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Doctor Fights Peer Review Abuse

TED GRIGGS

Dr. Richard B. Willner's crusade began seven years ago with an e-mail. In it, Dr. Brian Gale described his battle with the North Dakota Board of Podiatric Medical Examiners. Gale maintained the dispute began when he left another doctor's practice to begin his own. That doctor sued Gale, and the board filed disciplinary charges against Gale. The resulting ordeal was at the eight-year mark when Willner got involved. By that time, Gale had run through seven attorneys and burned through more than \$500,000 in legal fees, only to lose at the state Supreme Court.

"I asked him to send me a copy of the source documents," Willner said. "He sent me 29 pounds worth. I went through them. I saw he was 100 percent truthful, and I did not understand how a state board could terrorize a licensee. I volunteered to help him."

Three years later, every board member had resigned from the North Dakota board, Willner said.

"You've got a guy, a middle-aged man who said, 'You know, I don't really want to do another hammer toe surgery again. I've had enough,'" Willner said. "I want to do something better. I want to do something dynamic."

He founded The Center for Peer Review Justice Inc. The center now has offices in Kenner and Dallas. Eventually he retired as a podiatrist.

Gale's case was Willner's first brush with "sham peer review," he said. These types of actions take place when a hospital or a competitor misuses the fair hearing portion of the federal Health Care Quality Improvement Act to silence a whistleblower or run a doctor out of town.

Willner said he has no statistics to show how often the sham reviews occur in Louisiana.

Officials with the Louisiana Hospital Association said they have never heard of sham peer review.

However, a review of 1,000 cases by the Semmelweis Society, a nonprofit formed to battle sham reviews, found that at least 80 percent of those peer reviews were initiated for economic reasons.

The Semmelweis Society drew its name from a 19th century Hungarian physician ostracized by his peers for advocating disinfecting one's hands before delivering a baby.

Willner said there is a good reason why the Health Care Quality Improvement Act provides strict immunity for a hospital and the doctors who make a complaint.

For example, suppose a surgeon comes into the operating room and smells like mouthwash. The anesthesiologist says the operation must be stopped because the surgeon used mouthwash to mask the odor of alcohol. The surgeon says he hasn't been drinking. Later it's shown the surgeon was correct.

"You have to allow colleagues the power to do something like this, and they have to have immunity. No question about it," Willner said.

There is little chance the federal law will be amended, he said. The law has the support of the American Medical Association, the American Hospital Association, and the insurance industry among others.

The problem isn't the law, it's when the process is abused, Willner said. For now, sham reviews remain a rare occurrence, but their frequency is rising.

"We see it often with a new female OB/GYN who moves into town. She's instantly busy, she's a fierce competitor, and then there's questions about her cases, there's questions about her complications," Willner said.

So the hospital convenes a fair hearing, which is never fair, Willner said. The hospital chooses the review panel's chair and its other members who typically include a radiologist, an anesthesiologist, a pulmonologist and an ER doctor who are loyal to the hospital.

Physicians don't have the same rights as ordinary people, Willner said. The hospital doesn't have to do a substantive review, or get to the bottom of a complaint; the hospital just has to follow the bylaws.

The review panel's decision is a foregone conclusion, the process controlled by established physicians, Willner said. Typically, the hospital revokes the new doctor's privileges and a short time later sends her name to the National Practitioner Data Bank. The state medical board investigates the new doctor, and other hospitals revoke the new doctor's privileges.

The doctor's life is basically destroyed.

According to the Semmelweis Society, nine out of 10 doctors subjected to bad faith peer review never work again as physicians, and one out of five commit suicide.

Willner compared the sham peer review process to allowing McDonald's to decide where Burger King can open a location.



Richard B. Willner

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"One restaurant can put the other out of business with no fear of being sued," he said.

Willner said complications will occur if a person performs enough surgeries, but the center's clients have much lower rates of complications than their contemporaries.

