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The Peer Review Crash

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The lesson from the Redding heart surgeries is that the hospital licensing agency needs the ability to impose intermediate sanctions.

"A jetliner carrying 700 passengers crashed into Mount Shasta killing 69 and injuring most of the remainder. Pilot error caused the crash. The FAA ignored the incident."

If this story were true, we would be outraged and demand a full government inquiry of the FAA's negligent failure to investigate. The "passengers" were patients at Redding Medical Center in Redding, California between 1993 and 2002. The two "pilots" were Drs. Fidel Realyvasquez, Jr., a cardiac surgeon, and Chae Hyun Moon, a cardiologist.

In late 2002, the FBI broke up this scheme of negligence. Dr. Moon has lost his license to practice in California. The hospital administrators who helped hide details from public scrutiny reportedly have relocated to foreign countries to find work.

But ending unnecessary heart procedures and surgery on healthy patients did not solve the problem. Two doctors from RMC and I set out to discover how this gross medical negligence could possibly be tolerated for 10 years at this well respected, accredited, and licensed hospital.

Based on our investigation and report, gleaned from public documents and private testimony (available at www.roganconsulting.com), our government officials failed to enforce our laws: laws necessary to assure hospitals are safe for the public.

Both state and federal health care officials knew as early as 1999 that RMC and its medical staff could not assure patient safety for cardiac services. These officials knew the hospital and medical staff provided no oversight or review of the quality of care provided by the two physicians. Effectively, both of these physicians were in charge of their own reviews.

Moreover, our main hospital accreditation organization, the Joint Commission on the Accreditation of Healthcare Organizations, also knew in 1999 of the danger Doctors Moon and Realyvasquez posed to patients because their patient care services were hidden from review by their peers. JCAHO accredited RMC anyway. The first peer review provided for the two physicians was performed by outside medical experts hired by the FBI

in 2002.

Why would our enforcement agency, the Department of Public Health's Licensing and Certification Program (L&C), not use its power to enforce our laws? L&C can impose fines of $50,000 to $100,000 against hospitals for allowing imminent danger to patients but have not used this power to enforce peer review. L&C has not explained when and under what circumstances it will enforce our peer review requirements.

Patients at many California hospitals are vulnerable to medical negligence that can only be prevented by physicians using peer review to hold accountable those who endanger or harm patients. In hospitals where peer review is absent or ineffective, there is no mechanism to cull out negligent physicians until after many patients are damaged.

The Legislature ordered a report on peer review and hired Lumetra, a private company to write it. Lumetra published its report in 2008, finding that peer review in California is unacceptable, inadequate, and ineffective. RMC is the "poster child" for what too often goes wrong. Now, seven years after the Department of Justice and CMS kicked RMC out of the Medicare Program, our peer review laws remain unenforced throughout California.

In the 2009 legislative session, the California Legislature has taken up the peer review issue (SB 58, SB 700, AB 120, AB 245, and AB 834). But current proposals will not instruct L&C to enforce our laws by explaining to stakeholders what penalties it will impose for failure to perform peer review on repeat audit. L&C needs to promulgate its penalties to help reluctant stakeholders comply.

For example, L&C may impose intermediate sanctions that remove the license of a hospital for certain elective services only in those clinical departments (*e.g.*, cardiac services) where peer review is not provided or is ineffective on repeat audit.

Should L&C chose to use its power, a negligent hospital and medical staff would face huge financial losses and, therefore, would provide the missing peer review immediately. Without imposing intermediate sanctions, hospitals and medical staffs can continue to flaunt our laws knowing the state has no power to enforce them.

In other words, current peer review is self-administered and unaudited; when it is not done, L&C imposes no penalty. Self-administered peer review in hospitals works as well as self-administered regulation compliance did on Wall Street in 2008. Doctors who need help are not identified, and future patients continue to suffer the consequences.

In 2009, patient safety will remain a goal, not a reality; except, perhaps, in a few centers of quality. To push for change of this unacceptable situation, write to your California legislator and demand that L&C enforce the peer review laws in California.

Until then, good luck next time you are admitted to a hospital in California. You will need it. It is likely much safer to fly to India.

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