NORCOTT, J., dissenting. I respectfully disagree with the majority's conclusion that General Statutes § 19a-17b (d) is inapplicable in proceedings before the freedom of information commission (commission) and, therefore, that certain records held by the plaintiff, the director of health affairs policy planning for the University of Connecticut Health Center, are not exempt from disclosure under the freedom of information act (act), General Statutes § 1-200 et seq. In my view, the majority's narrow interpretation of the ambiguous language of § 19a-17b (d) effectively reads the "shall not be subject to discovery" language out of the statute and will have a chilling effect on future peer review proceedings, thereby defeating the very purpose of the statute. Accordingly, I respectfully dissent.

Section 19a-17b (d) provides in relevant part: "The proceedings of a medical review committee conducting a peer review shall not be subject to discovery or introduction into evidence in any civil action for or against a health care provider arising out of the matters which are subject to evaluation and review by such committee, and no person who was in attendance at a meeting of such committee shall be permitted or required to testify in any such civil action as to the content of such proceedings . . . ." The majority properly focuses its analysis on the terms "discovery" and "civil action," and concludes that their plain meaning indicates that the legislature intended for the protections afforded by § 19a-17b (d) to apply only to the formal discovery process, namely, the pretrial tools used by one party to obtain information in preparation for trial, in a court action in a civil matter. In my view, however, the meaning of those terms is ambiguous, and when the clear purpose of the peer review statute is considered, I conclude that the legislature intended § 19a-17b (d) also to preclude the disclosure of peer review proceedings in an action before the commission.

"When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . The test to deter-

mine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Hees* v. *Burke Construction, Inc.*, 290 Conn. 1, 10, 961 A.2d 373 (2009).

It is well settled that, "[i]n the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language . . . . General Statutes § 1-1 (a). We ordinarily look to the dictionary definition of a word to ascertain its commonly approved usage." (Internal quotation marks omitted.) *State* v. *Gelormino*, 291 Conn. 373, 380, 968 A.2d 379 (2009). With respect to the term "discovery," the majority concludes that, when read in conjunction with the statute's prohibition on "introduction into evidence," that term was intended to refer to its dictionary definition, under the heading "[t]rial practice," as "[t]he pre-trial devices that can be used by one party to obtain facts and information about the case from the other party in order to assist the party's preparation for trial." Black's Law Dictionary (6th Ed. 1990). A subsequent edition of that same dictionary, however, also defines the term "discovery" as, in relevant part, "[t]he act or process of finding or learning something that was previously unknown"; Black's Law Dictionary (7th Ed. 1999); a definition that is virtually identical to that for the term "disclosure" which, as the majority notes, typically is associated with proceedings under the act. See id. (defining "disclosure" as, in relevant part, "[t]he act or process of making known something that was previously unknown"). In my view, each of these readings of the term "discovery" is perfectly reasonable in the context of § 19a-17b and, accordingly, I conclude that the legislature's use of that term is, at the very least, ambiguous.[1] See, e.g., *Hees* v. *Burke Construction, Inc.*, supra, 290 Conn. 10.

The meaning of "civil action" similarly is unclear based on the language of § 19a-17b, which does not define that term for the purposes of disclosure of peer review proceedings. Black's Law Dictionary (7th Ed. 1999), however, defines the term broadly as "[a]n action brought to enforce, redress, or protect a private or civil right; a noncriminal litigation." That definition does not specify that the action must be a court proceeding in order to be classified as a civil action, and there is no clear indication, either in the statutes or in our case law, that that is the case.[2] Accordingly, I conclude that an interpretation of the term "civil action" that includes an action brought before the commission by a private individual seeking to enforce his or her right to public information under the act falls squarely within the common dictionary definition of the term, and is a reasonable reading of the statutory language. In light of the majority's equally reasonable reading of the statute, I conclude that the term "civil action," as used in the context of § 19a-17b, also is ambiguous.