In addition, almost every surgeon and doctor who's come to the center over the last seven years had never been sued, Willner said. In the rare instances where clients have been sued, almost always the lawsuit was dismissed, found to be without merit, or the physician was included because the lawsuit named everyone on the patient's chart.

It's not hard to see when abuse is taking place or why, Willner said.

The medical world has changed dramatically since the federal law was passed in 1986, he said. These days hospitals find themselves under tremendous financial pressure, with more competition for patients, for dollars, and in a never-ending race to purchase the latest high-tech equipment, Willner said. Hospitals also have to make sure they keep their physicians and surgeons happy, so they don't open a private hospital and take away all the paying patients.

The center tries to take action as quickly as possible for clients, but it can't promise a win, Willner said. Once a person has been "data banked" it's almost impossible to have their name removed.

For more information, go to the center's Web site at www.peerreview.org or surgeonsagent.com, a site that helps surgeons find jobs if they've been through a sham peer review.

Willner created the site because ordinary headhunting firms won't touch these doctors.

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Member Opinions:

By: [nguirkuis](#) on 10/25/07

TrueI witnessed myself the tragedy of sham peer review or bad faith sham peer review when we dared to open an independent dialysis center competing with the local hospital providing certain types of dialysis that the hospital does not even provide. Our entire life changed. One of the doctors has found himself under continues investigation and scrutiny for three years with falsified accusations and bad mouthing. Worst human rights violations have happened and you can't stop them. Your competitors and you enemies are protected with an absolute immunity granted to them by the congress law Health Care Quality Improvement Act (HCQIA) 1986. Any thing they do in the hospital if it is labeled peer review, it became un-recoverable document by any means. If a nurse accused you of anything and you are not liked by the hospital, you are gone and you can't take anything out to be examined by jury. Absolute immunity absolutely corrupts no doubt.

No matter how bad the human right violations e.g. pro-life, discrimination, abuse, anti-trust, conspiracy, etc you can't take it to court until you exhaust all the internal administration due process.

The hospital will drag you for years, ruining your reputation and destroying your business and at the very end and after the doctor is totally consumed they pull the noose and report you to national physician data bank to end the doctor's ability to work again and earn money. The doctor at that time is totally destroyed with no ability to fight back in court emotionally and financially.

You can't stop the human rights violations happening to you or to your colleague. You can't get the law to help because there is no law there for any lawyer to use to help the victim doctor because of the absolute immunity your competitors and their aids enjoying. What is more worse is, you can't leave the hospital because you could be reported to the data bank as leaving under investigation which it could be very damaging too. Basically, You find your life suddenly controlled by your enemies with no legal remedies. According to the dam Health Care Quality Improvement Act 1986/national data bank you can't go to court unless you exhausted the due process. Basically, they hang you until you dry and when they data bank you and the harm is already done and you have no job, only then you can go to court with no or very limited discovery to any thing the hospital labeled peer review record.

The hospitals like to drag the doctor under investigation for years because they can show that they tried with the doctor and have been patient with him and also they drain the doctor emotionally and financially and disable him from fighting back. It is a dirty tactic.

According to the HCQIA-1986, the hospital is not required to follow certain standards in their investigation to the doctor; they just have to show the formality of the due process. The content of the investigation is irrelevant and is not discoverable or discussed in the court even if there is huge errors or disregarding to facts or fabrication of the record. As long as the record is stamped with peer review record it is above the law. For the hospital, it is very simple, stamp whatever you want to protect with the peer review stamp and do what ever you want.

The HCQIA-1986 created a dark street for the bullies to bully the victim away from any human rights observation.

HCQIA-1986 has given the rat the key to the storage room.

HCQIA-1986 has stripped physicians from any basic human rights, the right of speech and the right to compete without the fear of retaliation from hospital administrators or fellow doctors.

