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# Correspondence

## Sham Peer Review

Upon reading Dr. Fitzgibbons's letter to the editor,<sup>1</sup> it occurred to me that the court records from the appeals of Dr. Raymond Long are public records. These could be sent to the patients who were deliberately infected in the hospital so that the patients' attorneys can attempt to obtain compensation. Although this approach won't be suitable for all sham peer review cases, it could be a deterrent to such behavior by hospitals. Thanks to the Journal for covering these important stories.

**Frank J. Schell, M.D.**

Luzerne, Pa.

Dr. Lawrence Huntoon's editorial on hospital immunity in sham peer review exposes the unseemly underbelly of the "rights" of power.<sup>2</sup> It is beyond tragedy that the basic rights and protections accorded to citizens under the law are denied to citizens who are physicians because they are physicians and care for patients. The very elimination of evidence and elimination of process applicable to all physicians, and the accord of virtual absolute immunity to designated authority in the business of medicine because of the posited excuse that it is about medicine, effectively eliminate the rule of law intrinsic to our charter of rights accorded to citizens under the Constitution.

It is a tragedy that affects patients and all of society, which depends on the process of law for the good of all. The rigging of the process by creating a blind alley in the accord of constitutional rights to certain citizens is pathological and harmful to society. It embraces the principle that any one individual is irrelevant.

Absolute immunity absolutely leads to abuse, especially if it elevates power and money in medicine to a position above the law.

**Lawrence Poliner, M.D.**

Dallas, Texas

Dr. Huntoon's editorial<sup>2</sup> reminded me of my work as an expert witness in the Poliner case, which resulted in the largest award for a physician harmed by peer review ever—\$366 million. The jury understood the importance of professional reputation and was furious with the peer reviewers, who attacked a doctor who had a sparkling career and superlative skills, for competitive reasons. I appreciate your effort to warn physicians about the now-absolute immunity created for hospitals through judicial misconduct.

Now, at least in the eyes of the author of the Poliner opinion in the 5th Circuit, no matter what the hospital does, even if it completely disregards the Health Care Quality Improvement Act (HCQIA, 42 USC 11111 et seq) provisions on peer review—it cannot be held liable for the damage done. Any reasonable reading of HCQIA shows that the absolute immunity created by the 5th Circuit is only available from a corrupt court or judge—certainly not from a proper reading of the statute and its provisions for how to do proper peer review. In my opinion, the judge was conflicted by personal and professional loyalties to the hospital industry. The opinion begins with encomiums to Presbyterian Hospital, which is now part of the largest consortium of hospitals in North Texas.

At trial, the hospital's physician peer reviewers showed no remorse for trying to destroy a man's career through a clever legal trick—abeyance under threat of a summary suspension—without the burden of proving a case of misconduct or negligence.

I provide links to Dr. Huntoon's articles to the physicians on my lists, and to the residents, who need to be aware of these cases before they launch into the murky waters of hospital peer review.

**John Dale Dunn, M.D., J.D.**

Brownwood, Texas

1. Fitzgibbons M. Letter. Sham peer review. *J Am Phys Surg* 2015;20:97.
2. Huntoon LR. Sham peer review: outrageous and unjustified immunity. *J Am Phys Surg* 2015;20:98-101.