

Editorial:

Sham Peer Review:

Recognizing Possible Early Warning Signs

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One of the most common phrases I hear from physicians who have been victims of a sham peer review is: "I never thought this would happen to me." They never saw it coming.

Many physicians mistakenly believe that if they simply practice good medicine in a professional and ethical manner, they will be protected from trumped up and/or false accusations concerning quality care or professional conduct. And, if they are falsely accused, they often mistakenly believe that the truth and the facts will exonerate them if they are subjected to peer review.

The price for failing to recognize that sham peer review exists, and that there are physicians and hospital administrators who view sham peer review as a "useful tool" to eliminate certain physicians, is often the death of a good physician's career.

Physicians who are able to recognize possible early warning signs of sham peer review, and are able to take appropriate action to protect themselves, have a better chance of surviving if a sham peer review attack is launched against them.

The possible early warning signs of sham peer review, as discussed below, do not represent an all-inclusive list, and the word *possible* is used because these warning signs do not necessarily mean sham peer review is imminent. However, physicians who encounter one or more of these warning signs are well advised to go on high alert and take immediate action to protect themselves.

Hostile Quality Care/Morbidity-Mortality Meeting

Those who target a physician for sham peer review will often initiate "small attacks" at quality care or mortality-morbidity meetings in an attempt to test the accusations, and to learn ways they might refine accusations to make them more effective in the future. If it seems as if someone is vigorously trying to make a case against you, he may in fact be trying to make a case against you. Do not assume that if you prevailed at the educational/quality improvement meeting, that the matter is resolved and will not reappear.

Sudden Discovery of External Peer Review

A physician who suddenly discovers that the hospital sent some of his charts for external peer review six months ago is six months behind in taking appropriate action to protect himself. A secret investigation involving an external peer review is very serious. Hospitals generally do not invest a large sum of money to obtain an external peer review and then do nothing with it. And, the fact that the external peer review was done in secret, without notifying the physician and asking for his response to the cases in question, speaks for itself.

Unusual or Highly Contrived Complaints

Like the "small attacks" launched at educational/quality meetings, sometimes unusual or highly contrived complaints arise against a targeted physician. In hospitals that use sham peer review, a hospital administrator or employee will sometimes solicit or help construct such complaints. Certain individuals are highly skilled at "spinning" complaints so as to portray the physician unfavorably. Some hospitals also secretly compile a number of complaints, and later present them as a "pattern" of misconduct. The physician should not assume that because the complaints are so bizarre, or obviously contrived, that no one will take them seriously. Those who participate in sham peer reviews are often dead serious about it, and they can and will use those complaints against the targeted physician if the right opportunity arises.

Negative Rumors Circulating

Hospitals have a built-in information gathering and distribution network—their employees. Hospital-employed physicians and other physicians who are financially dependent on the hospital are in this network. Hospitals that use sham peer review will often solicit complaints against the targeted physician. Some hospital employees, who feel that their jobs or prospects for promotion depend on supporting the sham peer review, may produce serious-sounding complaints. The process of scurrying throughout the hospital and asking nurses and other hospital employees whether they have noticed any quality care or professional conduct issues about the targeted physician is a strategic way of simultaneously soliciting complaints, and distributing negative information about the target. A physician who finds out about a negative rumor circulating about him should not simply dismiss it as idle gossip. Such rumors often indicate that something serious concerning the physician is occurring in the hospital.

Sudden Decrease in Referrals

A sudden and unexplained decrease in referrals is a sure ominous sign. In sham peer review it usually means that negative rumors about the targeted physician are being spread in the community. Referring physicians may provide various excuses, when asked why they are no longer referring patients to the targeted physician. The physician may also discover that patients are being steered away from his practice by the hospital and/or other physicians. Typically, by the time a formal sham peer review is launched, serious damage to the physician's reputation, career, and livelihood has already occurred.

Sudden Change in Working Relationships

A sudden unexplained change in working relationships also usually indicates that negative rumors about the targeted physician are spreading in the hospital. Previously cordial and friendly nurses and operating room technicians, who now seem somewhat cool in their interactions with the targeted physician, indicate a significant negative change in the physician's working environment. The targeted physician may also notice that his previously friendly colleagues seem to be distancing themselves from him. Once the physician has been singled out for a sham peer review attack, few, if any, want to be seen with or associated with him. This professional and social isolation of the targeted physician typically occurs shortly before a formal sham peer review is launched.

Hospital-Physician Contract Issues

Not all hospital-physician contract issues mean that sham peer review is brewing. However, contract issues and sham peer review may occur simultaneously in ways that act to accomplish the goal of eliminating the targeted physician.

A hospital may, for example, indicate to the physician that certain revenue production goals are not being met. A hospital that finds itself in an unfavorable financial position relative to the physician's contract may start a sham peer review against him. If the targeted physician loses hospital privileges as a result, then the hospital will claim that the physician breached the contract. If a physician starts hearing about unmet production goals, he should go on high alert and take appropriate action to protect himself.

Hospital-physician contracts may also contain provisions whereby the physician agrees to work at any of the hospital-owned clinics and other facilities providing services specified by the hospital. Surgical specialists, for example, may suddenly be required to take general surgery back-up call in the emergency room. A physician who was previously working mainly or

exclusively at the main facility, who suddenly is told that he must go work at a distant outpost performing less remunerative procedures or services, is one who may be at high risk for sham peer review. Any adverse change in working status or hospital-physician contractual relationship increases the risk that other negative events, like sham peer review, will follow.

Contract renewal, much like re-credentialing, is often the setting for launching an opportunistic sham peer review attack. As contract renewal and re-credentialing are routine reevaluations, the targeted physician may not anticipate anything out of the ordinary. However, the physician should take notice if terms offered in the contract seem unusually unfavorable, perhaps even less favorable than the original contract. If a hospital suddenly raises potential quality care concerns during contract negotiations, more negative effects or actions impacting the physician are sure to follow. If a sham peer review is initiated during contract negotiations, there is a very high probability that the physician will not be practicing medicine in that hospital in the future. And, as some hospital contracts have a non-compete clause that encompasses the entire state, the physician may be precluded from practicing anywhere in the same state.

Conclusion

Good physicians need to understand that not everyone acts with the same integrity that they do, and that it is therefore prudent to be aware of changes in their practice environment. Being able to recognize possible early warning signs of sham peer review and take appropriate action may preserve a physician's reputation, career, and livelihood.

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