Editorial

Disruptive Physician: Fighting False Accusations

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The evil and devastating effects of false accusations inflicted upon those who have done no wrong have been well-known since Biblical times.

> The blow of a whip raises a welt, but a blow of the tongue crushes bones.
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> Many have fallen by the edge of the sword, but not as many as have fallen because of the tongue. Sirach 28:17-18
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> Prayer of a Person Falsely Accused: O God whom I praise, do not be silent, for wicked and treacherous mouths attack me. They speak against me with lying tongues; with hateful words they surround me, attacking me without cause…. My enemies say of me: "find a lying witness, an accuser to stand by his right hand, that he may be judged and found guilty, that his plea may be in vain." (Psalm 109:1-7)

As reviewed in this journal, false accusations resulting in sham peer review and a subsequent report to the National Practitioner Data Bank (NPDB) cause irreparable harm to the physician victim and affect every aspect of the physician's life.[1-3] It is a moral injury that damages the very core of a physician's identity. Even if accusations of being a disruptive physician are false, the physician's career can be totally ruined or ended. Anger and disbelief give rise to depression, anxiety, financial stress, and stress affecting the physician's spouse and family. Marriages sometimes don't survive. The effects of chronic extreme stress can also lead to increased risk of illness and death.[3]

False accusations of inappropriate or disruptive behavior are typically initiated by a person or persons who have a deep-seated animosity toward the physician and an obsessive desire to "get him" and "teach him a lesson." Incident reporting software that allows anonymous complaints serves as an open invitation and means to "get the doctor."[4]

False accusations that come forth are frequently tabloid and salacious in nature, designed to shock. The mere accusation is damaging to the physician. Who could make up such a thing? He must be guilty.

When more than one person participates in making false disruptive-physician accusations against a physician, the vice president of medical affairs/chief medical officer serving as choreographer will reliably seize upon that as evidence or corroboration that the physician has a pattern of misconduct.

As noted in one review article: "While a physician may ultimately be vindicated from any allegations, by that time the damage will likely be uncorrectable and long-lasting."[5]

Who could forget the case of Richard Jewell?

In July of 1996, Richard Jewell was working as a security guard at Atlanta's Centennial Olympic Park. While making his rounds, he discovered a bomb in a backpack. He took quick action and was able to evacuate dozens of people before the bomb exploded. He saved many lives and was a true hero. Within days, however, the FBI identified him as the prime suspect in the bombing. Due to intense and irresponsible media coverage, his name became synonymous with the "Olympic Bomber." The public presumed he was guilty. His reputation was ruined. His life was ruined. Nine years later, in 2005, Eric Rudolph pled guilty to being the Olympic Bomber. He also pled guilty to three other bombings. Two years later, Richard Jewell died an early death at age 44. Although he won a number of settlements from the media that had defamed him, "no amount of settlements could have ever given Richard Jewell back two important things he lost: his dignity and peace."[6]

The information presented below is based on my study and experience working as an expert in sham peer review for more than 20 years. I am not an attorney and do not provide legal advice or opinion. Physicians are encouraged to consult with their attorneys for legal advice and opinions.

The History of the 'Disruptive Physician' Label

In 2007, the Joint Commission (previously the Joint Commission on Accreditation of Healthcare Organizations or JCAHO) proposed a new leadership standard based on the concept of a disruptive physician. The Association of American Physicians and Surgeons (AAPS) and Semmelweis Society International (SSI) submitted comments on the newly proposed standard in January of 2007. The AAPS and SSI warned about widespread abuse of this standard by hospitals, and unfortunately that is precisely what has occurred. Comments included the following:

> The hospital bar has been actively involved in promoting their definition of "Disruptive Behavior" in hospitals. The definition promoted by the hospital bar is purposely broadly drawn, general, vague, subjective, and essentially undefined so as to allow hospital administrators to interpret it however they wish. This has led to widespread abuse of the "Disruptive Physician" label in hospitals. The careers of many good, highly-trained, ethical physicians have been ruined and patients have been deprived of quality care as a result…. This proposal violates most Medical Staff Bylaws, and applicable state laws, by encouraging hospitals to unilaterally modify or replace Medical Staff Bylaws with a new code of conduct.[7]