When the statutory language is ambiguous, "we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter." (Internal quotation marks omitted.) *Fredette* v. *Connecticut Air National Guard*, 283 Conn. 813, 821–22, 930 A.2d 666 (2007). In doing so, "[o]ur ultimate objective . . . is to discern and effectuate the apparent intent of the legislature." (Internal quotation marks omitted.) *State* v. *Cote*, 286 Conn. 603, 614–15, 945 A.2d 412 (2008). Thus, we are bound to construe the statute in a manner that will reflect and achieve the purpose for which it was enacted; see *McGaffin* v. *Roberts*, 193 Conn. 393, 407, 479 A.2d 176 (1984), cert. denied, 470 U.S. 1050, 105 S. Ct. 1747, 84 L. Ed. 2d 813 (1985); and to refrain from "interpret[ing] the statute in a way that would thwart [that] purpose." *Curry* v. *Allan S. Goodman, Inc.*, 286 Conn. 390, 412, 944 A.2d 925 (2008).

I begin, then, with a discussion of the concept of peer review, which has become an entrenched aspect of the provision of quality health care throughout the United States. Peer review proceedings "are essential to the continued improvement in the care and treatment of patients. Candid and conscientious evaluation of clinical practices is a sine qua non of adequate health care." *Bredice* v. *Doctors Hospital, Inc.*, 50 F.R.D. 249, 250, (D.D.C. 1970), aff'd, 479 F.2d 920 (D.C. Cir. 1973). "The purpose of [peer review] is the improvement, through self-analysis, of the efficiency of medical procedures and techniques." Id. To that end, health care facilities throughout the United States have, in some form or another, created peer review mechanisms "with projected goals of, inter alia, continuing professional education, evaluation of the quality of patient care, renewal of privileges, complaint investigation and malpractice review." *Commissioner of Health Services* v. *Kadish*, 17 Conn. App. 577, 582, 554 A.2d 1097 (*O'Connell, J.*, dissenting), cert. denied, 212 Conn. 806, 563 A.2d 1355 (1989).

Courts and scholars consistently have recognized, however, that the efficacy of peer review is threatened by a reluctance on the part of many physicians and other health care providers to participate in that process. This reluctance generally stems from a number of factors, including "fear of exposure to liability, entanglement in malpractice litigation, [and] loss of referrals from other doctors . . . ." C. Creech, comment, "The Medical Review Committee Privilege: A Jurisdictional Survey," 67 N.C. L. Rev. 179 (1988);[3] see also *Yuma Regional Medical Center* v. *Superior Court*, 175 Ariz. 72, 75, 852 P.2d 1256 (App. 1993) ("[r]eview by one's peers within a hospital is not only time consuming, unpaid work, it is also likely to generate bad feelings

and result in unpopularity" [internal quotation marks omitted]).

In an effort to address such concerns, virtually every state has adopted a peer review privilege statute. Although these statutes differ with regard to the scope of the privilege and the materials protected by it, without exception they are founded on the strong public policy in favor of peer review proceedings, and are intended primarily to encourage and facilitate participation in such proceedings. The principal means of achieving that goal consist of immunizing participants from civil liability and precluding the materials used and the statements made in such proceedings from being introduced into evidence in a subsequent action for damages; see G. Gosfield, comment, "Medical Peer Review Protection in the Health Care Industry," 52 Temp. L.Q. 552, 553 (1979); and also by maintaining the confidentiality of such proceedings by prohibiting disclosure to the public.[4] See, e.g., *Morse* v. *Gerity*, 520 F. Sup. 470, 472 (D. Conn. 1981) ("[I]f the purpose of the statute is to encourage doctors to evaluate their peers without fear of disclosure, that purpose would be hampered by public release of any proceedings, not just those involving the patient who has sued. The danger of inhibiting candid professional peer review exists by the mere potential for disclosure. . . . The overriding importance of these review committees to the medical profession and the public requires that doctors have unfettered freedom to evaluate their peers in an atmosphere of complete confidentiality. No chilling effect can be tolerated if the committees are to function effectively."); *Cruger* v. *Love*, 599 So. 2d 111, 114–15 (Fla. 1992) ("[t]he privilege afforded to peer review committees is intended to prohibit the chilling effect of the potential public disclosure of statements made to or information prepared for and used by the [medical review] committee in carrying out its peer review function"); *HCA Health Services of Virginia, Inc.* v. *Levin*, 260 Va. 215, 221, 530 S.E.2d 417 (2000) ("The obvious legislative intent is to promote open and frank discussion during the peer review process among health care providers in furtherance of the overall goal of improvement of the health care system. If peer review information were not confidential, there would be little incentive to participate in the process.").[5]

