

COOKING BOOKS?
TRILLION DOLLAR COVER-UPS?
HOSPITALS CALL IT PEER-REVIEW!

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Are our hospitals any different from ENRON and WORLDCOM in their proclivity to hide the truth? Doctors are supposed to keep Medicine clean by performing peer-review on each other and taking actions where they find problems. But in many hospitals, the power elite (administrators and physicians acting in concert) simply use this system to hide the mistakes of their friends.

For a long time, the medical establishment has argued that the doctors can only review each other with honesty and candor if such reviews are protected from the public eye. Most states have bought this argument in a gullible fashion and have enacted laws that protect these reviews from being publicly questioned for accuracy and effectiveness.

Politically powerful doctors can easily do unnecessary surgery or make serious medical errors. They simply get reviewed by their colleagues in an “understanding” manner. However, if you do not have the political clout but simply practice good medicine, the same secretive process is used to blackball and eliminate you.

Abuse of peer review is more prevalent than admitted by the medical establishment. It has serious adverse effects on public health but nobody is paying any attention to this problem. The Center for Peer Review Justice (www.Peerreview.org) and Semmelweis Society International (www.Semmelweis.org) are two of the concerned organizations.

This situation needs to be addressed quickly and effectively in order to reduce medical errors, control malpractice costs and promote public health. This nation can not afford to pay 1.4 trillion dollars per year and still spiraling medical price tags for long.

“Reduce the medical errors”, was the public outcry in the 1970’s and 1980’s. Big malpractice awards were sounding alarm for public and politicians alike. The medical establishment took the stand that there existed a few bad apples who were causing most of the problems.

“Leave it to us”, the establishment said; “We are going to establish a fine system of “peer-review”. We shall review our colleagues with utmost “candor” and throw out the bad apples. “But”, they argued, we can only do our work with honesty and candor if our decisions can not be challenged in a court of law and the reviews are not open to the public. Otherwise these “bad apples” will sue us.

With a strong leap of faith in the medical establishment (i.e. hospitals and doctors entrenched in it), all states enacted stringent laws protecting peer reviews from public disclosure and scrutiny. The Congress enacted the Health Care Quality Improvement Act (HCQIA) of 1986, giving peer-reviewing doctors and hospitals immunity from damages. Sen. Ron Wyden (D- Oregon) authored the 1986 law that also created the National Practitioner Data Bank (NPDB), which was established to blacklist the “bad doctors” so that after committing malpractice, they could simply not cross state lines and set up a new practice.

But the medical errors have not gone down! Fifteen years have passed since then! The Institute of Medicine (IOM) reported in November 1999 that 98,000 patients die each year because of medical errors. St. Paul Insurance Company reports that the rate of malpractice claims has remained steady over between 1990 and 1999. In case you did not notice, we are in the middle of malpractice crisis once again, right now. Malpractice premiums are rising. The national medical bill is 1.4 trillion dollars and on the upswing. Where did things go wrong? Does this peer-review driven system of catching errors, educating and disciplining doctors and throwing out the “bad apples” really work as promised by the establishment? Or is it merely a smoke-screen for some doctors to maintain lucrative (but short on quality of care) practices at the expense of their more conscientious colleagues who actually practice good medicine? Is the stated objective of public good being seriously compromised?

Let’s see how the system is supposed to work. After any patient is discharged from the hospital, the quality assurance (QA) nurses check the chart to see if aberrations have occurred. If not, the chart is filed away. Otherwise the chart is flagged and goes to the peer-review committee of physicians. This committee checks to see if the physician attending the patient met the standard of care. If not, the attending physician is questioned, counseled, disciplined, suspended, or terminated depending on the seriousness of the medical error(s). Largely, peer-review is meant to be a learning process so that the medical errors are caught and all doctors are educated in order for patients in the future to get better care. But this is also where doctors can play out their personal politics of favoritism, prejudices and turf-wars!

First, who are these doctors that are reviewing their colleagues? Are they somehow tested and proven to be better qualified than those they are reviewing? Do they have the necessary integrity to judge others? Are they dispassionate? Not really, in most cases, they are simply the favorites of the administrators. Chances are that they are “stale, pale, male”, who bring in a lot of patients, surgery, and money to the hospital. They and the hospital lie in the same economic bed. They and the hospital share strong motive of profiting from keeping control of the medical practice in a given community. They form the “inner sanctum” and closely guard against “outsiders” using whatever means necessary. They may have a substantial conflict of interest in doing a proper peer review.

Secondly, are these reviewers honest in reviewing their colleagues? Can they objectively critique their friend who is simply a part of their everyday professional and social life? Who often refers to them? Who they play golf and dine with? On the other hand, can they be fair to one who just came into town and who may be taking some of their patients away; an inadvertent competitor? How about one who has this funny accent about him, or a different shade of skin? Can these doctors rise above their personal and professional ties, prejudices and insecurities to uphold the standards of medical profession, as they assure the public?

