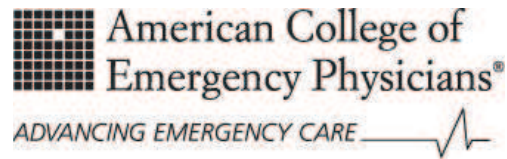


Exhibit A



Information on **Sham Peer Review**

September 2011

Definition

Sham peer review or malicious peer review is defined as the abuse of a medical peer review process to attack a doctor for personal or other non-medical reasons.

Background

In 2007 the American Medical Association conducted an investigation of medical peer review and concluded that 15% of the surveyed physicians were aware of peer review misuse or abuse.

The Health Care Quality Improvement Act (HCQIA) of 1986 was developed to facilitate physicians improving the quality of medical care through effective professional peer review.

HCQIA offers protections for physicians participating in professional peer review that meets the following criteria:

- The peer review is conducted in the reasonable belief that such action furthers quality health care;
- A good-faith effort is made to obtain the facts of the matter;
- Adequate notice and hearing procedures are afforded to the physician involved on after such other procedures as are fair to the physician under the circumstances; and
- In light of the facts known after reasonable effort to obtain facts, there is a reasonable belief that peer review action is warranted.

Physicians brought before a peer review panel are entitled to representation and have the right to cross-examine witnesses, present evidence, and receive a written report of the final decision. However the appeals process associated with peer review findings is limited and in some instances may be non-existent.

Although HCQIA was enacted to prevent misuse of peer review, sham peer review is reported to be conducted with increasing frequency as retaliation against physicians whom the hospital regards as ‘disruptive.’ Sham peer review or malicious peer review is a concept explained by Roland Chalifoux in *Medscape General Medicine* as “the practice of using a medical peer review process to remove a doctor who is seen to be disruptive, is too great an advocate for changes or is competitive with doctors within the same institution.”

In recent years there have been attempts to prevent or mitigate sham peer review. The Illinois State Medical Society has placed “Sham Peer Review and Sham Privileges Suspension” on its legislative agenda for 2007. In 2006, the Michigan Supreme Court ruled that the Michigan immunity statute does not protect the peer review entity if it acts with malice, specifically meaning that the committee acted with a reckless disregard of the truth.

The recent standard promulgated by The Joint Commission regarding hospitals’ responsibility in addressing “Disruptive Behavior” (MS 1.20) is purposely broadly drawn, general, vague and subjective which could allow hospital administrators to interpret it however they wish. This standard has the potential to lead to the abuse of “Disruptive Physician” charges. The concern in the physician community and registered by ACEP is that “disruptive physician” can be an easily manipulated to include a physician who properly defends patient care, exercises his/her right of free speech on political matters, seeks to improve various clinical practices, or who properly demands adherence to excellence. LD.3.15 states “Leaders establish a fair hearing process for those who exhibit disruptive behavior.” However due to what is perceived as pervasive use of sham peer review in hospitals today, relying on a fair hearing to adjudicate highly subjective accusations has the potential to invite more abuse. Some hospitals have

learned that if they simply appear to follow the HCQIA “procedural cookbook,” they can eliminate virtually any physician in the absence of any meaningful substantive due process.

ACEP

ACEP has a long history of supporting emergency physicians’ right to due process. The policy statement, *Emergency Physician Rights and Responsibilities*, reads in part, “Emergency physicians shall be accorded due process before any adverse final action with respect to employment or contract status, the effect of which would be the loss or limitation of medical staff privileges.”

ACEP’s information paper on “Fairness Issues and Due Process Considerations in Various Emergency Physician Relationships” notes that due process refers to the fairness of the procedure used to implement the criteria for taking actions and making decisions. ACEP has informed members that, regarding employment situations, one can “argue that they are entitled to ‘legal’ or ‘constitutional’ due process, but under the law, they typically do not have due process rights unless such rights are specifically included in the physician’s contract.”

Many of the College’s educational offerings discuss a variety of issues surrounding due process and peer review.

