Sham Peer Review: A Psychiatrist's Experience and Analysis

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It can be no sufficient compensation to a corpse to know that the dynamite that laid him out was not of as good a quality as it had been supposed to be. – Mark Twain[1]

Sham peer review is a fast growing problem in American medicine, as government and its private partners (such as HMOs) try to impose "group think" on physicians[2-5] Hospitals, especially those linked closely with HMOs, routinely use sham peer review as their weapon of choice to remove vociferous physicians who openly raise concerns about quality of care, and as a means of eliminating economic competitors. When hospital administrators "make an example" of one or two leaders among independent physicians, fear is instilled and compliance from the "herd" is often improved.

Because of a 1986 law known as the Health Care Quality Improvement Act (HCQIA), hospitals are free to launch attacks against independent-minded physicians with little risk of liability.[3] False and damaging charges against ethical and competent physicians enjoy immunity as long as the hospital disguises the process as a method for furthering quality care. The hospital controls the entire process. It organizes secret ad hoc committees. The administration often handpicks the so-called "peer" review committees and hearing panels.

The effect of a sham peer review on a physician victim is devastating. If the hospital continues a suspension for a mere 31 days, the condemned physician is reported to the National Practitioner Data Bank (NPDB).

Meanwhile, a carefully orchestrated "whisper campaign" is initiated. This further sullies the targeted physician's reputation among his colleagues and patients, making it difficult for the physician to continue to practice and earn a living. The financial crisis created by the concomitant negative cash flow to legal counsel and loss of clinical privileges adds to the personal stress of the physician and his family.

Case Report

My own experience with sham peer review started with a "friendly call" from a hospital administrator, who informed me that he hated bad surprises. He was calling to spare me the discomfort of a bad surprise. "Mr. Immunity" informed me that I should expect to receive a hand-delivered notice of suspension of my internal medicine privileges at his hospital in the near future.

Mr. Immunity's voice clearly revealed to this psychiatrist the emotions of exhilaration and smug satisfaction. The suspension only affected my internal medicine practice, which his employee-physicians (hospitalists) had been trying to take over for two years. My psychiatric privileges were left intact. In his parting remarks, Mr. Immunity encouraged me to admit further patients to the hospital's psychiatric service, noting that the census was low.

I was aware that the hospital had not yet attracted a full complement of employee psychiatric hospitalists. I thanked him and terminated the call. Of course, I chose never to willingly admit another patient of any kind to this HMO hospital again.

Two days later, the hand-delivered letter arrived as promised. The official letter said that the care of six patients raised concerns in members of a secret review panel. The panel alleged that three general patterns of my practice differed from "usual practice." The patients were not identified. The letter ended by quoting the medical staff bylaws, and noting that a hearing could be requested.

As is typical of many sham peer reviews, obstruction and obfuscation are the rule. My requests to obtain the names of the specific patients were ignored. All records of my hospitalized patients over the past year were reviewed. The hospital even ignored my request to obtain a current copy of its medical staff bylaws.

I had to speculate about which cases might be of concern. I retained an attorney, who made formal legal requests for records. I recall that the hospital administration seemed shocked that any resistance to its edict was even contemplated.

Psychiatrists have found that a person's behavior, conduct, and actions are often motivated by something below the surface. Having been handed the proverbial stick of dynamite intended to "lay me out," the question of the true motive arose.

In the recent past, I had written the hospital administration three letters, in which I expressed concerns about quality of care related to the financially self-serving referral pattern of its employed caseworkers. In the last letter, I attached a copy of a death certificate of one of my patients who had been referred to other physicians by caseworkers. I pointed out that continuity of care might have prevented his unnecessary demise. I also reflected on several occasions when salaried hospitalists sought contractual control of all my in-hospital patients. I was the last internal medicine solo-practice holdout. Finally, I was a local radio talk show host and had committed the ultimate sin of allowing guests on my show who were less than friendly toward the HMO.

Unfortunately, one does not always recognize when a target is forming on one's own back until too late.

Precisely 31 days after the suspension went into effect, the hospital administration lamented that HCQIA demanded that they report the matter to NPDB. My attorney discovered that the law firm handling the matter for the HMO hospital was a large, well-known firm located 1,200 miles away. The information I needed to respond on the NPDB website was not produced by the hospital until after the deadline. The damaging allegations by the hospital on NPDB website were thus refuted blindly. As it turned out, my response was more accurate than the allegations against me. Throughout the process, the hospital administration maintained remarkably tight control without allowance for true due process.

Four months after Mr. Immunity's call, three banker's boxes of material supplied by opposing counsel became available to me. These records confirmed my belief that the allegations were baseless. The internal hospital documents also revealed a very telling pattern.