Although the testified that the HCQIA-1986 is non-constitutional no one want to do anything about it! I believe everyone including the government is scared to free the doctors from captivity because the healthcare cost will increase. Doctors are the one who prescribe medicine, order procedures etc and it is better for the payers to have the doctors controlled to control expenses. The only one losing is the patient for sure.

Equally important, the HCQIA-1986 has silences physicians and scared them from error reporting. Doctors who report medical errors in the hospital are considered trouble makers and are subjected to peer review and elimination. The Institute of Medicine and others have documented very low error reporting in USA 3.7% compared to other developed countries 10% when the in-hospital mortality rate in USA is much higher than other countries sky rocketing to 180,000 in-hospital deaths per year related to fetal errors. The fear of reporting errors have deprived the healthcare from the benefit we learn from the error reporting. NASA and Airline aviation could not reach a Sigma 6 score in error without adopting non punitive environment that encourage error reporting and having a dynamic system to deal with errors with a focus on the system not the individuals.

HCQIA-1986 has created military tribunes around every corner. Hospitals no matter how low are their academic levels are able to set their own standards and force doctors to follow these standards. It is my way or the highway attitude. It is the tribal behavior.



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Doctors who get in trouble are usually those who don't accept wrongdoing or poor quality of care to their patients. I have seen hospitals repackaging inhalers and give them back to other patients with the dangerous risk of transmitting serious illness like TB but no one dare to speak up because of the terror environment inside the hospital. Decisions are made in hospitals every day not in the patient's best interest but based on administration rulings based on pennies.

The HCQIA-1986 has created new form of slavery where doctors are slaved by administrators and doctors.

I completely doubt that HCQIA-1986 have improved quality, in contrary I believe that HCQIA-1986 has ruined quality by silencing doctors and by creating a barrier to error reporting.

It is until the Congress passes a new law to correct its mistake, HCQIA-1986 and give some accountability to the people involved in the peer review process, the healthcare system will continue to deteriorate.

It is amazing how human manage to introduce slavery to human life over and over again even in the 21st century. It is amazing when we endure the cost of removing Saddam Hussain seeking freedom to Iraq when Saddam Hussain system do exist here in the middle of our community ruining doctors and patients life and worshiping the almighty penny. It is shame when we talk freedom for the world and we are losing it here in USA.

It is the time to free the doctor, 21 years of slavery is enough to go back and study the impact of the HCQIA-1986 on error reporting and on healthcare quality.

I would like to see the day of freedom and the day I could encourage my kids to go to medical school. At this point, the choice is clear, if you want to medical school and succeed, the moment you take your MD degree, the moment you lose your constitutional rights, the right of speech and the right to compete.

Lord have mercy!

By: **KDUNCAN** on 10/25/07

Let's back off the hysteria and be crystal clear with facts. Hospital peer review is conducted by members of the organized medical staff itself, not the hospital---that's why is it called PEER review. The medical staff bylaws, which are created by and voted on by the medical staff organization, direct who is selected for the peer review panel and the specifics of processes that are used. Those rules commonly call for same speciality peers to review the problem. Although that may appear anticompetitive, would a neurosurgeon be happier if, for example, a non-competitor OB-GYN made judgments about his practice? There are well known ways to avoid the problem, like hiring outside, out-of-community experts, but they would have to be paid and allowed by the bylaws(peer review panel members are commonly NOT paid, in some cases payment is prohibited by the bylaws). If you believe that the hospital is running roughshod over the medical staff and taking over the process (which would be contrary to HCQIA), whose fault is that? Be a leader and fix it.

All this conspiracy theory fingerpointing is mis-directed at the hospital, who does not write the bylaws or ordinarily direct the process. The medical staff has tremendous power if they bother to use it. Only the members of the medical staff organization can CHANGE THE RULES if they are inequitable. Don't just stamp your feet, become familiar with your own bylaws. Most physicians have never read them and they are the bible in a peer review process.

