SHAM PEER REVIEW:
WHAT HOSPITALS AND TARGETED PHYSICIANS CAN LEARN FROM THE POLINER CASE

AAPS PRESENTATION

September 23, 2005

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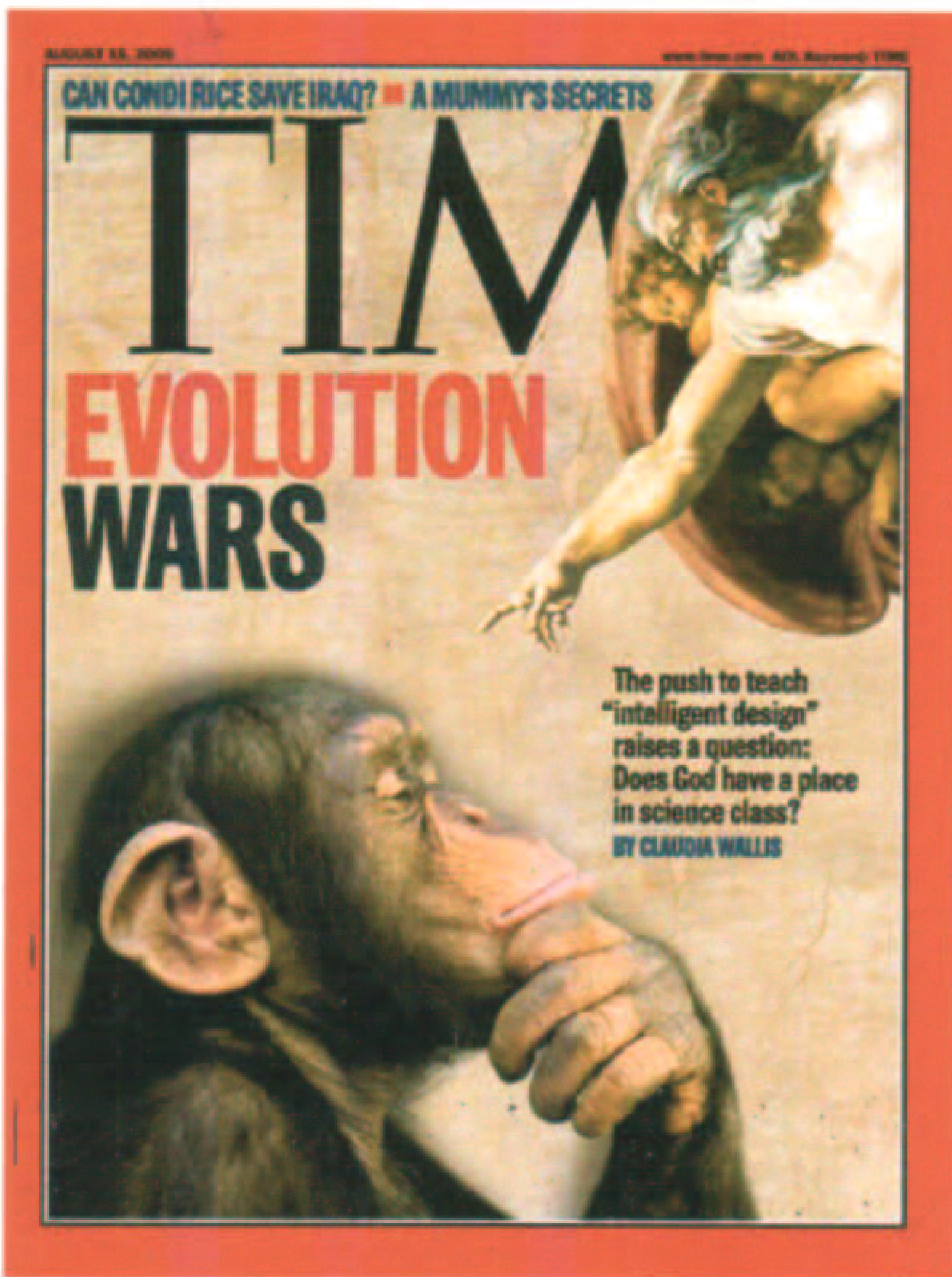
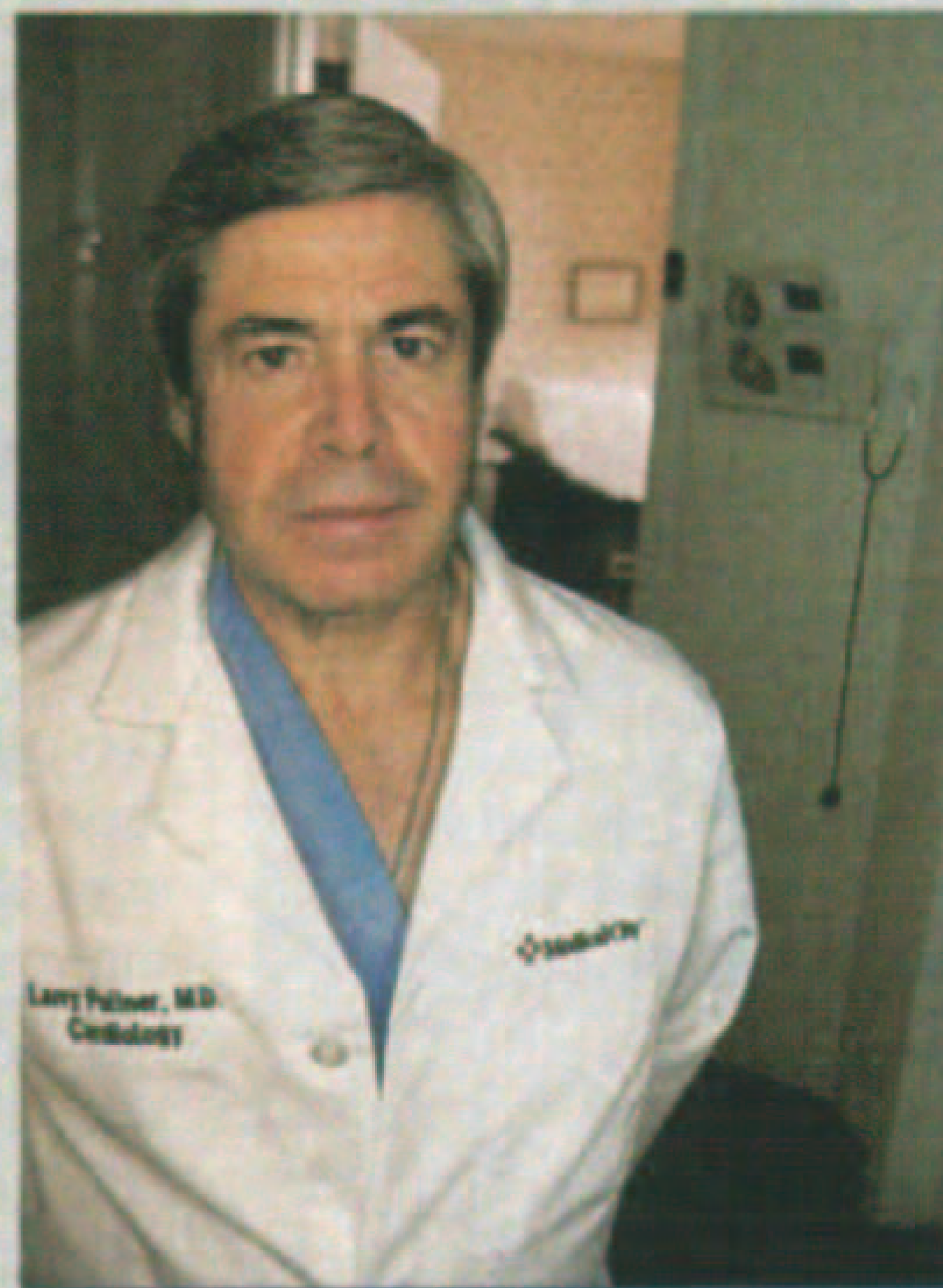