ACEP’s Policies

Expert Witness Guidelines for the Specialty of Emergency Medicine
<http://www.acep.org/Content.aspx?id=29446>

Code of Ethics for Emergency Physicians
<http://www.acep.org/Content.aspx?id=29144>

Definition of Democracy in Emergency Medicine Practice
<http://www.acep.org/Content.aspx?id=43014>

Emergency Physician Rights and Responsibilities
<http://www.acep.org/Content.aspx?id=29418>

Emergency Physician Contractual Relationships
<http://www.acep.org/Content.aspx?id=29222>

Other Resources

12 Signs of Sham Peer Review
http://hollandhart.typepad.com/healthcare/2006/05/twelve_signs_of.html

Sham Peer Review in Medicine
<http://www.mobbingportal.com/doctors.html>

Archive for Sham Peer Review Category
<http://semmelweis.org/category/sham-peer-review/>

Huntoon LR. The Psychology of Sham Peer Review. *J Am Phys Surg.* 2007; 12(1):3-4.

The Center for Peer Review Justice
www.peerreview.org

Further Reading

- Steve Twedt (2003-10-26). "[The Cost of Courage: How the tables turn on doctors](http://www.post-gazette.com/pg/03299/234499.stm)". *Post-Gazette* (PG Publishing). <http://www.post-gazette.com/pg/03299/234499.stm>.
- Magazine Staff (2006-08-01). "[All Is NOT Calm on the Hospital-Medical Staff Front](http://www.socalphys.com/article/articles/243/1/Opinions---August-2006/Page1.html)". *Southern California Physician* (LACMA Services Inc.). <http://www.socalphys.com/article/articles/243/1/Opinions---August-2006/Page1.html>.
- Charles Bond (2005-11-15). "Editorial in Response to "What Is Sham Peer Review?"". *Medscape General Medicine* 7 (4): 48. <http://www.medscape.com/viewarticle/515869>.
- Goldstein H. (2006). "[Appraising the performance of performance appraisals](http://www.spectrum.ieee.org/careers/careerstemplate.jsp?ArticleId=w110101)". *IEEE Spectrum*. <http://www.spectrum.ieee.org/careers/careerstemplate.jsp?ArticleId=w110101>.^[dead link]
- Philip L. Merkel (Winter 2004). "[Physicians Policing Physicians: the Development of Medical Staff Peer Review Law at California Hospitals](http://www.allianceforpatientsafety.org/sf-law-review.pdf)". *University of San Francisco Law Review* 38 U.S.F. L. Rev. 301. <http://www.allianceforpatientsafety.org/sf-law-review.pdf>.
- Bryan G. Hall (Fall 2003). "[The Health Care Quality Improvement Act of 1986 and Physician Peer Reviews: Success or Failure?](http://www.usd.edu/elderlaw/student_papers_f2003/health_care_quality_improvement_act.htm)". *University of South Dakota Elder Law Forum*. http://www.usd.edu/elderlaw/student_papers_f2003/health_care_quality_improvement_act.htm.^[dead link]
- "[Health Policy in the Courts -- California Medical Association Lawsuits -- 2006 - January 2007](http://www.cmanet.org/member/upload/Cmasuit-cas.pdf)" (PDF). California Medical Association. 2007-01. <http://www.cmanet.org/member/upload/Cmasuit-cas.pdf>



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Sham Peer Review: Resources for Physicians

Mar 24, 2011

AAPS Sham Peer Review Hotline Call (800) 635-1196 for a referral.

Sham Peer Review: A National Epidemic

Lawrence R. Huntoon, M.D., Ph.D., F.A.A.N.
Chairman, AAPS Committee to Combat Sham Peer Review

Ladies and gentleman we have a serious epidemic in our nation today. It isn't the swine flu and it isn't mad cow disease. It is neither bacterium nor virus. It is a disease of moral character that has infected too many of our hospitals and physicians. It is an insidious and spreading evil which threatens to destroy not only the integrity of the medical profession but quality care for all patients.

This spreading evil is known as sham peer review. And, I am here to tell you that it is eliminating some of the most competent, ethical and caring physicians from our hospitals.

Traditionally, physicians have reviewed the medical care provided by other physicians with the goal of improving the quality of care. That is known as peer review done in good faith.

Sham peer review, on the other hand, is peer review done in bad faith for some purpose other than the furtherance of quality care.

Increasingly, hospitals are retaliating against physician whistleblowers to silence them and to end their careers. Sham peer review has become the weapon of choice used by hospitals to eliminate these good, conscientious physicians from the hospital.

