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Sham Reviews Rare but Increasing

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, eventually losing 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 didn't understand how a state board could terrorize a licensee. I volunteered to help him."

Three years later, every 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."

Willner founded The Center for Peer Review Justice Inc. The center now has offices in Kenner, La., and Dallas. Eventually Willner 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.

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

One Florida doctor, who asked not to be identified, said there is another major reason for sham peer reviews like his: personality conflicts.

In his case, the hospital's chief of staff ordered him to perform a surgery, one for which the physician said he was not qualified. When the doctor declined to do the procedure because of this, the chief of staff suspended him and called for a review.

The physician expected a collegial meeting, where he explained his decision process to peers, who reviewed the patient's chart. "Instead, the facts were predetermined. They had decided what the clinical outcome was and what I should have done," he said.

The panel never checked the chart or looked at the physician's written report, he said. The panel recommended the physician enter a psychological counseling program normally reserved for drug addicts, alcoholics and perpetrators of sexual misconduct.

"Once you agree to go into something like that you have painted yourself with a broad brush that basically says you're highly impaired," he said.

The doctor fought the decision, eventually hiring the Center for Peer Review Justice.

Within a few months, the doctor was able to negotiate an agreement restoring his hospital privileges. But he has been scarred by the experience and remains wary of future brushes with the hospital administration.

Willner said that most sham peer reviews differ only in that they are typically money-driven.

"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 are questions about her cases, questions about her complications," Willner said.

The Health Care Quality Improvement Act of 1986 requires hospitals to convene a fair hearing, but the hearing is never fair, Willner said. The hospital chooses the panel, which typically consists of physicians loyal to the hospital.

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 of 10 doctors subjected to bad faith peer review never work again as physicians, and one out of five commits suicide. Physicians don't have the same rights as ordinary people, Willner said. A 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.

Willner said that peer review abuse is a result of the tremendous financial pressures hospitals face, with competition for patients and a



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At the same time, 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, Willner said.

Spotting sham peer reviews is easy, he said. Most of the center's clients have never been sued, or in the rare instances where they have, the case has been dismissed or found to be without merit.

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, visit the center's Web site at www.peerreview.org or surgeonsagent.com, which 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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