



Information on
Sham Peer Review

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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](#)". *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](#)". *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](#)". *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](#)". *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?](#)". *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](#)" (PDF). California Medical Association. 2007-01. <http://www.cmanet.org/member/upload/Cmasuit-cas.pdf>