Within days of my last letter to the hospital voicing quality concerns, Mr. Immunity organized the process leading to my suspension. He obtained permission from the Medical Executive Committee to form a secret ad hoc committee to "investigate." He seemed to have a hand in selecting two employee-physicians for this job. The letter informing me of suspension of my privileges, generated by the MEC, was modeled after the secret ad hoc committee's letter.

The opportunity to defend myself against the charges was delayed for a full year. The four physicians selected to judge me were all financially dependent on the hospital. The "fair hearing before my peers" occurred over two evenings. My attorney was outstanding. He brought out my points even when cross-examining the hospital's witnesses. The hospital's criticism of all six cases was based on inaccurate, incomplete, and/or misrepresented information.

The foundation for many of the secret ad hoc committee "charges" was my long-standing use of propranolol to control agitation in patients with dementia. There were no events of harm to any patients. The use of propranolol to control agitation in demented patients is well-supported in the medical literature.[6,7] My disagreement with employee-physicians of the secret ad hoc committee over this issue was well known. The hospital-employed physicians preferred to use antipsychotics for treating agitation in demented patients, despite the fact that propranolol is effective and has fewer side effects.

Moreover, in the hearing before my "peers" it was shown that one of the patients had died. However, the hospital-employee physicians had assumed care of the patient, and discontinued the propranolol, which had been controlling his agitation They then prescribed antipsychotics. The patient died under treatment with high-dose antipsychotics. Recently, the FDA has insisted that antipsychotic medications carry a "black box" warning of an increased risk of death.[8]

There was a single complaint from a caseworker about a psychiatric patient. The patient was a narcotics addict who had been discharged against her will, after making a pseudo-suicide threat. The hospital caseworkers and I had been in conflict over my concerns about quality of care for more than two years.

The "helpfully written" complaint from the caseworker alleged that I had asked questions concerning the patient's sexual function during the psychiatric interview. Such questions are an appropriate part of the psychiatric diagnostic interview.[9] It would especially be pertinent to obtain a sexual history in an opiate-addicted patient with a personality disorder in whom suicide risk is being assessed.[10,11] The psychiatric interview had been conducted in a professional manner, and the patient was safely discharged to complain later that she had been "forced" to leave at an inconvenient time.

Despite a full and reasonable explanation of the above event, the committee chose to recommend suspension of both my internal medicine and psychiatric privileges at the hospital. The basis for their decision was the second-hand (hearsay) report from a hostile caseworker alleging "inappropriate sexual language." One can only wonder how many such "transgressions" are routinely committed by physicians of all specialties. The "peer review" committee thus judged that an appropriate and necessary part of normal medical practice posed an "imminent danger" to patients, thus "justifying" my suspension.

The words "incoherent train of thought" might best describe the hospital's justification of my suspension. "Vindictive" and "political and economically motivated" are terms that also come to mind. An appeal was requested.

Months later a "blue ribbon" appeals committee was convened. Committee members were very carefully chosen. The committee consisted of three chief administrators from three affiliated HMO hospitals. These three businessmen, with no training or experience in medicine or psychiatry, were asked to make "fair" judgments about complex medical and psychiatric issues. The outcome was preordained. The attorneys orchestrating the event were again flown in from distant HMO headquarters. As expected, the "blue ribbon" committee of HMO hospital executives found in favor of the hospital.

Conclusions

Sham peer review is a spreading malignancy. Physicians need to become aware of this career-ending bear trap. As the corpses of ruined physician careers begin to pile up, many physicians will recognize that they could be next.

Patients also will come to recognize that in a hostile environment where their physicians are afraid to speak out about safety or quality concerns in the hospital, their care will be adversely affected. There have been a few successes in which physician victims of sham peer review have won significant monetary awards against hospitals and malicious reviewers. But HCQIA revision is desperately needed before this malignancy kills American medicine.

The HCQIA immunity provisions that protect malicious hospitals and peer reviewers need to be repealed. Some would argue that removing the nearly absolute immunity enjoyed by peer reviewers would discourage people from coming forward with legitimate complaints, and discourage physicians from serving on legitimate peer review panels. This argument, however, fails to consider the enormity of the harm currently being done to patients in environments where physicians are afraid to criticize hospital staff or procedures.

Moreover, if the Constitution guarantees substantive due process, how can we justify providing anything less in something as important as peer review? Legitimate legal procedures occur in an open public court. Secrecy protects the villains. Openness and transparency protect the accused. Accountability protects the integrity of the peer review process.

I make no apology for adhering to high standards of ethics and medical practice. I have no regrets for serving as an advocate for both patients and other staff who are committed to patient safety and quality care. I fully confess my status as a sham peer review victim, believing that such is a mark of positive distinction—although I admit that the honor carries with it all the joy and economic benefit of martyrdom.

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