

Sham Peer Review: a Pathology Report

John R. Minarcik, M.D.

Confession

I, John Minarcik, confess to the mighty U.S. government, to its agencies, subsidiaries, carriers, and contractors, and to you, my brothers and sisters in medicine, that I, through my own fault, committed the grievous crime of submitting tardy placenta reports.

Furthermore, I claimed and accepted \$44 in payment for each such report—money that had been forcibly taken from unwilling taxpayers, including widows and orphans.

Moreover, as a condition of claiming payment, I swore falsely to abide by all relevant laws, rules, regulations, and policies, written or unwritten, whether promulgated in the past or long into the future, although I knew or should have known that this was impossible.

Background

Although my confession may sound absurd to all but a few hard-core fans of the *Twilight Zone*, the events that led to my downfall are real, and a detailed account has been submitted as a sworn affidavit to a U.S. attorney. Because a medical journal cannot independently verify all the specific events, and because the setting and players can have infinite permutations, I will only outline the process here, as a warning to others. Call “The Hospital” Mount St. Elsewhere, or by the name of your own hospital. My accusers are nameless here, but doctors and staff members with faces you recognize could someday use the same tactics against you or your colleagues.

Some told me that I could have beaten the rap in court—if only I had had about half a million dollars for paying a lawyer. But after years of an agonizing attempt to vindicate myself, I chose to plead guilty and to accept the merciful punishment of 3 years’ probation. Additionally, I have lost my medical license, my reputation, my civil rights, my home, my retirement account, and my life savings. I must earn my living by means other than the practice of medicine. I ask the permission of my probation officer to travel to a meeting, and wear an ankle bracelet so that my whereabouts can be tracked continuously.

If you accept government or other third-party payments, be assured that you are guilty. Not all the guilty can be prosecuted without reducing the supply of physicians to zero. It is more expedient to reduce the numbers to a manageable group of cowed, compliant, nondisruptive serfs.

Take heed and repent now.

The Sequence of Events

The Hospital had medical staff bylaws that protected all hospital-based physicians (pathologists, radiologists, and anesthesiologists) by stipulating that “all existing departments shall

remain open,” that is, that the administrator could not bring in exclusive contracts. The ability to maintain my independence was one reason that I chose to work there.

When Mt. Olympus took ownership of The Hospital in the mid-1990s, it was dissatisfied because The Hospital had become the only one in its international empire in which the administrator could not hire and fire house-based physicians at whim, by virtue of exclusive contracts. Such contracts mean more control of the medical staff, and much more money for the corporation. Action was needed.

In radiology, the administration encouraged the largest group of radiologists, which had exclusive contracts at two neighboring Mt. Olympus hospitals, to buy out the smaller solo practices. Resistance, and the appearance of newer radiology solo applicants, thwarted that move.

In anesthesiology, the hospital administration encouraged a small army of “cardiac anesthesiologists” to join the staff as an aid to the new open-heart surgery program, which did have exclusivity because it was “new.” The wiser doctors realized that there were twice as many “cardiac anesthesiologists” as regular anesthesiologists at The Hospital because it was building its own contracted group to replace the non-contracted one.

In pathology, the approach was more creative. The Chief Executive Officer hired two pathologists who had contracts with other Mt. Olympus hospitals to review the two targeted pathologists’ work in secret, outside the usual quality assurance procedures. Tens of hundreds of slides were removed from the laboratory at night and on weekends, without the knowledge of even the pathology technicians. Not surprisingly, The Hospital’s two select reviewers alleged that the work of the independent pathologists was substandard, despite their previously unblemished record over 30 years at The Hospital.

The CEO and his Mt. Olympus-appointed board of trustees took the results to the Medical Executive Committee, whose members were physicians elected by their peers. The MEC was unimpressed. Nevertheless, the board revoked the two victim pathologists’ privileges without permission of, and with great protest from, the entire MEC.

The pathologists immediately sued, were granted an injunction by the Court, and were back on staff within 30 days. The Judge ruled that this arrogant corporation had violated nearly every Florida peer review law, as well as blatantly violating The Hospital’s own bylaws, which forbade the board to kick out doctors without a two-thirds vote of the MEC.

Mt. Olympus appealed and lost.

At about this point, a nationally famous malpractice attorney went on local and national television threatening a lawsuit against Mt. Olympus for an alleged “billion” dollars in pathology mistakes.

The board of trustees fired the MEC, citing bad inspection reports by various agencies including the Joint Commission on

Accreditation of Health Care Organizations (JCAHO), and replaced the elected medical staff officers with their appointed doctors.

The ousted MEC then sued and, supported by the appellate court, got another injunction. This time the Judge ruled that The Hospital had created its own “crisis” as a pretext for violating medical staff bylaws by removing the elected medical staff officers. The Court also found that The Hospital had violated state law in the prior case concerning the two independent pathologists.

