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Improving Peer Review

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A legislative committee is working on changes to state peer review laws. Physician input can help achieve what's needed: a more effective, consistent and just process.

WHEN CALIFORNIA ENACTED the Medical Injury Compensation and Reform Act (MICRA) in 1975, the Legislature expected medical staffs to conduct effective peer review in hospitals under sections 800-809 of the Business and Professions Code.

Now the state Senate Committee on Business, Professions, and Economic Development, chaired by Senator Gloria Negrete McLeod, is demanding accountability. The Lumetra Report[1] on peer review commissioned by the California Legislature through the Medical Board of California documents peer review too often is ineffective, inconsistent, and occasionally unjust. Lumetra concludes:

These variations can result in physicians continuing to provide substandard care (at times for years) impacting the protection of the public.[2]

On March 9, the Committee held a 3 1/2 hour fact-finding hearing at the state Capitol. Twenty experts and stakeholders testified, including me. Senator Sam Aanestad, a member of the Committee and oral surgeon who is experienced in peer review, clarified that the California laws requiring peer review will be revised. Lumetra presented its recommendations. Various stakeholders offered variations of Lumetra's recommendations and alternative solutions.

I sat though the entire hearing and concluded there was a majority view. To improve peer review, auditing by external auditors is necessary. At the hearing, Dr. Bruce Ermann, MD, of Mercy General Hospital, testified that Catholic Healthcare West employs an outside auditing firm, the Greeley Company,[3] to help assure peer review is effective and performed as expected by our Legislature. As an additional benefit, outside peer review can reduce the liability of a medical staff and hospital - such as when a review results in a decision adverse to a physician's ability to practice medicine, who then responds with a lawsuit for damages.

An external peer review resource, available as a back-up, can assure local peer review is performed as required by law, is effective, and is just. The external resource can be used when needed to remove bias and to remove a legal cause of action that alleges bias or an unjust process.

Currently, California is unable to effectively enforce its peer review laws because it lacks meaningful intermediate penalties to do so. Our findings from the Redding Medical Center (RMC) disaster, obtained under the Freedom of Information Act, show that in 1999 three agencies - the Licensing and Certification Division of the state Department of Public Health; the San Francisco regional office of the federal Centers for Medicare & Medicaid Services; and the Joint Commission on Healthcare Facilities - were unable to compel RMC to provide effective peer review in its cardiac services sections.

Negligent patient care in the cardiac unit continued unabated until 2002, when the FBI raided the facility and employed medical experts to provide effective peer review. RMC, the culpable physicians and their insurers paid over $500 million in damages and fines to over 600 damaged patients, the government, and commercial insurers. RMC was kicked out of the Medicare Program. No hospital can tolerate a repeat of this type of disaster.

Under current law, those same three agencies remain unable to assure effective peer review. We have proposed a new law that gives the state's Licensing and Certfication Division the power to remove the license of a department of a hospital when peer review remains ineffective or is not done.

Under such a law, elective services normally performed in these departments could not be provided by the hospital or its medical staff, could not be billed to insurers, and could not be billed to patients until the missing peer review is provided and effective action is taken as appropriate.

Physicians must develop effective methods to assure peer review is properly performed and is effective in each institution. For example, it is no longer acceptable to protect a "rainmaker" physician from peer review; by doing so, patient safety cannot be assured. The fear of reporting adverse events, expressed by some physicians, must give way to an effective and safe reporting system. Physicians who advocate for patient safety and quality must be free from fear to do so.

Physicians must be part of the solution. Peer review is complicated. It encompasses elements of total quality management, quality assurance, and detailed case review prompted by specific adverse events. Our Legislature must craft new laws that will be effective for many years. The law must anticipate changes yet to come.

No one knows more about peer review than those involved in it. These physicians can help our Legislature by considering what can be done and advising the Business and Professions Committee.

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