Although scant, the legislative history of § 19a-17b indicates that it was cast from the same mold as the peer review statutes of our sister states. See, e.g., 23 H.R. Proc., Pt. 24, 1980 Sess., p. 7096, remarks of Representative Richard Lawlor (peer review statute intended to "allow for some confidentiality in peer review proceedings with regard to any hospitals and medical facilities").[6] Indeed, we have recognized that the purpose of § 19a-17b is to facilitate peer review proceedings by protecting participants from civil liability and precluding the materials used therein from being introduced

into evidence in an action for damages; see *Babcock* v. *Bridgeport Hospital*, 251 Conn. 790, 824–25, 742 A.2d 322 (1999); and also by protecting the confidentiality of such proceedings. See id., 825 ("[o]nly where . . . peer review committees . . . are assured of confidentiality [will they] feel free to enter into uninhibited discussions of their peers" [internal quotation marks omitted]); *Pisel* v. *Stamford Hospital*, 180 Conn. 314, 326, 430 A.2d 1 (1980) ("[t]he purpose of [§ 19a-17b] is to keep peer review studies, discussions and deliberations confidential"); *Commissioner of Health Services* v. *Kadish*, supra, 17 Conn. App. 582 (*O'Connell*, *J.*, dissenting) ("[t]he peer review committee's proceedings are designed to be free from the chilling concern that they would become public and expose its members to the involvement of civil litigation and the glare of public attention").

In my view, the majority's narrow interpretation of the statutory language fails to reflect or effectuate the legislature's clear purpose and intent in enacting § 19a-17b. First, to the extent that § 19a-17b is intended to prevent litigants in a court action from obtaining peer review materials to assist in their preparation for trial—which I agree with the majority that, in large part, it is—the majority's interpretation of the statutory language effectively reads that protection out of the statute with respect to all public health care facilities throughout the state.[7] Specifically, although the prohibition remains on obtaining such materials through the formal discovery process, hereafter a litigant will be able to circumvent that safeguard simply by filing a request under the act for the exact same information, thereby eviscerating any protection that the discovery prohibition was intended to provide. It would be illogical and meaningless for the legislature to have enacted the discovery provision at all if it intended for a litigant against a public hospital to be able to obtain the same privileged information through disclosure under the act.[8] We are bound to avoid an interpretation of the statutory language that leads to such an unworkable result. See *Kelly* v. *New Haven*, 275 Conn. 580, 616, 881 A.2d 978 (2005) ("It is axiomatic that we construe a statute in a manner that will not thwart its intended purpose or lead to absurd results. . . . We must avoid a construction that fails to attain a rational and sensible result that bears directly on the purpose the legislature sought to achieve." [Internal quotation marks omitted.]).

From a practical standpoint, moreover, having obtained such materials pursuant to the act, a litigant will be able to use what was said and done during the peer review proceedings to determine what questions to ask, and of whom to ask them, during the formal discovery process in order to discover evidence that *would be* admissible at trial, thereby essentially providing litigants with the blueprint for an effective trial strategy. See *Yuma Regional Medical Center* v. *Supe-*

rior Court, supra, 175 Ariz. 76 ("Inherent in [the] plaintiffs' ability to obtain information from another source is the knowledge on [the] plaintiffs' part that such information exists. . . . Herein lies the real benefit to [the] plaintiffs of [obtaining peer review materials that are not themselves admissible in evidence]: it informs [the] plaintiffs what the peer review participants consider to be relevant information to [the] plaintiffs' case—information of which [the] plaintiffs might be unaware."). As a consequence, public health care providers will be reluctant to participate in the peer review process in the knowledge that what they say and do during such proceedings may, albeit indirectly, be used in an ongoing or subsequent malpractice action against themselves or one of their peers. This is precisely the result that the legislature sought to avoid when it enacted § 19a-17b.