Established in 1951, the Joint Commission is currently governed by a 32-member Board of Commissioners (including hospital administrators) and includes corporate members including the American College of Physicians, the American College of Surgeons, the American Dental Association, the American Hospital Association, and the American Medical Association.[8]

On July 9, 2008, the Joint Commission published a Sentinel

Event Alert, "Behaviors that Undermine a Culture of Safety."[9] The new Leadership Standard, LD.03.01.01, went into effect on January 1, 2009. Elements of Performance (EP) included:

> EP 4: The hospital/organization has a code of conduct that defines acceptable and disruptive and inappropriate behaviors.
>
> EP 5: Leaders create and implement a process for managing disruptive and inappropriate behaviors.[9]

This new standard was intended to apply to all team members in the hospital, which presumably would include hospital administrators, but to date we have not encountered any hospital administrator labeled disruptive. The new standard emphasized that punishment was an integral part of enforcement.

> 2. Hold all team members accountable for modeling desirable behaviors, and enforce the code consistently and equitably among all staff regardless of seniority or clinical discipline in a positive fashion through reinforcement as well as punishment.[9]

The LD.03.01.01 standard was subsequently revised and further clarified in 2012.

> Effective July 1, 2012, the Joint Commission revised these Elements of Performance to delete reference to the phrase "disruptive and inappropriate behaviors." The Joint Commission explained that the term "disruptive behavior" can be considered ambiguous and noted that physicians who express strong advocacy for improvements in patient care can be inappropriately characterized as disruptive. Accordingly, the Joint Commission adopted the phrase "behaviors that undermine a culture of safety" in place of "disruptive behavior."[10]

Unfortunately, despite this clarification and revision of the LD.03.01.01 standard, physician whistleblowers have been labeled "disruptive" and have had their careers ruined or ended by a sham peer review. The term "disruptive physician" is still widely used in hospitals.

In clarifying and revising the new standard, the Joint Commission added further subjectivity to the definition and included both verbal and non-verbal behaviors in their definition of behaviors that undermine a culture of safety. One PowerPoint review noted:

"Disruptive behavior" means any:

- Verbal or non-verbal conduct that harms or intimidates others to the extent that quality of care or patient safety **could be compromised** [emphasis in original]
- Abusive conduct including sexual or other forms of harassment
- "Behavior or behaviors that undermine a culture of safety."[11]

Based on the Joint Commission's LD.03.01.01 standard, facial expression, body language, and tone of voice can be used to prosecute a physician as disruptive or undermining a culture of safety in the hospital.

In one case I encountered working as an expert in sham peer review, a pediatric ENT physician was accused of "yelling" in the hospital. Yelling and screaming in a hospital, of course, would certainly be considered disruptive and inappropriate behavior. The hospital sought to ruin or end the physician's career because she had previously filed a successful lawsuit against the hospital for discrimination: female faculty attending physicians were being paid much less than male faculty attending physicians. The facts of the so-called "yelling" incident were that the physician was running a code on an infant at the time. Codes can often be somewhat noisy events. The physician urgently needed a medication that was not on the crash cart, and so as to be heard above the fray she raised her voice to request the medication. This is what the hospital portrayed as disruptive "yelling." The medication was obtained and administered, and the infant's life was saved as a result. The infant she saved was the son of another attending physician at the hospital, who was very grateful that she took appropriate action to get the medication she needed to save his son's life. Following a peer review investigation, she was forced to take a course on how to communicate appropriately.

Some hospitals consider the disruptive physician label and ability to end a troublesome physician's career via sham peer review to be a "useful tool."