From Time Magazine
August 15, 2005

PEER REVIEW

Doctors Who Hurt Doctors

Physicians fear being sued by patients, a well-known fact, but many also worry about being targeted by fellow doctors through the process of peer review. Allegations of poor care or other serious complaints against a doctor go to a panel, consisting mainly of physicians, that decides in secret whether the accused has done wrong. That system is too open to manipulation and needs reform, says the 4,000-member American Association of Physicians and Surgeons. The Semmelweis Society agrees; its 85 members are mostly doctors who claim to be victims of "malicious peer review," in which the process is used to damage competitors or punish whistle-blowers. Support for reform is also widespread among doctors who work in patient-safety policymaking, says Robert Wachter, co-author of *Internal Bleeding: The Truth Behind America's Terrifying Epidemic of Medical Mistakes*. "We need as transparent and objective a system as possible," he says.



LEE EMMERT FOR TIME

TARGETED A jury found Poliner's competitors trumped up charges of substandard care against him

Dallas cardiologist Lawrence Poliner says his case shows how peer review can be abused. Last August a jury awarded him damages of $366 million from Presbyterian Hospital of Dallas and three colleagues who trumped up charges of substandard care against him to eliminate him as a competitor. Says Poliner: "It's unfathomable that a process that should be about healing could be used to attack doctors." Obstetrician John Raviotta, after reporting to state authorities dangerous obstetrics policies at the Community Memorial Health Center in South Hill, Va., lost privileges there as a result of a peer review that included doctors from the facility. "As contractors of that hospital, how can the doctors be objective?" he asks. The hospital said Raviotta "disrupted [its] efficient operation."

Not even critics of peer review want to abandon it. "Peer review is the process by which we say, What went wrong?" says orthopedic surgeon S. Jay Jayasankar, who helped devise the Massachusetts Medical Society's guidelines, which call for a ban on competitors of a doctor reviewing his case and on the common practice of registering confidential accusations in disciplinary proceedings. "There must be more openness," he says.

Semmelweis doctors went to Capitol Hill in May to lobby Congress to codify such principles. But they haven't managed to get even a hearing on the topic. Most reform advocates say it would be better for doctors to adopt new standards on their own. "Doctors already feel beleaguered" by regulation, says Wachter. More rules imposed by outsiders would be seen as "intrusion."

If doctors don't act, voters may do it for them. In November, Floridians approved a constitutional amendment giving patients access to records related to "adverse medical incidents," including peer-review reports. Several states are mulling similar laws. Some doctors fear exposing the process to the public will inhibit physicians from reporting and forcefully investigating problems and will ultimately hurt the quality of patient care. Publicity could also open hospitals to more malpractice claims, even when panels find no wrongdoing. Trial lawyers sponsored the Florida amendment. —*By Jeff Chu*

MICHAEL A. LOGAN

Michael A. Logan is one of the founding Shareholders of Kane, Russell, Coleman & Logan, P.C., which is located in Dallas, Texas and was established in January 1992. He graduated *cum laude* from the University of Alabama with a J.D. in 1985 in the top 10% of his class. He was a member of the Order of the Coif, the Alabama Law Review, the Bench and Bar Legal Honor Society, and President of the Trial Advocacy Association.

Mr. Logan has extensive experience in federal and state courts handling tort litigation on behalf of insurers and self-insured companies, as well as complex business litigation. His primary practice areas include auto liability, business torts, construction law claims, dram shop (liquor liability) claims, employment law, inadequate security claims, insurance coverage, medical peer review, premises liability, products liability, professional negligence, property and casualty claims, subrogation claims, toxic tort claims, mold litigation, wrongful death and survivor actions, as well as complex commercial litigation and general civil litigation.

Mr. Logan is licensed in all state and federal courts in Texas and in the Fifth Federal Circuit Court of Appeals. He is a qualified mediator in the State of Texas, a member of the State Bar of Texas in the Insurance and Litigation sections, and a member of the Dallas Bar Association in the Litigation and ADR sections. He is also a member of the Defense Research Institute, Texas Association of Defense Counsel, Dallas Association of Defense Counsel, Bar Association of the Fifth Federal Circuit, and the Global Alliance of Hospitality Attorneys. Mr. Logan has an AV rating by Martindale Hubbell Law Directory. He was named "Super Lawyer" in 2003, 2004 and 2005 by Texas Monthly magazine.

Mr. Logan was hired in 1998 to represent Dr. Poliner in his peer review proceeding at Presbyterian Hospital of Dallas, which resulted in the reinstatement of his privileges. Mr. Logan also handled Dr. Poliner's federal court lawsuit, including the filing of the complaint, the summary judgment proceedings, and the jury trial in August 2004. He continues to represent Dr. Poliner through the expected appeal of the case.

Mr. Logan now represents numerous physicians across the country with respect to various aspects of medical peer review, and is a speaker on the issue of medical peer review.

KARIN M. ZANER

Karin M. Zaner practices in the Business and Commercial Litigation Section at Kane Russell Coleman & Logan in Dallas, where she is a director. Her experience includes litigation of general business and commercial disputes before both state and federal trial courts, with an emphasis on real estate, contract, and banking cases. She was introduced to medical peer review law through her representation of Dr. Lawrence Poliner, which began in 1999. Dr. Poliner's federal court lawsuit for malicious peer review was filed in May 2000, and the case was tried before a jury in August 2004, resulting in a verdict that totaled over $366 million. In addition to her regular business and commercial litigation docket, Ms. Zaner now represents numerous physicians nation-wide in peer review proceedings as well as in litigation. Earlier this year, she testified before Texas state legislative committees regarding the need for legislative reform of medical peer review laws in Texas.