Mt. Olympus appealed again, and lost again. But even this did not slow it down.

The Hospital’s CEO and administrator, without permission or advice from the medical staff or pathologists, then hired another pathologist to review the targeted pathologists’ work and report any perceived discrepancies to the State of Florida as diagnostic errors. According to news reports, this review function cost the hospital \$75,000 per month. It was completely separate from any medical staff program.

After criticizing the work of *all* the pathologists, the contracted reviewer offered to have her own group perform the pathology services at The Hospital.

All four pathologists, with a combined 50 years of practice without regulatory complaints, now faced dozens of administrative complaints from the State of Florida and have had to pay many thousands of dollars in legal defense while trying to keep their licenses. The State of Florida had become the enforcer for a multibillion dollar corporation.

In 2001, about 60 FBI agents raided The Hospital, two of its storage facilities, and the homes of two pathologists. The FBI contingent did not state the reason for the raid to anybody and said its affidavit was “sealed.” Nevertheless, The Hospital’s spokesperson was quick to make a public statement that the FBI was investigating the pathologists, not The Hospital. Dozens of doctors and administrators were interrogated in the following months, but they seemed to be very hesitant to relay to their colleagues the content of their conversations with the FBI.

Six months later, an “emergency” suspension (ESO) of a pathologist’s medical license occurred because of 16 placentas he had examined more than two years earlier. “Expert” witnesses were paid to say he did not examine the placentas well enough, and therefore could not justify an 88307 billing code, for which the fee was \$44, rather than about \$30 for the next lower code. No patients were harmed, and no doctors or patients complained about this alleged \$200 oversight. The pathologist was informed that his license would be reinstated if he dropped his lawsuit against The Hospital.

About 5 months later, the federal prosecutor sent certified letters to two pathologists, stating he would be seeking to indict both of them for Medicare fraud, mail fraud, and wire fraud, with reference to about 50 late placenta examinations performed three years earlier. He asked them to waive their statute-of-limitations rights in exchange for their attorneys’ chance to review evidence the federal government had against them. One pathologist refused. His lawyer asked that the defendant be allowed to surrender peacefully if indicted rather than have his small children witness a dramatic arrest scene. The government refused.

This physician moved his family back to his home state. Florida friends who visited them reported on their interviews with the FBI. They had been told that the purpose of the investigation was to

uncover a huge “pathology conspiracy” at The Hospital. The idea was that a powerful in-group of doctors referred cases to the two suspect pathologists, in order to receive “any diagnosis they want” to justify further unnecessary procedures and maximize profits. The pathologists were also supposed to help this in-group stay in power by campaigning for them at election time.

The doctors were told that if they revealed the nature of this investigation to anybody, particularly the five named suspects, they could go to jail for interfering with an FBI investigation. Conveniently, this “in-group” under FBI investigation for supposed criminal activity was the very same group that had standing civil litigation against Mt. Olympus.

The arrest occurred outside the pathologist’s home. A nice lady came to his door and informed his mother-in-law that his car, parked in front, had a flat. When he went to inspect it, half-a-dozen agents with Kevlar vests and drawn guns appeared out of nowhere, put him in handcuffs, and took him downtown. He was released by a judge about three hours later on a \$250,000 “own recognizance” bond, to return to Florida to face charges. Each one of the 48 “late” placenta reports cited since 1996, for which he received at most \$44 each, could land him 10 years in prison, according to the indictment. That adds up to 480 years.

The indictments clearly stated that because the placenta reports were reported after the babies were discharged, the work was medically unnecessary, and billing for them was fraud. By now the federal government and the lawyers had financially exhausted both pathologists. They pleaded nolo contendere to one count of “felony tardy placenta report,” and both are now on probation.

The amount of “fraud” admitted was \$44. The price of the investigation to taxpayers was millions of dollars. The price paid by the patients of The Hospital is incalculable: it includes lawyers’ fees, as well as the increased prices and lowered quality that result from monopoly control of a service.

Conclusion

The events described here are by no means singular. The underlying problem is that the agencies entrusted with protecting the public may be in collusion with the very same corporations from which the public needs protection. This is called the “public-private partnership” these days. Previously, it was called “fascism.”

The effect on the practice of medicine is pervasive even if most practitioners are neither participants in nor victims of the resulting abuses. The climate of fear influences everyone.

The massive 60-agent FBI raid of April 2001 and the resulting \$2-million dollar “Diagnosis for Hire” pathology conspiracy theory investigation netted only the plea bargains described above. But diagnosis for hire does occur, in a different sense—and so does treatment (or lack thereof) for hire, when patients and physicians relinquish their control over medicine to megacorporations and government.

John R. Minarcik, M.D., was in practice of anatomic and clinical pathology for nearly 20 years. E-mail: minarcik@gate.net.

Editor’s Note: Further, specific information can be obtained from the author, who is solely responsible for its content.