In 2006, I ran a town hall meeting in the small town of Beeville, Texas, at which I explained the concept of sham peer review. The meeting was held at a community college auditorium and was well attended by the people of the town. All the surgeons at the local hospital had resigned. They had spoken out about hospital interference with the treatment of their patients and feared that they would be labeled disruptive as a result, leading to the end of their careers. This left the town without any surgical coverage. If a surgical emergency were to arise, the nearest hospital was about 60 miles away. During the question-and-answer period that followed my presentation, I was utterly shocked when a hospital advisory board member went to the microphone and stated that "sham peer review is needed in some circumstances" and she considered "sham peer review to be a useful tool for hospitals to remove troublesome physicians."[12]

Strategies For Fighting False Accusations

Dismantling lies ultimately involves exposing and discrediting the liar. Credibility is the key issue. If possible, it is important to identify the underlying motive(s) of the accuser for bringing false charges against the physician as this may provide an avenue for attacking the credibility of the accuser. Common motives may include:

- Revenge/retaliation for a perceived wrong or disrespect
- Personal animus
- Anticompetitive
- Professional jealousy
- Discrimination
- Too well-liked by patients
- Retaliation against a physician whistleblower as encouraged by hospital administration
- Others

Physicians also need to be aware of a common tactic used by hospitals at peer review hearings where the physician is being accused of misconduct or being disruptive. In that circumstance, the choreographer of the sham peer review and/or hearing panel members will frequently try to verbally provoke the physician. The physician must remain calm. Any angry outburst will be cited as incontrovertible evidence that

the physician has an anger-management or behavior problem.

Covert recordings, where legal, may be very helpful. In one case in which I participated as an expert in sham peer review, the doctor made a covert recording of a phone call with the president of the medical staff. In that call, the president admitted that the whole peer review was a complete sham, but he was under pressure from the hospital administration and could not do anything about it. When that recording was played before the jury, it was case over.

It may also be possible to get a friendly nurse to call or contact a nurse who filed a false accusation, for example, by email or social media and record the call or obtain helpful information in writing.

Where possible, attempt to obtain declarations from other physicians who were similarly affected by false accusations made by the same accuser. Noting that some physicians may be reluctant to provide a declaration for fear of retaliation by the hospital, a physician might consider conducting his own 360°/P.U.L.S.E.-type anonymous survey.[13]

Following general recommendations regarding defending against sham peer review published in this journal may also be helpful.[14]

Opposition Research

Opposition research is the collection and analysis of information that can be used against an opponent. It is most frequently used in political campaigns but may be very useful in discrediting a person who has filed a false complaint in the peer review setting. Online research has become a very powerful and effective tool in conducting opposition research.

There are private investigators who specialize in opposition research and are experienced in conducting online investigations.[15] Depending on one's computer skills and experience with social media networks, one might be able to conduct one's own opposition research. If a physician chooses to conduct his own opposition research, he should check with his attorney to make sure that his probing is legal and not a violation of privacy rights.

Searching publicly available social media sites may yield very useful information. Discriminatory comments or proclaimed animus against physicians or a specific physician may significantly damage the credibility of the person who has filed a false complaint against the physician. Some accusers may even be inclined to boast on social media about how they "took down" the "arrogant" doctor. That type of post might also open the door for an "anonymous nurse" to invite the accuser to provide tips about how a nurse with an axe to grind against a physician but who does not have any specific evidence or event might construct something to "take him down."

There are also websites that, for a fee, allow one to search court records and convictions.

And last, but not least, one should always check the medical or nursing board's public website to confirm an attacker's current license status and to find out whether any negative actions have been taken against the licensee.

In one case in which I participated as an expert in sham peer review, it was revealed that the chief medical officer who was prosecuting a physician for professional misconduct was not currently licensed in that state. In that particular state, it is illegal for a physician to use the title "Dr." unless the physician is currently licensed in that state.

Cross-Examination to Expose Lies and Bias

Meticulously planned cross-examination of the accuser and opposing witnesses is essential. This is important for your attorney at the peer review hearing and is perhaps even more important at deposition and trial. Experienced trial attorneys typically bring a binder with them that contains lists of specific questions and topics they wish to cover. It is imperative that the physician retain an attorney who has trial experience.

