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Opinion

Preserving the Credibility of the Physician Peer Review System

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A just, equitable, and credible peer review process is the cornerstone of a high quality and safe Health Care System. The importance of an unbiased and protected Peer Review System is codified in the Health Care Quality Improvement Act of 1986, HCQIA [1]. However, the peer review process may go wrong when in the new landscape of healthcare which is dominated by large hospital organizations and the big business of medicine, the peer review system may be misused for reasons other than to ensure compliance to the highest standards of professionalism in the interest of the public and the profession. In those instances, due to the immunity protection, which is afforded by HCQIA, contrived allegations of incompetence or disruptive behavior may be used to retaliate against physicians. Clearly such a potentially unbecoming application of peer review was never foreseen by the lawmakers who tried to preserve the sanctity of the Peer Review. Nonetheless, medicine has undergone significant change since 1986, and in 2022, the perception of "Sham Peer Review" is an unfortunate reality. Even if "Sham Peer Review" is just a perception, it presents a grave danger to an existential institution which has defined medicine for many decades. On the other hand, if "Sham Peer Review" is real, not only does it threaten the very foundation of Medicine, but it threatens the wellbeing of the public that HCQIA was designed to protect.

The exact frequency of sham peer review is uncertain, but according to NPDB records, hospital disciplinary actions including perceived sham peer review average 2.5 per year per hospital. This number does not include the rate of false allegations made against physicians in order to coerce settlements without a NPDB report, which putatively occurs at a rate that is at least 4 times higher [2,3]. This correlates with a 5-figure number and it is common enough to have a real impact on the growing epidemic of resignations, burnout, and poor morale of physicians.

Unlike 1986, in 2022, in most hospital organizations, peer review committee members are not always independent. Members are typically hospital-employed physicians that have signed an agreement to make decisions (including those about peer review) that comport with expectations, metrics, and targets of the administration of the healthcare system. At times, this requires physician members to accept the political or strategic goals of a hospital system that may want to exploit sham peer review for the hospital administration's purposes. A hospital administration that selects this route becomes immune under HCQIA from any lawsuits by a terminated physician merely by labeling those actions "peer review". Most hospital bylaws grant the hospital the right to remove MEC members that are unwilling to comply with such capricious decisions. While the original intent of immunity was to protect the judgments of physician reviewers about the medical competency of their peers, it has now been also coopted to protect political decisions such as in terminating "difficult" physicians.

In addition, most hospital-appointed peer review committee members lack specific training and are not experts in that specific field. Hospitals shy away from true and fair peer review by mutually agreed-upon national experts because they do not necessarily align with the goals of hospital administration. However, the judgments of hospital-appointed members are at significant risk of being biased by personal or professional ties and administrative expectations. These "unfair" issues add up to investigations that are often incompetently performed with tremendous adverse consequences to the practitioner.

The remedy for an accused physician facing grave professional consequences is to file a lawsuit against perceived "Sham peer Review". But the hospital has a very potent ace-in-the-hole. The legally guaranteed immunity allows hospitals to keep their actions confidential and information privileged from legal discovery. It also allows hospital administrators to officially distance themselves from the accused physician for several reasons and from a process they know was corrupt or fear of being blamed for a negative outcome [4-8].

A physician is most likely to succeed in court when there is evidence that the procedure that was used in the investigation and decision-making process was fundamentally flawed. Although, courts of law may be important game changers for the problem of sham peer review, primarily for financial reasons, most affected physicians do not take legal action. Suing a hospital is expensive, time-consuming and requires enormous mental resolve.

Most physicians are not familiar with these complex issues which can affect their careers. On the other hand, not only are most healthcare attorneys aware of the shortcomings of HCQIA, but they are quite prepared to suggest changes to the law to make it more applicable to the present healthcare environment. It is time for a comprehensive discourse among physicians, healthcare attorneys,

and Lawmakers with the singular goal of preserving the legitimacy of an existential pillar of medicine, the Peer Review System.

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