Ms. Zaner was named a 2004 Rising Star by Texas Monthly and Law & Politics Magazines, a designation given to lawyers under 40 who are viewed by their colleagues as preeminent in their respective practice areas. Ms. Zaner is a member of the College of the State Bar of Texas, the Dallas Bar Association, Dallas Association of Young Lawyers, and Commercial Real Estate Women of Dallas. She is a member of the State Bar of Texas, and is licensed to practice in the U.S. District Court for the Northern, Southern, and Eastern Districts of Texas.

Ms. Zaner attended the University of Texas at Austin and received a B.A. in 1991 with special honors in the Plan II Honors Program. She was named a Dean's Distinguished Graduate for the School of Liberal Arts and is a member of the Friar Society, the University's oldest honorary society, established in 1911. She attended the University of Texas School of Law and received her J.D. in 1994.

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INTRODUCTION

In August 2004, a Dallas federal court jury awarded Dr. Larry Poliner a total of $366 million in damages as a result of the suspension of his cardiology practice at PHD in May 1998. Dr. Poliner, a board-certified cardiologist and former medical school faculty member, was a solo practitioner at the hospital. Dr. Poliner filed the lawsuit in an attempt to stop the abuse of the peer-review process by holding the hospital and the other participants in his peer review accountable for their actions. Prior to filing suit, Dr. Poliner was aware that most cases of this type are unsuccessful because a physician bears the burden of proving the adverse action was taken with "malice," which means with knowledge of its falsity or with reckless disregard of its truth or falsity. If such burden is not met, federal and state peer-review immunity laws provide hospitals and peer-review participants with immunity from civil liability. Dr. Poliner believes that the peer-review process is essential to protect patients, but only if it is carried out with honesty and integrity. Hospitals and the doctors who participate in peer review must realize that

peer review cannot be conducted for reasons other than patient care. The jury's verdict has been a public vindication for Dr. Poliner and a warning to other hospitals that peer review must be conducted in a fair and honest way, and not for anticompetitive, economic, political, personal, or other improper reasons.

Sham peer review is a growing concern. Despite the *Poliner* case, doctors across the country are being attacked for reasons other than health care. Although the *Poliner* case has had a positive impact, there is much more work to be done. Each physician involved in peer review must do their part to help clean up the system. Do not participate in sham peer review. Do not blindly allow others to do so. Active participation by those who are involved is essential to prevent further abuse. Sham peer review is not peer review. Until the law in this area is changed, physicians will have to be aggressive in their stance against bad faith peer review. Peer review, as currently used, simply does not achieve the goal for which it was intended. Medical errors are on the rise but those committing the errors are rarely the subject of peer review proceedings. Physicians in large, powerful groups are rarely brought to justice. Only the perceived weak are the subject of such scrutiny.

Hospitals must be made to understand that peer review is not a sword to kill disliked doctors or to kill those who are successful despite their lack of affiliation with the chosen groups.

LESSONS FROM THE POLINER CASE

The following constitute some of the lessons from the *Poliner* case, for hospitals as well as for physicians who find themselves targeted:

1) MAKING THE PROCESS FAIR

Hospitals—Do not stack the deck against the physician. Hospitals and peer review participants should take appropriate steps to ensure that the affected physician has every

opportunity to establish that his or her standard of care is acceptable, that he or she does not pose a danger to patients, or that he or she is not "disruptive." Transparency of peer review is crucial to the process. In the past, peer review has been a secretive process, always taking place behind closed doors. The basis for the hospital's action should be open to scrutiny by hospitals and physicians who can ensure that the peer review actions taken are fair and ethical. If a lawsuit is filed, courts (and juries) will look at the objective fairness of the process, so it is important for the hospital and the participants to take reasonable efforts during the process to afford the physician fundamental fairness. Just because hospitals and participants claim that they took the action in the interest of patient care does not make it so. The jury will be allowed to draw its own conclusions about the defendants' motivations. Hospitals and peer review participants must perform peer review in good faith and in the interest of patient care, period.