It should be noted that in some cases, medical staff bylaws specify that a physician may have an attorney with him at a peer review hearing, but the attorney is not allowed to speak. That is, of course, an egregious violation of due process and the physician's right under the Health Care Quality Improvement Act to be represented by an attorney at a peer review hearing. An attorney cannot represent a physician if he is not allowed to speak, raise objections, or cross-examine witnesses. In that circumstance, the physician is forced to function as an attorney, a task which he is not trained or equipped to handle. In that situation, the physician should spend some time studying cross-examination techniques.[16,17]

Exposing Lies

During cross-examination it is important to expose contradictions, inconsistencies, and inaccuracies. Every effort should be made to pin down accusers and opposing witnesses on specifics, as that will often provide fertile ground for exposing inconsistencies.

In one case, in which I worked as an expert witness in sham peer review, the doctor was accused of throwing condoms at staff. Under cross-examination at deposition, however, a medical assistant testified that she could not recall ever seeing the doctor throw condoms at anyone. She testified that she was merely told (hearsay) that that salacious event had occurred. She further testified that it was only one condom, and as far as she knew it might have been the accuser who threw the condom at the doctor.

In exposing lies during cross-examination, it is critical to construct questions so as to characterize the motive for creating a lie using specific words such as "deceive," "manipulate," "tell less than the truth," "fraudulent," and "obstruct."[18] These same words can then be used in summation to drive the point home.

One caveat and suggestion provided by experienced attorneys:

> Once the attorney has proven the lie it may be tempting to pounce and call the witness a liar. Case law in New York and other jurisdictions has held that it is improper to call a witness a liar, and in some circumstances it may be reversible error. However, the more powerful approach is to let the jurors form their own conclusions that the witness is a liar.[18]

Exposing Bias

Exposing the bias of a witness on cross-examination may be as important as exposing lies. In a review article published

in the *New York Law Journal*, experienced attorneys offered the following advice.

> Cross, in this situation, must focus on exposing any motive that the witness has for telling less than the truth such as the witness' bias, prejudice, sympathy, empathy, hostility, friendship, and any other interest the witness has in your adversary's case. To properly attack the biased witness, the underlying facts supporting that bias must be carefully elicited on cross-examination. Crucial to achieving this goal is the thorough preparation of a detailed list of those factors before ever setting foot in a courtroom. This list can serve as a road map for a powerful cross on bias. That cross, if successful, will not only expose the witness's bias, but will also allow the examiner to argue on summation that the witness may have concealed the truth and deceived and misled the jury by withholding important information.[19]

Spiritual Warfare

At some point we must acknowledge the fact that people who knowingly make false accusations against others to harm them are evil people who are engaged in doing evil deeds. Ultimately, it is a matter of spiritual warfare. As noted in Ephesians:

> For our struggle is not with flesh and blood but with the principalities, with the powers, with the world rulers of this present darkness, with the evil spirits of the heavens. (Ephesians 6:12)

The method and equipment needed to pursue this battle against evil and evildoers is fully explained in Ephesians 6:13-17.

Thus, if you have been falsely accused and are living in despair, thinking that you don't have a prayer, it might help to get one.

Conclusions

Fighting false accusations of disruptive physician or professional misconduct is one of the most challenging tasks a physician can face. Being labeled disruptive based on facial expression, body language, or tone of voice, when the only "evidence" needed to prosecute the physician in a hospital is the accusation itself, is the very essence of absence of due process.

As always, it is of utmost importance to retain a knowledgeable attorney early on. It is also critical to obtain appropriate opposition research and develop a comprehensive strategy for exposing lies and biases of the accuser(s).

If medical staff bylaws force the physician to act as his own attorney at a hospital peer review hearing, the physician will need to study and learn basic cross-examination techniques.

It is important to recognize that although the strategies for fighting false accusations may be more effective in a courtroom where due process is more likely to be enforced, presenting your best case at a hospital peer review hearing can have benefits later on in litigation. Having an independent court reporter to produce the transcript of the peer review hearing is critical.

Assisting others who have been falsely accused of being a disruptive physician will not only help that physician feel less isolated but may help provide some measure of self-healing.

And, finally, recognize the reality of evil in the setting of false accusations and consider how one might go about fighting it.