As to going to court right away instead of playing out the due process, think about it. Do you want a judge (or worse, a jury) to try to figure out complex medical issues? Do you really want a public record for your patients to see, because that is what would happen. It will still cost loads of money, maybe more, and take longer.

These reviews are much like a family fight--lots of emotions, infighting and power struggles; simple lose-lose situations. Hospitals hate them too--they are just as expensive for them, there is liability exposure at the end of the day, the docs choose up sides and the hospital often takes a chance on losing big moneymakers.

kcd6227

By: **nguirquis** on 10/25/07

The bottom line are:

1. Is HCQIA-1986 constitutional?
2. Do human rights violations occur in-hospitals under the HCQIA-1986? And who is responsible for these human rights violations? Did we descend to the level of tribal fights and normalize it this way-power struggle?
4. Is absolute immunity the answer?
5. Is the technique of getting rid of competitor doctors taught by organizations to hospital administration nation wide or not?
6. Could we substitute a panel of jury in the court with peers in the hospital? The process of jury selection is rigorous to make sure that no conflict of interest exists. What are the accepted standards for selecting the panel of peers and who make the selection in the hospital?

As far as the bylaw goes, there is no accepted bylaw standard nation wide and this is big part of the problem.

Currently, each hospital lobby to introduce poor bylaws to the medical staff and have them sign off them taking advantage of their ignorance in law. Should doctor also know politics and law? How many years should the doctor spend more to be able to protect him/herself? Should not the system protect the doctors by setting certain standards for hospital bylaws and clearly separate the power of the administration from the medical staff? Hospitals across the nation keep introducing statements in the bylaw to paralyze the medical staff and introduce terror among them by making examples out of few doctors. It is the art of bullying.

Now, could you tell me why the in-hospital death rate is the highest in developed countries and continue to increase? Is a silencing doctor the answer? Did the HCQIA-1986 silenced doctors or not?

To eliminate guesswork, should we do a study to investigate the impact of HCQIA-1986 on error reporting and health care quality?

Before you blame the doctor walk in their shoes and see how many years you need to be a doctor and how many years you need to learn politics or bullying.

In any event, when the law is biased and un-constitutional you can't blame the bully when they use the poor law. The HCQIA-1986 is a poor law that was created by a hospital lawyer according to the history of this law.

Is it a national problem or is a local problem in one particular hospital?

At 180,000 deaths/year rate in our hospitals in USA, something need to be done right away, the first thing you learn in medical schools is "if you can't do good do no harm"

Some blame the litigation culture for poor error reporting and that might be true but it is not the only barrier to error reporting. Terrors

and intimidations in the hospitals are real problems hurting the quality care by introducing secrecy, favoritism, tribal culture that thrives on hiding and covering up.

Wake up America before it is too late.

Are we giving the rat the key to the storage room!

We all will sleep in the bed we prepare today!

More on the bylaws and how to control the medical staff governing body,

It is not difficult at all. I have seen it happening again and again.

With the right mix of carrots and sticks you can get the job done.

Don't also forget to create division among doctors to make their control easy

Here are some tactics:

Hire the leader doctors and induce them, if you can make these doctors dependant on the doctor, it will be very difficult to oppose the hospital

Make sure that the majority of the medical staff committees are employed by the hospital

Make examples of the leader doctors who dare to speak up about quality, no one without mistakes, find their mistakes and hang them up in public like what Sadam did with his opponents and no other doctor will dare to speak up again for years. When doctors forget after some years, do it again and keep the pressure on

It is the art of bullying and ganging.

Because, each hospital has a different set of power, you can call it the tribal behavior at worst

Again, I don't blame hospitals, fellow doctors or any human because we are all humans and we are subject to do mistakes and all other human weakness of jealousy etc, I blame the law that was introduced in 1986 by the Congress and that allow for this slavery status to happen.

Deny all what is happening and wait and watch the in-hospital mortality rate keep going up.

Are we giving the rats the keys to the storage rooms?

Lord have mercy!

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