A typical sham peer review scenario goes something like this:

A conscientious doctor reports a quality care problem or patient safety problem to the hospital administration. This might be anything from an anesthesiologist falling asleep during surgery to a malfunctioning piece of equipment which places patients at risk for harm.

Instead of fixing the problem, some hospitals misuse the peer review process to attack and silence the physician whistleblower.

The hospital administration and unethical physician collaborators then search for some pretext upon which to attack the physician whistleblower. This might involve the hospital bringing trumped up charges against the physician or it might involve

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the process, the physician's privileges to practice at the hospital are terminated. The physician is reported to the National Practitioner Data Bank, and the physician's career is essentially over. Once a physician receives a negative report in the National Practitioner Data Bank, it is unlikely that physician will ever work in any hospital again anywhere in the nation.

Sham peer review is also being used by unethical physicians to attack other physicians so as to eliminate competition. It is a process which is being driven by money. As reimbursements to hospitals and physicians decline, sham peer review increases.

The enabling source of this insidious and spreading evil is a law called the Health Care Quality Improvement Act, otherwise known as HCQIA, which congress passed in 1986. Although the purported intent in passing this law was to improve quality health care, in reality it has had the opposite effect. The HCQIA law has invited the widespread abuse from which we now suffer, and it is doing irreparable harm to quality care.

HCQIA has provided a shield of nearly absolute immunity for bad faith, malicious peer reviewers. Absolute immunity, like absolute power, corrupts absolutely.

Although thousands of patients die every year from preventable errors which occur in hospitals, many physicians today are afraid to come forward to report problems in hospitals out of fear that their careers will be ended by a retaliatory sham peer review. Fewer and fewer physicians are willing to risk their career and livelihood to protect patients in hospitals. It is easier and far safer for physicians to simply look the other way and remain silent.

And, this is not just a "doctor problem" or a "medical profession problem." This is a serious problem which affects all of us.

Although some may have the good fortune of dying in their sleep in their own bed in their own home of old age, most of us will be a patient in a hospital at some point in our lives.

And when you become a patient in a hospital, you will have the expectation that your doctor will ensure that you receive the quality care you need.

You will have the expectation that your doctor will look out for your welfare and act as your primary advocate in the hospital.

But unless something is done to eradicate this spreading evil of sham peer review, you may not be able to count on your doctor acting as your advocate in the hospital. If hospitals eliminate the most competent, ethical and caring physicians from the hospital via sham peer review, what kind of doctor will be left? And, if physicians are afraid of reporting deficiencies in quality care and problems with patient safety, what kind of care will you receive?

President Ronald Reagan once commented that the most terrifying words in the English language are: **"I'm from the government, and I'm here to help."**

In this case, the so-called help that our government has provided to us by way of the HCQIA law has brought a virtual plague of sham peer review upon the entire nation.

It is a plague which is destroying the trust which patients place in their physicians.

Editorial:

The Psychology of Sham Peer Review

Lawrence R. Huntoon, M.D., Ph.D.

As sham peer review has spread across the nation, it has left behind a trail of broken and ruined lives and careers of good physicians. Although each case is unique, there are certain common features underlying the psychology of sham peer review.

Psychology of the Sham Peer Review Process

Sham peer review is a premeditated process that begins long before the actual sham peer review hearings and formal proceedings. It begins in the minds of those who set out to destroy a targeted physician. Improper motives, having nothing to do with furthering quality care, drive the process.

The process of sham peer review frequently involves a progressive series of small attacks leading up to a final formal proceeding designed to end the targeted physician's medical career. Sometimes these trial runs may go unnoticed or seem insignificant to the targeted physician. Meanwhile, the hospital often secretly collects, compiles, and even solicits documentation to be used in the final attack at a later date.

The final attack (formal sham peer review proceeding) is often well planned and well choreographed so as to give the appearance of a legitimate, good-faith peer review action. The appearance of due process and fundamental fairness is given top priority, although substantive due process and fundamental fairness are always lacking in sham peer review.

Psychology of the Attackers

Although there are some cases in which one or a few participants in the sham peer review proceedings are lazy and negligent and simply defer to the leaders of the attack in casting their vote against the targeted physician, in most instances those who participate in the sham proceedings know exactly what is going on.