Second, as a result of the majority's conclusions in this case, all peer review proceedings in public health care institutions potentially will be subject to disclosure beyond the litigation context. The ensuing public scrutiny of the comments made and documents submitted in such proceedings undeniably will have a chilling effect on peer review and will discourage health care providers—who risk their relationships with their peers, their reputation within the profession and the continued success of their practice through referrals—from participating in the process. Such a result defeats the clear purpose for which § 19a-17b was enacted, and we are bound to avoid such an interpretation. See *Kelly* v. *New Haven*, supra, 275 Conn. 616.

Accordingly, I conclude that the only permissible interpretation of the ambiguous language of § 19a-17b is that the legislature intended the language "shall not be subject to discovery . . . in any civil action" to include an action before the commission seeking disclosure of medical peer review information under the act. Because I would affirm the judgment of the trial court to that effect, I respectfully dissent.

[1] In concluding that the term "discovery" refers only to the pretrial process of obtaining information for subsequent use at trial, the majority states: "The meaning of 'discovery' must be understood as it is employed in the statute, as one of the *two* circumstances within a civil action in which the privilege comes into play—in other words, 'discovery' is best understood in conjunction with the concept of 'evidence.' " (Emphasis in original.) In my view, however, it does not follow from the fact that the legislature deemed peer review proceedings to be inadmissible evidence, that it intended the term "discovery" to apply only in the limited evidentiary sense of the term. If the legislature's intent in enacting § 19a-17b simply was to prevent peer review proceedings from being introduced into evidence at trial, then its use of the term "discovery," understood exclusively as a pretrial device designed to achieve that ultimate goal, essentially would be redundant because such concerns likely would be adequately addressed by the statute's explicit prohibition on "introduction into evidence . . . ." General Statutes § 19a-17b (d). Thus, it is reasonable to interpret the legislature's use of the term "discovery" as an indication that it had more than mere evidentiary concerns in mind, and that it intended more broadly to prevent the release, or "disclosure," of such information regardless of whether it was sought for a specific evidentiary purpose. Put differently, the legislature's inclusion of the term "discovery," *in addition to* the prohibition on "introduction

into evidence," indicates that a third party's mere knowledge of such information was something that the legislature sought to avoid, a view that accords with the disclosure oriented definition of the word "discovery."

[2] I acknowledge that the rules governing the commencement of a civil action are set forth in part elsewhere in the statutes; see General Statutes §§ 52-45a and 52-91; and that our cases have, as a factor in determining whether an administrative proceeding properly may be classified as a civil action, examined the procedure for commencing that proceeding to determine whether it is sufficiently similar to the requirements set forth in §§ 52-45a and 52-91. See, e.g., *Board of Education* v. *Tavares Pediatric Center*, 276 Conn. 544, 557–58, 888 A.2d 65 (2006); *Waterbury* v. *Waterbury Police Union*, 176 Conn. 401, 407, 407 A.2d 1013 (1979); *Chieppo* v. *Robert E. McMichael, Inc.*, 169 Conn. 646, 652, 363 A.2d 1085 (1975). As the majority notes, however, the process for filing an appeal before the commission *is* strikingly similar, although not identical, to the requirements set forth in §§ 52-45a and 52-91. Compare, e.g., Regs., Conn. State Agencies § 1-21j-23 (requiring complaint and other documents submitted to commission to be signed), Regs., Conn. State Agencies § 1-21j-26 (requiring complaint and other documents to be served in same manner as permitted by Superior Court), and Regs., Conn. State Agencies § 1-21j-28 (commencement of action occurs upon filing of complaint with commission, which must include complainant's name, address, and telephone and fax numbers and concise statement of relevant facts, including nature of relief sought), with General Statutes § 52-45a (commencement of civil action requires writ of summons describing parties, return date and place and date for filing appearance, accompanied by complaint), and General Statutes § 52-91 (requiring first pleading in civil action to be "complaint . . . contain[ing] a statement of the facts constituting the cause of action and . . . a demand for the relief, which shall be a statement of the remedy . . . sought").