Physicians—The deck is stacked against you. Physicians must protect themselves before peer review ever begins. First, check your ego at the door. Many of the disputes are battles of will between physicians entrenched in powerful positions in the hospital or members of dominant groups and solo physicians or physicians in small groups (with few allies in powerful places). Also, remember that the complaints of nurses, technicians, and other hospital staff can put you on the hot seat. Always be courteous and respectful to those who assist you in taking care of patients; even if you are correct on the medicine, causing the hospital staff aggravation or fear can cause you to be deemed a "disruptive doctor," and could give the hospital a reason to take action against your privileges. Document your charts thoroughly, taking great care to set forth the patient history and physical as well as the reasons for the treatment of the patients. Do not cut corners when it comes to the patient's record, as it may be the only evidence you have when that case comes under review. Finally, given the numerous strategical considerations that

arise as well as the crucial decisions that must be made, the advice of an attorney well-versed in peer review law is essential. Your goal should be to maintain your privileges, not to litigate over why the privileges were lost.

2) KNOW AND FOLLOW THE MEDICAL STAFF BYLAWS

Hospitals—The first step to ensure the process is "fair" is to prepare and follow Medical Staff bylaws that are carefully drafted to provide the physician with due process. If the bylaws do not provide appropriate due process protection, they need to be rewritten to ensure fairness in all respects. Also, avoid strict use of the bylaws that would cause actual unfairness. For example, if the bylaws allow for a hearing on three days notice, but the physician is requesting another day or two to prepare, if no real harm will occur, it is prudent to give the additional time. Hospitals and peer review participants must follow the bylaws, not only in form, but also in substance. This includes making sure that the participants know the correct standards to use when making decision. For example, it is crucial for the decision makers to know the standard for obtaining an abeyance (that there be a voluntary agreement, without duress) and the standard for imposing a summary suspension (there be a reasonable belief that a present danger to patients exists).

Physicians—Know your medical staff bylaws and fair hearing procedures. These govern the peer review process, so you must know what they say. Be familiar with the summary suspension, corrective action, and fair hearing process procedures, as well as whether the hospital has an option to request an abeyance of your privileges for a certain period of time. Once an action is taken, you will need to know the deadlines involved so that you act to preserve all rights you have to contest and appeal the decisions. The medical staff bylaws will also set forth your substantive rights, such as the right to know all of the allegations upon which the

adverse action is based and the right to meet with the committees (standing or ad hoc) to dispute the allegations before a formal hearing process occurs. Again, involvement of knowledgeable counsel should be considered at the first sign of trouble.

3) SELECTING PARTICIPANTS

Hospitals—Hospitals and participants should avoid even the appearance of bias or impropriety in the conduct of peer review. Personal animosity, economic motivations, and other ulterior motives have no place in peer review. Although not always possible, obtaining the opinions of persons outside of the particular hospital environment (such as outside experts qualified to review the medicine at issue) helps dispel the impression that actions were taken for reasons other than patient care. Great care should be exercised when selecting:

- Decision Makers
- Members of Ad Hoc Committees
- Investigating Committees
- Hearing Panel Members
- Hearing Officers
- Outside Experts

It is important to avoid the use of competitors as much as possible, but in order to evaluate the medicine involved, it usually is necessary to have reviewers in the same specialty. This is a dilemma that is most easily solved by the use of outside experts who have no exposure or ties to the particular physician or hospital environment. Also, to the extent that there have been any past personal biases, it is crucial to be sure that those persons are removed from the review and decision-making processes.

Physicians—Despite the above advice, in reality, the participants in your peer review will likely be biased, whether they are your direct competitors at the hospital (who else can best evaluate the medicine in the cases but those who practice your subspecialty?) or persons at the hospital who know you and may not personally like you. You must do all you can to involve those at the hospital with whom you have good or at least neutral relationships. Also, to the extent there are participants in the peer review with whom you have had past unpleasant interactions such that you believe they are unfairly biased against you, it is important to object (in writing), make clear the bases for your objection, and request that such person be replaced. Further, if there are issues of medicine, you must obtain reviews of the medicine by unbiased experts. Ideally, the unbiased experts should not know you personally and have solid credentials in the appropriate subspecialty. Although national experts will typically suffice, if they are available, experts with national reputations that are local or regional are the most persuasive, as their reputations will be well known in the community. However, these local or regional experts may be less willing to participate given the political ramifications of giving an opinions against a local (and likely powerful) hospital. As soon as you know of an adverse action, it is important to make arrangements for these unbiased experts to review the patient file(s) and give their opinions. Of course, when you are approaching these experts to request their help, it is crucial that you communicate to them that you want their truthful and unbiased opinion and nothing more.