The psychology of the attackers is a combination of the psychology of bullies and that of the lynch mob. The attacks are typically led by one or a few bullies who have gained positions of power over others and who enjoy exercising and abusing that power to attack and harm the vulnerable. Although there is always some improper motive that precipitates the attack, the attack itself often serves to distract attention from the bully's own underlying shortcomings, deficiencies, insecurities, and cowardice.

Sham peer review is by nature a group effort involving collaboration between unethical hospital administrators and unethical physician attackers. The psychodynamics involve both the excitement of the hunt and the raw power of the lynch mob that often develops a life of its own, leading to actions that individuals would likely not take if acting alone. It is the psychology of predators versus prey. Others are drawn into the group hunt via the same type of macabre attraction that often compels people to turn their heads and gawk as they drive slowly by the car wreck, looking for any sign of mangled or dead bodies.

The power to snuff out the career and livelihood of a fellow physician in the blink of an eye provides a certain pathological satisfaction and excitement for some attackers. To share in the "group hunt" is to share in some of the power and excitement. And the nearly absolute immunity the attackers enjoy under the Health Care Quality Improvement Act (HCQIA) and the doctrine of judicial nonintervention further emboldens and enhances the power of the attackers.

Psychology of the Physician Victim

Facing superior power and numbers, the targeted physician soon understands that he is the prey and the hunt is on. The final attack is often unleashed quite suddenly and with great fury. The resultant shock and awe often causes a sudden loss of energy and a mental numbness that impairs the physician victim's ability to defend himself effectively. This often further excites the predators as the deer stands motionless, caught in the headlights.

Shock and awe is followed quickly by denial and disbelief. This is frequently accompanied by a strong belief that the truth will save the victim and set him free. Meanwhile, the stigma attached to mere allegations of wrongdoing produces an intended isolation of the targeted physician. As a result, the physician victim often shuns contact with colleagues, further assisting the predators in cutting the prey out from the herd in preparation for the kill.

At this stage, alone and isolated, facing almost certain demise, extreme fear sets in. How will the physician provide for his spouse and children? How will he cope with the bills that are mounting up now that the attack has stopped cash flow? How will he survive?

Constantly living in an adrenaline-soaked fight-or-flight state further depletes the victim's energy and is often accompanied by significant depression, complete with severe sleep disturbance (too much or too little), weight loss, and a pervasive feeling of helplessness and hopelessness. The risk of "death by stress" or suicide is very real at this stage.

Anger emerges as the physician victim comes to recognize that the truth and the facts do not matter at all in sham peer review since the proceedings are rigged and the outcome predetermined. The procedural presumption is that the physician is “guilty” and the burden is shifted to the physician to prove his innocence—a burden that the attackers will never allow him to meet. Anger is often accompanied by a consuming desire to hold the attackers accountable for their evil deeds. This not infrequently leads to many years of litigation, further depleting the victim’s energy and resources, and consuming the lives of the ruined physician and his family.

Chronic fear and anger often take a heavy toll on the physician’s physical and mental well-being, and on his relationship with family and others. The resulting downward spiral often leaves the physician devastated, still alive physically, but invisible or “dead” to former colleagues and to the profession of medicine. It is a cold and lonely pit that no one could have envisioned upon entering the profession of medicine.

Psychology of the Enablers

Enablers are those physician bystanders who are aware that the sham peer review attack is taking place, but who stand by and do

nothing to object or to stop it. It is the psychology of the herd that stands placidly by while one of its own is cut out from the herd and killed. Enablers are like the timid sheep who huddle close together, keeping their heads down, in the hope and belief that the predator’s appetite will be satisfied with the “kill,” leaving the rest of the herd to graze in peace.

In many instances, a few vocal physician bystanders may be all that it would take to stop the bully’s attack. Expressing objections to individual physicians could also destroy the psychodynamics that impel a lynch mob.

Although bullies who launch vicious attacks against physician colleagues may be beyond redemption, renewal of professional ethics through education, and urging of the physician bystanders to get involved, may help to stop the spread of sham peer review. It may be the only hope.

Unless ethical physicians stand up and object, and hold the unethical physicians accountable for their actions, the spreading moral malignancy of sham peer review will irreparably harm patient safety, medical excellence, and the integrity of the medical profession.

Lawrence R. Huntoon, M.D., Ph.D., is a neurologist practicing in New York and serves as Chairman of the AAPS Sham Peer Review Committee.

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