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Sham Peer Review

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Imagine receiving an envelope marked “private and confidential,” hand-delivered to your office one day. On opening it, you find that your local hospital has just summarily suspended you. The official letter, signed by the hospital CEO, details your rights under the “corrective action” section of the medical staff bylaws, and you are advised that a hearing will be held. A sinking feeling comes over you as you realize that a very private execution is about to take place, and you are the “guest of honor.”

The official “Request For Corrective Action” does not mention any specific charge or complaint. After placing a quick phone call to the hospital administration, however, you learn the awful truth – you have been labeled a “disruptive physician.” Further details will be provided to you when and if the hospital deems appropriate.

Disruptive? What on earth are they talking about? You weren’t drunk or running naked in the halls of the hospital. You didn’t scream or curse at any aide or nurse. You didn’t throw any medical instruments in a fit of rage. You didn’t abuse any patient, and you committed no malpractice. What could you possibly have done to lead anyone to believe that you pose such an imminent danger to patients that summary suspension is warranted? What’s going on here?

And, then it hits you. You brought a patient safety/quality of care concern to the hospital administration’s attention two months ago, and now they’re retaliating. Their weapon of choice? Sham peer review.

So, what exactly is sham peer review? Sham peer review is an official corrective action done in bad faith, disguised to look like legitimate peer review. Hospitals use it to rid themselves of physicians who advocate too often or too vociferously for quality patient care and patient safety, and economic competitors frequently use it to eliminate unwanted competition. The alleged “charges” may be totally bogus, fabricated and false, none of which really matters since the hospital controls the entire process. And, if the hospital continues your sham suspension a mere 31 days, you get reported to the National Practitioner Data Bank, and your medical career is effectively over.

How can they get away with making such false accusations against you, you say? It’s actually quite easy. Thanks to a law passed in 1986, known as the Health Care Quality Improvement Act (HCQIA), those who make totally false and damaging charges against others in the “name of quality of care,” enjoy nearly complete immunity. The American Medical Association, in fact, lobbied long and hard for this immunity protection, and

despite the fact that sham peer review is becoming rampant, they continue to advocate for absolute immunity in their publications. [1]

The actual sham peer review process itself goes something like this: After the hospital has provided the targeted physician with official notification of the adverse action, an ad hoc committee, hand-picked by the hospital, is appointed to “investigate.” This committee typically will consist of the targeted physician’s political enemies and/or physicians with close financial ties to the hospital who will do as they are told. Their one and only task is to affirm your guilt. The ad hoc committee, in turn, reports their “findings” to the hand-picked hearing committee, which then reports its “decision” to the medical executive committee. The medical executive committee affirms the decision, reports to the board of directors and the execution is complete. All very neat, tidy, and done in secret behind closed doors.

In keeping with the hospital industry’s strategic plan developed in 1990, [2] which was designed to increase control over physicians in hospitals, many hospitals have obtained majority control over the adjudicating committee – the medical executive committee. This has been accomplished via paid directorships and exclusive contracts the hospital has made with key physicians. Once they have achieved majority control over the medical executive committee, the hospital can act as judge, jury and executioner. So-called “due process rights” of accused physicians then becomes totally meaningless and without effect.

While all of this is happening, the hospital is typically utilizing its communication network capabilities, the “rumor mill,” to the fullest extent possible. Strategic “leaks” of highly damaging information will insure that both the medical community and the public come to view your impending execution with righteous justification. Moreover, such propaganda also insures that your practice and income will decline, making it harder for you to garner the resources needed to hire an attorney for your defense. And, even if you can afford legal counsel, finding a competent attorney, who knows anything at all about sham peer review, is next to impossible.

The hospital attorneys, however, are well-versed in this process of sham peer review. Many know exactly what to do and how to do it. In fact, certain prominent law firms which represent hospitals, even give seminars throughout the nation, which teach hospital attorneys and CEOs how to do it. Among other things, these courses teach hospitals how they can label targeted physicians as “disruptive,” so as to justify the attack. Some physicians may be shocked to find out the myriad of things which qualify one for the “disruptive physician” label. Here is a brief sample:

1. **Political:** Expressing political views that are disagreeable to the hospital administration.
2. **Economic:** Refusing to join a physician-hospital venture, or to participate in an HMO offered to hospital employees, or offering a service that competes with the hospital.
3. **Concern for quality care:** Speaking out about deficiencies in quality of care or patient safety in the hospital, or simply bringing such concerns to the attention of the hospital administration.
4. **Personality:** Engaging in independent thought or resisting a hospital administration’s “authority.”

5. **Competence:** Striving for a high level of competence, or considering oneself to be right most of the time in clinical judgment.
6. **Timing:** Making rounds at times different than those of the “herd.”

For those who doubt that such a thing exists in their hospital, one need only check the “Corrective Action” section of your medical staff bylaws. There is where you will find the “disruptive physician” clause. The definition of “disruptive,” of course, is entirely under the control of the hospital administration.

One national medical organization, the Association of American Physicians and Surgeons (AAPS), has taken note of the spread of this sham peer review malignancy, and in the spring of this year formed a special committee to address the problem. In addition to formulating a resolution to condemn the process of sham peer review and those who participate in it, the AAPS has established an independent panel of physicians to provide fair and unbiased reviews in instances where a member feels they have been a victim of sham peer review. Ethical physicians must stand up and fight for other ethical physicians. In the end, this is the only way to stem the tide of this abuse that is sweeping the nation today.

For those who want to read more about sham peer review, the following resources are recommended: www.aapsonline.org; Waite V.S., Sham Peer Review: Napoleonic Law In Medicine. *Journal of American Physicians and Surgeons* (www.jpands.org) 2003;8:83-86; Steve Twedt, The Cost of Courage series, available at www.post-gazette.com; Center For Peer Review Justice (www.PeerReview.org); and Semmelweis Society International, Inc. (www.semmelweissociety.net).

1. Editorial. Peer Review: The case for absolute immunity. *AMNews*, March 15, 2004
2. Hospital Industry Reveals It’s Strategic Plan: Control Over Physicians. www.aapsonline.org, under “Hall of Shame”