Moreover, our prior cases have not categorically stated that such similarity is the *only* relevant factor in classifying an administrative proceeding as a civil action. To the contrary, we have recognized on several occasions that the purpose for which a statute containing a term such as "civil action" was enacted is an important factor in determining whether a proceeding falls with the scope of that term as it is used in the specific context of that particular statute. See *Connecticut Light & Power Co.* v. *Costle*, 179 Conn. 415, 423, 426 A.2d 1324 (1980) ("the scope of proceedings which will be included within a term, whose precise reach is uncertain, depends upon the nature and purpose of the particular statute in question"); *Chieppo* v. *Robert E. McMichael, Inc.*, supra, 169 Conn. 653–54 (examining purpose of statute as factor in determining whether legislature intended administrative proceeding to constitute civil action); *Carbone* v. *Zoning Board of Appeals*, 126 Conn. 602, 605, 13 A.2d 462 (1940) ("the scope of proceedings which will be included within the term as used in the statutes depends upon the nature and purpose of the particular statute in question"); *Fishman* v. *Middlesex Mutual Assurance Co.*, 4 Conn. App. 339, 344, 494 A.2d 606 ("[w]hat the legislature may have intended to be a civil action for some purposes may not be a civil action for others"), certs. denied, 197 Conn. 806, 807, 499 A.2d 57 (1985). Our prior case law, therefore, does not foreclose the possibility that the legislature intended an action before the commission to be considered a civil action in the specific context of protecting peer review proceedings from disclosure under § 19a-17b, and it is appropriate for us to examine the purpose behind § 19a-17b in order to determine if the legislature did so intend. See, e.g., *Connecticut Light & Power Co.* v. *Costle*, supra, 423–24.

[3] Indeed, "[a] physician's qualifications, competence, and ethics all are called into question when a medical staff committee is requested to review his application for staff privileges, to determine the extent of his clinical privileges, or to assess the quality of his work. The nature of these activities suggests that committee participants may lose professional friends, as well as referrals, from physicians who receive unfavorable reviews. In addition, the committee members, and the hospitals as well, may be exposed to costly litigation alleging defamation, the most common claim arising from committee activities." R. Hall, "Hospital Committee Proceedings and Reports: Their Legal Status," 1 Am. J.L. & Med. 245, 254 (1975).

[4] At least one jurisdiction, foreseeing the very issue that we are presented with today, expressly has provided that peer review proceedings "shall not be subject to *discovery* pursuant to [that state's] . . . [f]reedom of [i]nformation [a]ct . . . ." (Emphasis added.) Ark. Code Ann. § 16-46-105 (a) (1) (A) (LexisNexis 2008).