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REFERENCES

1. Huntoon LR. Sham peer review and the National Practitioner Data Bank. *J Am Phys Surg* 2017;22(3):66-71. Available at: https://www.jpands.org/vol22no3/huntoon.pdf. Accessed Feb 11, 2025.
2. Huntoon LR. Sham peer review: the destruction of medical careers. *J Am Phys Surg* 2019;24(4):99-100. Available at: https://www.jpands.org/vol24no4/huntoon.pdf. Accessed Feb 11, 2025.
3. Huntoon LR. Sham peer review and increased risk of illness and death. *J Am Phys Surg* 2022;27(1):7-9. Available at: https://www.jpands.org/vol27no1/huntoon.pdf. Accessed Feb 11, 2025.
4. Huntoon LR. Sham peer review: abuse of incident reporting software. *J Am Phys Surg* 2022;27(3):78-79.
5. Sullivan W, Tintinalli J. When the curtain is drawn: how to handle accusations of professional misconduct. *Emergency Physicians Monthly*, Feb 29, 2016. Available at: https://epmonthly.com/article/curtain-drawn-handle-accusations-professional-misconduct/. Accessed Feb 11, 2025.
6. Ishak N. Richard Jewell saved dozens during the 1996 Olympics bombing—then was falsely accused of perpetrating it. Available at: https://allthatsinteresting.com/richard-jewell. Accessed Feb 11, 2025.
7. Jointly Adopted Comments to the Proposed Hospital Disruptive Behavior JCAHO [Joint Commission] Leadership Standard; Jan 17, 2007. Available at: https://www.aapsonline.org/peerreview/jcaho-01-17-07.pdf. Accessed Feb 11, 2025.
8. Braun BI. Safety culture and leadership: a view from the Joint Commission. The Joint Commission; Dec 6, 2018. Available at: https://lhatrustfunds.com/assets/uploads/documents/Safety-Culture-and-Leadership-A-View-from-The-Joint-Commission.pdf. Accessed Feb 11, 2025.
9. Sentinel Event Alert: Behaviors that undermine a culture of safety. The Joint Commission. Issue 40; Jul 9, 2008. Available at: https://www.jointcommission.org/resources/sentinel-event/sentinel-event-alert-newsletters/sentinel-event-alert-issue-40-behaviors-that-undermine-a-culture-of-safety/. Accessed Feb 11, 2025.
10. CPPPPH. Policies and Procedures for Medical Staffs and Medical Groups: Behaviors that Undermine a Culture of Safety—a Guideline from California Public Protection & Physician Health; 2017. Available at: https://www.cppph.org/wp-content/uploads/2017/02/Behaviors-that-Undermine-a-Culture-of-Safety-2017-1.pdf. Accessed Feb 11, 2025.
11. Brown ME, Ziegler P. Disruptive Behavior: Why Should We Deal with Difficult Colleagues? Professionals Resource Network; Nov 18, 2014. Available at: https://flboardofmedicine.gov/apps/app-disruptive-behavior.pdf. Accessed Feb 11, 2025.
12. Willey SR. Advisory Board can't resolve dispute between doctors and Christus Spohn, member says. *Beeville Bee-Picayune*, Nov 11, 2006. Available at: https://aaps.pub/bp111106. Accessed Feb 11, 2025.
13. Huntoon LR. Sham peer review: abuse of the P.U.L.S.E. Survey. *J Am Phys Surg* 2012;17(3):67-68. Available at: https://www.jpands.org/vol17no3/huntoon.pdf. Accessed Feb 11, 2025.
14. Huntoon LR. Sham peer review: disaster preparedness and defense. *J Am Phys Surg* 2011;16(1):2-6. Available at: https://www.jpands.org/vol16no1/huntoon.pdf. Accessed Feb 11, 2025.
15. Keith T. Opposition research boot camp: learning to dig for political dirt. NPR—All Things Considered; Apr 1, 2013. Available at: https://www.npr.org/sections/itsallpolitics/2013/04/01/175928963/opposition-research-boot-camp-learning-to-dig-for-political-dirt. Accessed Feb 11, 2025.
16 Editorial Team. Cross-examination: 16 techniques and strategies for success in the courtroom. Run Sensible; Oct 4, 2024. Available at: https://www.runsensible.com/blog/cross-examination-techniques-strategies/. Accessed Feb 11, 2025.