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Stuart Faxon

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Rachel Eck

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Correspondence

Summary Suspension

Dr. Lawrence Huntoon's piece "Sham Summary Suspension: Injunctions to Prevent Irreparable Harm"¹ offered an excellent overview of this abusive phenomenon and succinctly explored the urgent legal mechanisms necessary to interrupt the dual harms caused by staff suspension in the course of a sham peer review and the automatic report to the National Practitioner Data Bank (NPDB).

Considering the devastating career impact of sham summary suspension that emanates from unfair peer review, his key thesis is that the punishment, that of a permanently damaging and virtually irretrievable and uncorrectable report, is delivered without the benefit of a fair hearing. Thus, the allegations driving the NPDB report of summary suspension are essentially indistinguishable from a guilty verdict by jury. But the harm occurs with the allegation and suspension itself, without the benefit of a fair hearing. As soon as it is meted out, its career-spoiling effect is permanent and the consequences to the victimized physician are irreparable.

While Dr. Huntoon does not address this, I believe that the psychological impact of being singled out and accused of deficient care—customarily employing the frequently abused gambit alleging that that soon-to-be suspended physician is a "danger to patient care"—is a vital element that will help underscore how profoundly damaging this hostile action is. It is as deeply assaultive as is a malpractice lawyer's dramatic and unwarranted accusations of killing patients.

Independent of the veracity of the charge, it is such a weighty allegation that it can't but elicit a powerful psychological reaction in the suspended physician. The trauma involves bombardment with feelings of hurt, embarrassment, fear, and anger, which will continue to devour psychic energy throughout this prolonged ordeal. This pathological bullying process essentially ensures that the charged physician will experience a deep moral injury, one that embitters and immobilizes the physician psychologically as profoundly as the NPDB report does

occupationally.

Dr. Huntoon stresses the necessity of engaging knowledgeable counsel, who must act immediately to implement some mechanism to halt this damaging process until a fair hearing can be had. While it is well known that there is no guarantee of either fairness or legitimacy of that awaited formal hearing, at least this interim halt—the temporary restraining order (TRO)—buys time and prevents the immediate harm that necessarily comes from the hospital's NPDB reporting.

It is certainly ironic that the TRO is the same protective mechanism that courts can engage against domestic abusers in order to prevent them from further harming their victims. The TRO is a viable mechanism that knowledgeable and proactive attorneys can—indeed must—boldly employ to protect their physician clients from irreversible harm.

What Dr. Huntoon has exposed here through the gathered wisdom of more than a thousand cases in which he's been involved is a virtual bully's playbook. It succinctly highlights the hospital's characteristic trinity of defenses: (1) Our report didn't cause harm; in essence, it's just a formal citation we have to provide to this database; (2) The suspended physician didn't avail himself of the appeal mechanisms and therefore the quandary is his own fault; and (3) We have to report this action to NPDB or else we ourselves could be investigated and fined.

These assertions on their face may seem "sensible." But as Dr. Huntoon explores, they are really pretextual.

I'm tempted to recap even more of his key takeaways, but this is not intended as a "book review" of his article. However, my brief recap here is intended as an exhortation to every reader of this letter to make sure to read this article and immediately deliver it to all plaintiffs' counsel.

There are multiple components of the outlined sham peer review/suspension operation that beg to be more deeply explored. I limit my scope here to two.

(1) **When to engage counsel.** Given the rapid timeline, Dr. Huntoon's recommendation to retain counsel as soon

as a suspension is initiated may be way too late. Finding suitably expert counsel and engaging them in the process needs to happen a considerable period before the sham summary suspension happens. It seems understandable that counsel needs sufficient time to assess the presenting situation before being asked to institute the recommended TRO. Further, even before the physician engages counsel, he should have a clear understanding of what the “unjust” actions are, and a narrative of the key events that have occurred so that the attorney is prepared to take action quickly. And quick action is mandatory to prevent this lethal cascade from occurring, as it will in a very short time. Too many physicians remain incapable of distilling the wrongful action down to its essence.

(2) Physicians’ ignorance of the administrative and legal infrastructure of hospital and medical staff operation.

Most physicians are entirely naïve to the administrative and legal operations that govern how medical staff are credentialed and what role hospital policies and bylaws play, as well as to how licensing boards and contracted “impairment assessment” corporations operate.

We tend to treat these boring legalistic matters—policies, procedures, bylaws—like the nuisance fine print on “software user agreements.” We just presume that they’re all fundamentally okay and won’t harm us (“surely they couldn’t do that”). Most do not realize that contained within that fine print is a veritable contract with wording that could literally steal your livelihood and offer no recourse.

Dr. Huntoon’s concise analysis should compel a larger examination of the entire sham peer review phenomenon—why does it remain so pervasive? Why are there so few attorneys sufficiently knowledgeable about these corporate healthcare administrative employment matters that disastrously entangle physicians? How can victimized physicians find the specialized legal guidance they need quickly?

We need to thoroughly explore how we might best educate the actively practicing physician community about the entire administrative and legal minefield of which sham peer review and summary suspension are just two career-threatening occupational jeopardies, even though these may only affect five to 10 percent of the physician population. Five percent lethality is an epidemic.

While I believe that nonprofit associations like AAPS (and our young advocacy group Center for Physician Rights) do a great service in issuing the clarion call, the most effective agents of change here should be the state and national medical associations and physicians’ specialty societies. These should each have standing “threat assessment” committees who educate and advise their physician members about such lethal dangers.

Just as we were first warned about the military-industrial complex 70 years ago, we ought to be concerned about the burgeoning “medical-regulatory-therapeutic complex.” Few are aware that this collective of powerful administrative

entities exercises life-and-death power over physicians’ careers. Its tight network of quasi-judicial prosecutors, license-suspending entities, and non-neutral fitness-for-duty evaluators operates collaboratively and at maximal profit. It purports to offer a “rehabilitative” system to reform officially designated “impaired physicians” who have been declared, through a due-process-vacant process, to “pose a danger to the public.” Just as with suspension in a sham peer review, the physician’s career and livelihood, and life as he knew it, is in lethal danger as soon as the ensnarement begins.

Another avenue that might be explored later is other legal approaches to delay the process in the event there has ever been any allegation of impairment. In that circumstance, invoking the “regarded as” wing of disability eligibility under the Americans with Disabilities Act (ADA), legal interventions could be instituted, not only to halt the destructive process of suspension and reporting to NPDB, but also to compel a TRO against the NPDB and Health Services Administration from accepting from any board or hospital any complaint in which the licensee has alleged or been alleged to have an impairment that has weighed in any manner in the suspension action.

Kernan Manion, M.D.
Gloucester, Mass.

REFERENCE

1. Huntoon LR. Sham summary suspension: injunctions to prevent irreparable harm. *J Am Phy Surg* 2021;26:66-70

AAPS Has Lost a Mascot



On Nov 21, 2021, AAPS lost one of our beloved mascots, Trenty [Freedom’s Victory at Trenton 1776, CDX (companion dog—excellent), WD (water rescue dog), DD7 (draft dog—7 times qualified)]. AAPS has had Newfoundland mascots for more than 20 years. Trenty, lovingly cared for by Dr. Tamzin Rosenwasser, served loyally for more than 12 years. Trenty will be sorely missed.

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