

Editorial

Sham Peer Review: The Leave-of-Absence Trap

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The latest addition to the hospital sham peer review playbook is the leave-of-absence trap. Like the “voluntary”-abeyance tactic,¹ the leave of absence trap depends heavily on coercion and deception.

A physician who has been targeted for elimination from the hospital typically meets with hospital leadership behind closed doors and is told he must either ‘voluntarily’ take a leave of absence while the hospital conducts an investigation to determine whether any further action is needed or he will be subject to an immediate summary suspension. The physician is often led to believe that the leave of absence is a better choice than a summary suspension. He may be told or led to believe that a leave of absence will not result in a highly damaging report in the National Practitioner Data Bank (NPDB). He may even be led to believe that the hospital is doing him a favor by offering this option.

Coercion has become a favored tactic used by hospitals against physicians. After the physician agrees to take a leave of absence, the trap snaps shut, and the physician is immediately reported to the NPDB and to the state medical board. And, since the physician ‘voluntarily’ took this action and no adverse action was recommended or imposed upon him, he has no right to a due process fair hearing or appeal procedure under the medical staff bylaws. It’s a win-win for the hospital. They have gotten rid of the targeted physician and have ruined or ended his career via the databank report.

Reportability Issues: Leave of Absence vs. ‘Voluntary Abeyance’

A leave of absence and ‘voluntary’ abeyance may seem somewhat similar, but the NPDB treats them very differently in terms of reporting requirements.

The benign-sounding nature of these ‘voluntary’ actions is part of the deception hospitals use to set the trap for unsuspecting physicians.

According to the NPDB, a ‘voluntary’ abeyance is treated the same as a summary suspension.² The NPDB has consistently maintained:

An action must be reported to the NPDB based on whether it satisfies NPDB reporting requirements and not based on the name affixed to the action.... Suspension or restriction of clinical privileges is reportable if it meets reporting criteria, whether the suspension or restriction is called summary, immediate, emergency, precautionary, or any other term.^{3, p A-11}

A ‘voluntary’ abeyance, like a summary suspension, is thus reportable to the NPDB once it reaches the 30-day mark. In California, a ‘voluntary’ abeyance is reportable to the state medical board once it reaches the 14-day mark (805 Report).⁴

A leave of absence while under investigation, however, is treated the same as a resignation while under investigation and is immediately reportable to the NPDB. Similarly, in California, a leave of absence is subject to immediate reporting (805 Report) to the medical board and must be filed within 15 days of the action. [4] The NPDB Guidebook (2018) provides the following information regarding leave of absence which necessarily involves an agreement not to exercise privileges while on leave:

22. Is an agreement not to exercise privileges during an investigation, without actually surrendering the privileges, a resignation while under investigation that is reportable?

Yes, the agreement not to exercise privileges is reportable if other reportability conditions are met. NPDB regulations state that “acceptance of the surrender of clinical privileges or any restriction of such privileges...while under investigation” is reportable. An agreement not to exercise privileges is a restriction of privileges. Any restriction of privileges while under investigation, temporary or otherwise, is considered a resignation and must be reported.^{3, p E-50}

23. Is a leave of absence while under investigation considered to be a resignation of privileges that is reportable?

If a leave of absence while under investigation restricts privileges, it is reportable. NPDB’s regulation states that “[a]cceptance of the surrender of clinical privileges or any restriction of such privileges” is reportable. To the extent a leave of absence restricts a practitioner’s ability to exercise privileges, it is considered a surrender that is reportable. If a practitioner can take a leave of absence without affecting his or her privileges, and his or her privileges remain intact during the leave of absence, the leave of absence is not reportable to the NPDB.^{3, p E-50}

21. A hospital is investigating a physician who holds clinical privileges at the hospital. Separately from the investigation, colleagues and friends of the physician—who are not hospital officials—caution the physician that he should take time off to resolve personal problems. The physician takes a leave of absence from the hospital for 45 days, and the hospital reports this to the NPDB as a resignation while under investigation. When the physician returns to the hospital and his clinical privileges are reinstated, the hospital’s governing body determines that the physician engaged in no

professional conduct that adversely affected or could have adversely affected the health or welfare of a patient, and it found no reason to fault the physician's professional competence. What action should the hospital take with respect to the NPDB?