The third factor is why should they expend time and effort on this thankless job? The reviewers can simply gloss over the charts and do a perfunctory review. In fact, the department of ob-gyn, of which I was a member at that time, at Presbyterian Hospital, Charlotte, circulated a memo in April 1995, admitting euphemistically:

“Overall, our (peer-review) process has been very relaxed these past few years.”

Finally, the fact is that managed care has shrunk the size of the monetary pie to be had, so it is a doc-eat-doc world out there! If I can review you and eliminate you before you even get a chance to review me, I can be way ahead in the game.

The manner in which many, if not most hospitals, set up their peer review committees is by including those physicians who have maximum political clout, not those who are better doctors. For these peer reviewers to criticize other politically powerful physicians who are making medical errors would be to commit professional hara-kiri. Of course, the reviewers can not afford to do absolutely nothing either. Citizen groups are watching, they have to do something to “show” and make themselves look good in the public eye.

Given all these factors, it is very easy to see that the reviewers set up a double standard of covering up the real mistakes of their friends and exposing their politically vulnerable colleagues for non-substantial, flimsy, clinically insignificant, bogus and fabricated reasons.

If they accept you or if you are part of the “inner circle”, meaning politically powerful, they simply look the other way if you make mistakes. Chances are that your charts may never be peer-reviewed because the administration, through the “understanding” quality assurance nurses, can simply let these charts slide by. However, if you are a competitor but/or do not belong to a powerful group, gender or race, full fury of the peer-review system may be unleashed upon you.

Behind the smoke screen of every one physician targeted by sham peer-review, there are a dozen physicians whose medical errors are

quietly shoved under the rug! Therein lies the real source of threat to public health as well as injustice to those individual physicians, who become sacrificial lambs.

The system goes to great lengths to create an illusion of public protection, while it is really protecting the establishment, by hiding medical errors of the politically powerful physicians.

The basic concept that an elite group of physicians who depend on each other and the system for their bread and butter, will demonstrate enough courage to criticize and discipline other members of their elite group, is plain ludicrous.

If they did, they would threaten their own survival because their own medical errors would come to surface. (I use the word “elite” here because of their social power not because of their superior medical skills and judgment).

NATIONAL PRACTITIONER DATA BANK:

This data bank was created with much fanfare by the Congress in 1986. Public perception was created and persists to date that somehow all the bad doctors would end up in the data bank and all the good doctors outside. U.S. congress Rep. Tom Bliley (R) has now introduced a bill to open up NPDB to the public.

But as elucidated above, one’s entry into the data bank simply depends on his or her political connections. As with everything else in life, there is an extreme double standard here. If you belong to the larger subset of physicians who constitute the “country club”, you will be protected by your colleagues from being disciplined. Or that your penalty will be so chosen that it does not get reported to data bank.

However, if you belong to the other subset of physicians, who are bright, conscientious, good defender of public health but lack social connections, you may be thrown into the bank as a scapegoat for minor and non-substantial infarctions. Medical establishment has the power to make you look like a monster lurking in the dark. They kill two birds with a stone, they eliminate you for reasons of their whim and they get a “notch” in their belt, showing the public they are being guardians of public trust. Nothing is more hypocritical than that.

I believe that the information entered into the data bank is so incomplete and biased regarding physicians in general as to be of any help in stating with much confidence whether a physician is competent or not. The federal General Accounting Office reported in November 2000 that NPDB contained information that is incomplete, inaccurate or both. It is well-accepted that there is a low rate of

reporting of “real problem” physicians to the data bank. A report by the Inspector General of the Department of Health and Human Services said that in the last decade, 84% of HMO’s and 60% of hospitals never reported a single adverse action to the government. It should therefore be obvious that, the bill introduced by Rep. Bliley is not going to give the public any meaningful insight into a physician’s competence, rather a false sense of security when they do not find a doctor’s name in the bank.

The consumer groups continue to want more entries in the data bank. Sen. Ron Wyden has said that the low level of reporting was unacceptable. While they are rightfully concerned with the low number of the overall entries, they should also be concerned with the fact that many of these entries are force upon good doctors! They should also be concerned with the political, unjust and high-handed process by which these entries are generated to appease the public demand. And with the fact that peer-review process is controlled by the power elite in largely a mob fashion!

Here is an example. If 5 doctors assert that a woman should have a hysterectomy for no medical reason but for their obvious financial reward and one doctor disagrees, the lone doctor can be branded incompetent and cast away into the data bank. From then on, he is falsely perceived by the public as a bad doctor. He is headed for oblivion! There is no process of check or balance against such a sham peer review.