[5] See also, e.g., *Bredice* v. *Doctors Hospital, Inc.*, supra, 50 F.R.D. 251 ("[t]here is an overwhelming public interest in having [peer review proceedings] held on a confidential basis so that the flow of ideas and advice can continue unimpeded"); *Tucson Medical Center, Inc.* v. *Misevch*, 113 Ariz. 34, 38, 545 P.2d 958 (1976) ("[t]he protection is justified by the overwhelming public interest in maintaining the confidentiality of the medical staff meetings so that the discussion can freely flow to further the care and treatment of patients"); *West Covina Hospital* v. *Superior Court*, 41 Cal. 3d 846, 853, 718 P.2d 119, 226 Cal. Rptr. 132 (1986) (peer review statute "expresses a legislative judgment that the public interest in medical staff candor extends beyond damages immunity and requires a degree of confidentiality"); *West Covina Hospital* v. *Superior Court*, supra, 853 ("[E]xternal access to peer investigations conducted by staff committees stifles candor and inhibits objectivity. . . . [T]he quality of in-hospital medical practice will be elevated by armoring staff inquiries with a measure of confidentiality."); *Baltimore Sun Co.* v. *University of Maryland Medical System Corp.*, 321 Md. 659, 668, 584 A.2d 683 (1991) ("[A] high level of confidentiality is necessary for effective medical peer review. By protecting these records from public access in those situations covered by [the peer review statute], the legislature recognized that a system of effective medical peer review outweighs the need for complete public disclosure."); *Claypool* v. *Mladineo*, 724 So. 2d 373, 383 (Miss. 1998) ("[the] privilege is intended to prohibit the chilling effect of the potential public disclosure of statements made to or information prepared for and used by the [medical review] committee in carrying out its peer review function" [internal quotation marks omitted]); *Virmani* v. *Presbyterian Health Services Corp.*, 350 N.C. 449, 478, 515 S.E.2d 675 (1999) ("[t]he public's interest in access to . . . court proceedings, records and documents is outweighed by the compelling public interest in protecting the confidentiality of medical peer review records in order to foster effective, frank and uninhibited exchange among medical peer review committee members"); *Trinity Medical Center, Inc.* v. *Holum*, 544 N.W.2d 148, 155 (N.D. 1996) ("[P]hysicians would be unwilling to serve on quality assurance committees, and would not feel free to openly discuss the performance of other doctors practicing in the hospital, without assurance that their discussions in committee would be confidential and privileged. It was this purpose to encourage frank and open physician participation, and the resulting improvement in patient care, which underlies the privilege."); *Sanderson* v. *Frank S. Bryan, M.D., Ltd.*, 361 Pa. Super. 491, 494, 522 A.2d 1138 (1987) ("Generally, hospital peer review findings and records are protected from public scrutiny . . . . The purpose for such protection is to encourage increased peer review activity which will result, it is hoped, in improved health care."), appeal denied, 517 Pa. 624, 538 A.2d 877 (1988); *Barnes* v. *Whittington*, 751 S.W.2d 493, 497 (Tex. 1988) (Phillips, C. J., concurring) ("The [peer review] statute reflects a legislative judgment that the overall quality of medical care will be elevated by shielding certain in-house evaluations from public disclosure. Medical professionals are more likely to come forward with information about professional incompetence and misbehavior when protected from personal liability or public disclosure.").

[6] See also 19 S. Proc., Pt. 2, 1976 Sess., p. 516, remarks of Senator Anthony Ciarlone (bill intended to give immunity to physicians serving on peer review committee); 19 H.R. Proc., Pt. 6, 1976 Sess., p. 2384, remarks of Representative Morris N. Cohen ("[T]his bill is a most necessary bill if we are to continue checking on health care delivery in our [s]tate. Peer review committees must constantly judge the services rendered by their peers. Without giving them this immunity, they would not be able to do so."); 19 H.R. Proc., Pt. 9, 1976 Sess., p. 4094, remarks of Representative James T. Healey ("opinions of the medical review committee . . . are not subject to discovery or introduction into evidence and . . . no person who is in attendance at a meeting of such committee shall be permitted or required to testify in civil actions as to any opinions of said committee").

[7] It is particularly troubling that only *public* health care institutions will be impacted adversely by the majority's conclusions today, as private health care institutions are not subject to the provisions of the act. Accordingly, the public institutions sit at a distinct disadvantage in comparison to their private competitors with respect to assuring the continued provision of quality health care through an effective peer review process.

[8] In my view, this court's decision in *Chief of Police* v. *Freedom of Information Commission*, 252 Conn. 377, 746 A.2d 1264 (2000), is inapposite. Although I agree with the majority that *Chief of Police* v. *Freedom of Information Commission* supports the proposition that the fact that certain informa-

tion is not subject to disclosure under the rules of discovery does not necessarily mean that it also is not subject to disclosure under the act, it does not follow that the fact that certain information is not subject to disclosure under the rules of discovery means that it necessarily *is* subject to disclosure under the act. Put differently, the question presented here is whether the legislature intended § 19a-17b to prevent the disclosure of peer review proceedings in an action before the commission such that those materials are *neither* subject to disclosure under the rules of discovery *nor* subject to disclosure under the act, a question that was not raised or analyzed in *Chief of Police* v. *Freedom of Information Commission*.