Likewise, when you asked to serve on a peer review committee, you should do so. In such instances, you must review the issues with only the patient care in mind, and not any other agenda. Your honest participation in peer review will help achieve the intended objective. Do not allow dishonest peer review to happen at your hospital!

4) Effects are Swift and Permanent on a Physician

Hospitals—There very often is a domino effect that occurs once an adverse peer review action is taken. Frequently, there is no way to expunge the action once it occurs. Bylaws should be written to allow an expungement remedy in appropriate cases. Even if no official report is made to outside entities, the physician must very often self-report any adverse action. An adverse action will likely affect the physician and his relationships with:

- Hospital Staff
- Referral Physicians
- Patients
- National Practitioner Data Bank
- Licensing Boards
- Insurance Plans
- Healthcare Organizations

Physicians—Given the domino effect described above, a prudent physician will spread his or her risk. Even though you may practice primarily at a single hospital, it is important to obtain privileges at other local hospitals in the vicinity (courtesy or associate, at a minimum), in case the "unthinkable," an adverse action, occurs. Having privileges at other hospitals, in most cases, will allow you to keep your practice afloat while you battle a particular problem at a hospital, given that you may not have privileges in the interim. While other hospitals will be interested in what happens in your peer review, you stand a good chance that they will allow you to retain privileges unless the allegations are so egregious or an event happens at their hospital. It is important to obtain these additional privileges before any adverse action is taken as once

such action is taken, you will have to disclose the action on the application and the other hospital will be less likely to grant privileges without knowing the result of the peer review action.

5) PUNISHMENT MUST FIT THE CRIME

Hospitals—To the extent that any adverse action is actually imposed, the action must be proportionate considering the gravity of the triggering incident, the record of the physician, the length of his or her career, and his or her willingness to improve behavior, be proctored, or receive additional training. Also, the adverse action should not be punitive, except in egregious cases. Instead, the action must be focused on helping the physician improve his or her abilities, while using the least restrictive means necessary to achieve the desired goal of improved health care. In situations that involve summary suspension (an action taken summarily, before the physician has due process and hearing rights), the hospital must be convinced that the action taken is actually required to prevent a "present" or "imminent" harm to patients and grant the physician a right to be heard promptly after such summary action in order to minimize the detrimental effect of the summary suspension. Only those persons necessary should be advised of the summary suspension. If not, summary suspension should not be used. In those rare instances where summary suspension is warranted, the medical staff bylaws grant the physician a right to be heard promptly.

Physicians—Although hospitals should only impose the adverse action appropriate to the allegations made, many do not. Keep in mind that summary suspensions, even if they are improper, can be a death knell to your practice. Typically, in order to impose a summary suspension, the physician must pose a "present" danger to patients. Having a summary suspension on your record is a statement that you, at one time, were deemed a present danger to your patients. Also, termination of privileges after the chance to be heard and dispute the

allegations is also a very serious event on your record. Thus, if there is any solution short of the termination of your privileges, consider it (and perhaps even suggest it) early on. Among these possible solutions are such things as proctoring, retrospective case reviews, second opinions, re-training, and further medical education. If this helps the hospital address its concerns that there may be some patient-care issues and you keep your privileges, you or your attorney may be able to convince the hospital to scale back the action. However, keep in mind that agreeing to proctoring, retrospective case reviews, second opinions, and the like may have unforeseen consequences—given the complex reporting guidelines under federal and state law and the many different applications that hospitals, insurance plans, and other third parties now require, you will likely need the help of an attorney to know whether agreeing to such mechanisms will result in a report to the National Practitioner's Data Bank or to state licensing authorities, or require you to disclose the agreement in future applications. Knowing what will have to be reported (by you or by the hospital) will allow you and your attorney to evaluate whether you should agree to such mechanism.

6) CAUTIOUS USE OF SUMMARY SUSPENSIONS

Hospitals—Summary suspensions should be used sparingly and only in cases where the failure to take such action would lead to "imminent danger to the health of an individual." Impairment cases usually meet this standard. However, if the issue is standard of care, unless there is clear evidence that a danger exists, a corrective action that provides notice and hearing before such action is taken is a better option. The physician should be given "due process" before taking away his or her privileges.