The chance of finding good or bad doctors is about equal either inside or outside the data bank!

While I consider myself a well-trained, competent and humanitarian physician, my paper trail in the data bank would convince any potential patient to run away at the sight of me!

SUMMARY:

Effective medical peer review is (or rather can be) the ultimate protector of public health! However, in its current secretive form, it invites abuse. There is much reason, as elucidated above, to believe that peer review is practiced more in its corrupt form rather than for its original established purpose.

The Congress had devised peer review and the NPDB as the way to reduce medical errors and keep Medicine safe from the public. However, they entrusted the establishment, the hospitals and the established doctors, with the process. They thought that the system would catch its own errors and reform itself. Well, as it turns out, the system is not such a saint!

The situation with medicine today is reminiscent of the days when scientists of cigarette companies did their own research and declared that cigarettes did not cause cancer!

By and large, the people sitting on the review committees are themselves interested in the bottom line- more surgery and more hospitalization. But to make a showing that they are doing something in the direction of “reducing errors”, they hang their more conscientious colleagues and the ones who may be better guardians of public health. The “bad apples” are thus throwing out the “good apples”.

Dr. Charles Silver of Dallas, TX, has therefore said that the “noble act” (HCQIA of 1986) originally intended to monitor problem physicians, has gone totally in the opposite direction and, in many cases, decimated fine careers. Dr. Gerald Moss wrote in The American journal of Surgery in 1994: Our better (usually younger) surgeons increasingly are placed in jeopardy by the unchecked ignorance and/or malice of their established colleagues.

The establishment has thus thwarted the intent of Congress. As columnist James J. Kilpatrick points out in his column, their “candor” in review may be a camouflage for “cover up”. Once the hospital has thrown out the conscientious and the competent physicians under the false label of “bad apples”, the rest of the doctors can “play while the cat is away”. They can do unnecessary surgery with impunity, hide each other’s mistakes, and generally forget about the public good.

If patient care is to reign supreme, this problem must be tackled and solved. AMA, state medical boards and societies, JCAHO and other concerned entities need to look into this matter seriously. However, it may ultimately rest with the Congress to do something about it.

In February 2000, President Clinton announced an initiative to improve patient safety and reduce the number of medical errors by 50% over the next 5 years. I believe that the following needs to happen to meet that goal:

1. The hospitals need to stop playing favorites with some doctors at the expense of others and public health. ALL members of the department should review the medical charts on a round-robin basis. That would be more democratic, would it not? No administration-appointed group of physicians should tower above the rest and abuse its power. The same should go for all hospital committees that control various functions. The way some people have all the power all the time is the root of all corrupt practices.
2. Secondly, laws need to be put in place for independent and unbiased “external review”. The external reviewers, when employed, should have

no vested interest in the outcome of the review. This option should be available to the reviewed physician. But, some of the so-called independent “external” organizations are simply “guns for hire”, we need to watch out for them.

3. The American Medical Association envisions an “oversight committee” in each state to prevent abuse of peer-review process. This will serve as a check for sham peer reviews, avoiding local politics and conflict of interests. Some states, such as New York, have an oversight mechanism needed for the check. However, there is no mention of the “oversight committee” in the recent report of AMA.
4. JCAHO and the medical boards should not just sit around in the face of calamity of justice. Conspiracies like the one in my case are far too common. They are not rare exceptions. Vital public health interests are at stake. If the hospitals can force physicians to review others with complete dishonesty, they can also force them to do more cesarean sections and hysterectomies. The economic interests are so powerful, mere power of suggestion from the administration will do.
5. The hospitals should be required to show that they have reviewed everybody in a similar fashion and nobody is being doled out a disparate treatment.
6. Some measure of judicial scrutiny is necessary for the peer review process to be honest, fair and beyond reproach. It is ludicrous to trust the administrators of hospitals with the altruism of defending the public. The job of the administrators is to make money. The strange concept of the need of a process to be completely hidden from public eye in order to achieve public good needs to be reexamined. Secretiveness invites abuse. The courts need to abandon their “hands-off” approach of today, public health is not just the realm of medical conglomerates, and the little man should be heard.
7. Finally, there is nothing in today’s regulations that forces the hospital to do effective (non-perfunctory) peer reviews. The hospital can merely make a showing that they are doing something and get away with it. This situation needs to be remedied.

With these measures in place, the peer-review and NPDB will have the desired effect of reducing medical errors and protecting public health. By bringing honesty into medical practice, they may well reduce unnecessary surgery, reduce medical costs and save lives. The congress and states need to take urgent steps to recognize this trillion dollar Enron and clean up the peer review process. And to say the least, the media needs to promptly bring this matter to public attention!

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