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Correspondence

Sham Peer Review

I'm writing to applaud the editorial in the winter issue¹ by Dr. Lawrence Huntoon, the reigning international expert on physician peer review matters. Taking the offense with a lawsuit based on allegations of fraud by administrators or other actors, including attorneys, puts into evidence indications of mendacity or malice in the accusations or testimony against a doctor, and the perpetrators are not protected by the immunity provision of the Health Care Quality Improvement Act (HCQIA). This creates personal exposure for malefactors and can be a strategy that could result in extinguishing the sham/abusive peer review and proposed discipline.

Fraud lawsuits in matters involving government agencies may not be permitted because of governmental immunity provisions, but the threat of such action raises the question of what actions by individuals are not protected because they are not official agency actions undertaken in good faith.

My perspective on Dr. Huntoon's work comes from many years of physician peer-review consulting, and hearing and trial work as an expert, hearing officer, or sworn expert witness. Thirty years ago, I was endorsed by the Texas Medical Association and the Texas Hospital Association as an outside consultant on matters of physician/medical staff peer review and discipline.

In the mid-1990s, I stopped doing work for big hospital entities and focused on expert work for physicians and peer review consulting for smaller, usually rural hospitals. My experience was that the big hospitals just wanted hired guns to cover for their efforts and they were already lawyered up and on a mission to finish off a physician. Sometimes I was recommended by the TMA to help the accused physician. As a peer review consultant, smaller hospitals were my choice because they wanted someone to be fair. To them, medical staff were valuable commodities, and they had no wish to create a bad medical staff environment. In my work with them I did routine reviews to buff up the stature of the hospital's quality assurance program, refereed medical staff battles, and even chaired peer-review hearings on occasion.

The law that governed my work was the 1986 HCQIA and its companion, the *National Practitioner Data Bank* (NPDB) found at the Federal Code of Regulations Chapter 42 Section 11101 et. seq.² This was made effective by the Medicare Conditions of Participation for Hospitals 42 CFR 485.³

One thing I noticed early on is that if I ever ruled in favor of a physician in a peer review matter that involved a big hospital corporate

entity, that was the last time the hospital asked me to consult.

I keep a file of Dr. Huntoon's editorials and essays on peer review/sham peer review. I always benefit from reading his advice for physicians caught in the worst professional situation imaginable, the risk of losing privileges or even a license to an abusive and mendacious peer review process motivated by malice, which could visit any physician at any time in his career.

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Spring Issue

The spring issue (<https://jpands.org/jpands2901.htm>) continues our organization's unsurpassed efforts to keep us informed. Dr. Orient's latest "negative evidence" article is a fascinating evaluation of the SARS-CoV-2 origin dispute, utilizing the Gordian knot example with an AI-generated illustration. She cites Alexander the Great's unambiguous solution: "Just cut it." Dr. Emmon's perspicacious article describing Physician Physical Fitness for Duty Evaluations and Dr. Huntoon's brilliant exposé of abuse of referrals for psychiatric and neuropsychological assessment of physicians are both superior in making us all cognizant of the sham peer reviews in our current competitive physician climate. The book reviews continue to be an intriguing part of our journal. After reading Dr. Hoffman's poignant article, "Hidden in Plain Sight" and Dr. Gahl's excellent review of Dr. Kory's book *The War on Ivermectin*, I decided to combine both segments into an educational piece for my patients.

Our journal is outstanding for its scientific inquiry and for providing wise insight into enigmatic problems not only for ourselves but also for those who trust us for their medical care!

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