Physicians—Instead of imposing a summary suspension or a termination, some hospitals may avoid the adverse action route by offering the physician the chance to resign. While a

physician may see this as the only way out from a hostile environment, be cautious! While the ultimate decision as to whether this is the best option is dependent upon the individual facts and circumstances of a physician's case, it is crucial to be sure that if you do accept this option, you know whether or not the hospital will report you to the National Practitioner's Data Bank or to state licensing authorities. Technically, the hospital would have to make a report if you resigned under investigation, but bringing your concern regarding this issue to the hospital's attention could possibly result in an agreement with terms that avoid such report and allow you to leave the hospital. Given the strategic considerations and the serious ramifications that can occur, the advice of an attorney should be obtained. If the summary suspension or other action is entirely egregious (and you can back that up with evidence of motives other than patient care and proof that you were never a danger to your patients or acted outside of the standard of care), you may decide to hold your ground and protest the action at the hospital's "fair hearing process" and eventually in litigation. If you choose this route, you must be sure not to resign or voluntarily relinquish your privileges (even if it means a summary suspension) as doing so will usually result in a waiver of your rights to protest and appeal at an administrative level, as well as to sue in a court of law.

7) CONFIDENTIALITY IS CRUCIAL

Hospitals—During the peer review process, every effort must be made to keep the matter strictly confidential. Peer review privilege and immunity may be lost if the substance of the peer review is disclosed to persons outside of the process. Also, the affected physician's career can be devastated by the lack of confidentiality, which would only add to the damages should he or she sue and prevail.

Physicians—Just as it is for the hospital, confidentiality is crucial for you as the affected physician. Confidentiality will lessen the damage to your practice and reputation and stop rumors that may destroy your patient base and referral network. Further, even if the news of an adverse action is spreading through the hospital like wildfire, take great care to not be the source of the information, as this will likely defeat your complaints against the hospital that the confidentiality required by peer review was breached by the hospital. To the extent that you inform other members of the staff (to obtain their help) and your outside experts (to obtain their opinions) of what has occurred, do so only to extent absolutely necessary to accomplish your purpose. In some situations, you must disclose to patients why, for example, their procedure is being canceled. Do so in a way that is truthful but also best preserves your reputation and practice. As for the breaches of confidentiality from the hospital, be sure to record the details of each so that you can keep track of these breaches, and the witnesses and documents that will substantiate them, in case you need to prove them in a later proceeding or lawsuit.

8) USE OF PAST EVENTS

Hospital—If the physician has had past events that have been "cleared" through the regular channels of peer review, those same events should not form the basis for a subsequent adverse action. This may create the impression that the hospital and participants are using fabricated grounds in order to get rid of the physician. If a case was cleared and the physician absolved, it should no longer be considered, unless a pattern of the same activity can be shown to exist. This is especially true if the physician never knew of the complaint regarding the cleared case and never had a chance to defend himself in the first place.

Physicians—If you are notified of any concerns or events that are being investigated, no matter how trivial, respond! If you are given the opportunity to meet with a quality assurance

committee regarding one of your cases, show up and discuss the case! Succinctly and clearly set forth the reasons (in writing, if requested) that you treated the patient as you did so that the quality assurance committee will know your thinking. Although you should have already provided plenty of documentation in the patient's chart, many concerns will be resolved if the committee understands your actions—you must explain them. Also, it is important to obtain a resolution to each of the cases ("cleared" or "no concern") so that if such past cases are brought up again to justify a later adverse action, you can show that you addressed the concern and the case was cleared.

9) REALIZE THE CONSEQUENCES

Hospitals—Remember the severe impact that a peer review action has on the affected practitioner. The imposition of summary suspension or similar actions can dramatically impact the professional life, practice, referral base, earning potential, and future employability of a physician. The summary suspension and abeyance are events that such doctors must self report on applications for the rest of their professional careers and will likely affect their ability to transfer to another location as well as enroll in new health plans, should they choose to do so. A report to the National Practitioner's Databank or an action by the state against the physician's license may have a "domino effect" on licenses from other states and privileges at other hospitals. But most importantly, peer review actions have an effect on the affected practitioner's reputation, self-esteem, and family, with depression and suicide being a not unexpected result in some cases. Hospitals and participants must realize the devastation that can occur so that the process can be undertaken with appropriate care and caution.

Physicians—Given the dire consequences stated above, the physician must take any peer review very seriously. An attorney experienced in this area of the law is essential—make sure

you know who you will call if you ever become the subject of a peer review. Even if the hospital never knows that you have hired an attorney or sought legal advice, immediate, competent advice from an attorney (especially in the crucial early stages) is absolutely essential. An attorney can help you determine if an early resolution can be achieved. Further, if you proceed to a fair hearing process before the hospital as well as if you appeal those findings with the hospital administratively, the services of an attorney will be necessary.