The hospital is not required to take any additional action with respect to the NPDB. However, the NPDB encourages reporting entities in such situations to file a Revision-to-Action Report reflecting the reinstatement of clinical privileges to provide future queriers a more complete history of the situation.^{3, p E49-E50}

However, as discussed in a previous editorial, a Revision-to-Action Report, even when reporting a positive outcome like restoration of privileges, does not fix the irreparable harm done by the initial databank report, which remains available to queriers forever.⁵ The narrative accompanying the Revision-to-Action Report is essentially irrelevant. The fact that a physician has two databank reports raises a big red flag for any hospital considering putting the physician on medical staff.

Although medical staff bylaws may have differing requirements with respect to leave of absence, virtually all stipulate that the physician cannot exercise privileges during a leave of absence. Thus, the databank's suggestion that if a leave of absence does not restrict privileges and privileges remain intact, it is not reportable, rings hollow.

Under What Circumstances Might a Hospital Use the Leave-of-Absence Trap?

Hospitals have become very adept at using sham peer review to eliminate a targeted physician from a hospital. At a town hall meeting on sham peer review I conducted 20 years ago, a hospital advisory board member stood up at the meeting and told the audience that "Sham peer review is a useful tool for hospitals to remove troublesome physicians."⁶ She went on to say that "Sham peer review is needed in some circumstances. I can see where it can be abused but it also has benefits."⁶

The immunity provided to the hospital and peer reviewers by the Health Care Quality Improvement Act is very strong, and with increasing employment of physicians by hospitals, hospitals can exert significant control over physicians involved in the peer review process.

In some cases, however, a hospital may determine that they have weak or insufficient evidence to reliably obtain a "guilty" verdict against a targeted physician even when the entire hearing panel consists of hospital-employed physicians. A hospital-employed physician who refuses to go along with a sham peer review to achieve the desired outcome may put his job in jeopardy.

Recognizing that there may be some courageous ethical physicians who refuse to participate in sham peer review, the hospital may in some cases determine that it is too risky to utilize the peer review process in the hope of eliminating the physician from the hospital. The leave-of-absence trap avoids this risk by coercing the physician to take a leave of absence so as to be able to immediately ruin or end his medical career even before any investigation has been completed.

A Possible Alternative

As an alternative to taking a leave of absence or agreeing to a 'voluntary' abeyance, a physician may simply decide to go on vacation during which time the hospital can conduct an investigation. Taking a vacation does not require that a physician surrender or agree not to exercise privileges. And, unlike a leave of absence which requires that the physician apply for reinstatement when he returns, a vacation does not require that a physician apply for reinstatement when he returns from vacation. A physician simply notifies the hospital in writing the dates that he will be away on vacation and the physician who will be covering for him in his absence.

The physician's attorney should seek to negotiate this alternative, while making sure that there is no agreement not to exercise privileges during vacation. This should satisfy the hospital's desire that the physician not be caring for patients while it is conducting an investigation to determine if any further action is needed and most importantly would not harm the physician prior to any negative findings. The hospital should not cause irreparable harm to the physician via a databank report prior to making an objectively reasonable effort to obtain the facts of the matter.

A vacation would also give the physician time to gather together resources, materials, documents, and expert opinions; set up a "war room" in his home; and discuss strategy with his attorney to prepare for the fight of his life.⁷

In correspondence with the NPDB, I confirmed that "If a vacation or rehab while under investigation does not restrict privileges it would not be reportable to the NPDB" (email communication with NPDB Support Team, Dec 17, 2025).

Conclusions

Any time a hospital coerces a physician to take a 'voluntary' action like a leave of absence or 'voluntary' abeyance, the physician should be on high alert that evil and malicious plans are underway. Despite time pressures imposed on the physician, the physician should consult his attorney before making a decision.

Taking a leave of absence while an investigation is ongoing is treated by the NPDB the same as a resignation while under investigation and is immediately reportable to the NPDB and to the state medical board. The NPDB report can lead to the ruin or end of a physician's medical career.

The physician's attorney needs to be involved early on and needs to be aggressive in advocating for an alternative that will not irreparably harm his client. Taking a vacation while the hospital conducts an investigation would satisfy both the needs of the hospital and the physician. Due process and fundamental fairness require that a physician not be punished prior to a professional review action that, after a fair hearing and appeals, finds that there is a problem with professional competence or conduct. An investigation needs to be completed to determine the facts of the matter.

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