure equality of rights, regardless or who employs the ED physicians directly. Specifically, this legislation would require the Department of Health and Human Services – through rulemaking – to extend due process rights to ED physicians that are employed by a third-party contractor. Without due process in our nation’s greatest safety net, physicians are unable to act as their patient’s best advocate. This is not what America’s public health heroes deserve, especially in the wake of a pandemic.