10) KNOW THAT IMMUNITY NOT ABSOLUTE

Hospitals—Qualified immunity helps protect peer review not only for individual physician who may be subjected to a peer review, but also for hospitals and participants. Hospitals and peer review participants have long held the belief that absolute immunity exists for peer review activities. Most participants, even with absolute immunity, will conduct peer review in good faith and ethically. However, there are some who, because they believe that immunity is absolute, will act for reasons other than patient care. Once hospitals and participants realize that the immunity given under state and federal law is qualified (only available if done within good faith standards and without malice), then hospitals will have a better chance of convincing all peer review participants that peer review must only be performed in the interest of patient care.

Physicians—In this area, qualified immunity is almost absolute. Courts are very reluctant to get involved in staffing decisions at a hospital, especially those involving medicine. Although we all hope that the peer review process is carried out in good faith and without malice (especially if you are targeted), many times it is not. As stated above, federal and state laws provide immunity for the hospitals and participants from civil lawsuits in the event that such peer review is carried out in good faith and without malice. There is a presumption that peer review is entitled to immunity, making it very difficult (if not impossible) to overcome and hold

hospitals and participants civilly liable. Thus, a physician must know, even before any lawsuit is filed, that he or she has little leverage to control the peer review process—the threat of civil liability down the road has not in the past caused hospitals much concern. This may have changed some in the wake of the *Poliner* verdict, but these lawsuits remain very difficult to win and hospitals know that. In other words, the physician must know that threatening to sue at a later date will likely not allow him to obtain the result he or she wants. However, hospitals are paying attention to the *Poliner* verdict and, as such, may be motivated to reach a compromise. However, sometimes the adverse action is so egregious and baseless that you may want to challenge the peer review action and attempt to recover despite the qualified immunity defense. Although they are difficult, such cases exist—Dr. Poliner both obtained reinstatement of his privileges at the fair hearing level and won a jury verdict in his lawsuit.

11) SEARCH FOR THE TRUTH

Hospitals—Hospitals and participants should search for the truth, instead of trying to "win." The results should not be preordained. Hospitals should instead engage outside experts to evaluate the medical care in order to discover the truth. It is crucial to avoid the usual result of falling into an adversarial relationship. The goal of peer review should be truth. The peer review process should not be adversarial. Instead, it should be about finding the truth about whether a danger exists, whether a physician is practicing below the standard of care, or whether the physician needs additional training or proctoring. Hospitals and participants should not be focused on winning, but instead should make all efforts to find the truth and get a fair result.

Physicians—The peer review process should be focused on finding the truth. However, given the almost absolute control that the hospital exerts over the process, too many times, it is not. It is crucial to win the fight at the administrative level at the hospital, and your every effort

to expose the truth—i.e., the medical realities, the actual facts of the incident, the factual events relating to the questioned behavior—the better chance you have to obtain a favorable decision at the administrative level. To do this, you must expend resources at an early point. A good attorney who knows the area of law and can clearly and persuasively present your case, unbiased experts with top qualifications, and a clear presentation (in written and graphic form) of the patient care issues involved are all essential to this goal. Interviewing and presenting factual witnesses as well as character witnesses who can testify to your abilities is a must. The money you spend to win the administrative hearing may result in the reversal of the adverse action. At the very least, if the "fair hearing process" is only a kangaroo court and the decision predetermined, you will have the witnesses, documents, and counsel that will be essential should you decide to pursue a lawsuit.

CONCLUSION

Peer review is a vital process to the health care industry. Hospitals owe the public the obligation to use the process fairly, and not to abuse the enormous power this process represents. However, there is no guarantee that the peer review process will not be abused, although the *Poliner* verdict has caused some hospitals to re-think their aggressive strategy. Nonetheless, sham peer review is rampant. Every doctor has a duty to do his part to help combat this growing epidemic. Slowly change can and will occur. Dr. Poliner believed that he could make a difference – and he has spent 7 years of his life in a long, expensive, and demeaning legal battle. One of Dr. Poliner's favorite quotes, which is most applicable still – "All it takes for evil to flourish is for good men to remain silent." Do not remain silent!

All physicians are human. All physicians are subject to making mistakes. As an individual physician, you must take reasonable precautions. Although you may have never been

a target in the past, you can never be sure that an adverse action will not be taken against your privileges. Preparing yourself should this ever happen is essential so that you can know your options and act quickly to save your privileges.

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