



National Peer Review Corporation

Specialists in external medical peer review

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Hospital Peer Review Guide II: An Effective Peer Review Report

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Introduction

The essential element in the peer review decision-making process is the peer review report.

Whether obtained by internal or external peer review analysis, the peer review report should provide an unambiguous basis for determining if additional peer review action is necessary. Based upon the information provided in the report, hospital boards, administrators and medical staff officers should be confident that their actions fulfill their legal obligation to provide quality care to patients and that the appropriate course of action has been taken regarding the physician under review.

Specifically, a peer review report should contain:

- an Executive Summary that concisely encapsulates the findings of the peer review report
- a complete abstract of the medical records and imaging studies
- answers to pertinent clinical questions within the expertise of the peer reviewer
- clear explanations of any clinical practice variations
- clear and concise findings and conclusions
- references to current medical literature and comparative data, benchmarks and accepted national standards used in the peer review report
- the curriculum vitae of the peer reviewer performing the peer review

If properly constructed, the peer review report also provides legal, financial and political protections for the hospital and medical staff. Legally, an effective peer review report will preserve hospital and medical staff immunity from money damages, as provided under the Health Care Quality Improvement Act (HCQIA) (See, also, Hospital Peer Review Guide I: Avoiding Money Damages at www.nationalpeerreview.com). A properly prepared report can also preserve the hospital's financial resources by abbreviating the peer review process, which often involves many hours of administrative and medical staff time. In addition, by providing a sound basis for decision-making, a properly constructed peer review report also preserves the hospital's political resources. It provides the credibility and support necessary to take appropriate peer review actions without the delays and indecisiveness that contribute to divisions among and between the medical staff and the hospital administration.

Given the significant impact of the peer review report, hospital decision-makers should carefully consider the following issues in determining if the peer review report is providing the hospital with all the benefits available.



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The Report Must Be Unambiguous

A recent Louisiana case¹ provides a glimpse of the detail and expert level of review required to be successful in a professional review action. The court specifically noted those instances in which the National Peer Review Corporation's (NPRC) peer review report and the NPRC peer reviewer's testimony clearly identified deviations from accepted standards of care:

"a number of instances in which [the reviewed physician] exhibited a lack of medical knowledge and deviated from the standard of care"

instances in which [the reviewed physician] "intervened when the patient's condition did not warrant intervention"

instances where [the reviewed physician] "failed to consider relevant treatment alternatives"

questionable "drug choice and dosage" in several situations by [the reviewed physician]

In addition, while observing the multitude of specific issues identified by the NPRC Report for each of the reviewed cases, the court noted:

"Although the hospital review committees reviewed this case because it was a deviation from the time standard, [the NPRC peer reviewer] considered the entire case and did not limit his focus to the time standard deviation."

Based upon a thorough evaluation by a highly credentialed peer reviewer, the court was able to rely on the report to unequivocally state those instances in which the actions of the reviewed physician deviated from the standard of care. With this objective, clear basis for the hospital's actions in reducing the physician's privileges, the court found that the physician "had not shown a substantial likelihood of success on the merits."

An unambiguous report also provides the hospital and medical staff with legal protection. Under HCQIA, the hospital and the medical staff are protected against money damages in conducting peer review actions upon meeting the following standards.

SEC. 412. [11112] Standards for Professional Review Actions.

(a) IN GENERAL. For purposes of the protection set forth in section 411(a), a professional review action must be taken:

(1) in the reasonable belief that the action was in the furtherance of quality health care,

(2) after a reasonable effort to obtain the facts of the matter,

(3) after adequate notice and hearing procedures are afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances, and

(4) in the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts and after meeting the requirement of paragraph (3).



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A professional review action shall be presumed to have met the preceding standards necessary for the protection set out in section 411(a) unless the presumption is rebutted by a preponderance of the evidence.

Therefore, if the appropriate committees of the medical staff and the board of the hospital base their decision on a peer review report:

- prepared by board certified specialists in the same specialty as the physician;
- performed impartially on an adequate sample of cases; and
- containing the peer reviewer's findings, conclusions and recommendations in appropriate detail,

the decision-makers should satisfy Section 412 of HCQIA that they acted:

- in the reasonable belief that the action was in the furtherance of quality health care; and
- after a reasonable effort to obtain the facts of the matter.

Upon satisfying the conditions of Section 412 (3) and Section 412 (4), the hospital and the medical staff need only afford due process to the physician without serious mistakes to satisfy the remaining conditions of Section 412. (See, also, "Hospital Peer Review Guide I: Avoiding Money Damages" at www.nationalpeerreview.com.) Maintaining immunity also requires the hospital to consider the requirements of state peer review laws. With few exceptions, cases challenging the peer review protection and immunity afforded to hospitals that have complied with federal and state requirements have been decided in favor of the hospitals.

Clearly, the conclusions of the peer review report are crucial to providing the evidentiary basis for the hospital and medical staff's peer review decision. However, hospital and medical staff officers should not allow peer reviewers to make decisions for them. The hospital decision-makers, including the appropriate committees of the medical staff, have the ultimate responsibility for acting on the report and should review the underlying medical record documentation/imaging studies to resolve any questions that may arise before making any decisions or taking any action.



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The Hospital's Role in Obtaining an Effective Peer Review Report

The peer review process, when resulting in a professional review action, is complex, subject to legal interpretation, involves high-level hospital and medical staff politics and is not a routine occurrence in most hospitals. Therefore, the probability of a mistake is substantial. These mistakes then become incorporated in the peer review report, making the report a problematic issue for the hospital and medical staff during the peer review process or litigation. To avoid these mistakes, the hospital and the medical staff should consider the following issues during the peer review process.

Selection of Cases and Data

In a peer review action with a potential for serious disciplinary action, the peer review report requires a sufficient survey of cases or individual actions of a physician to support the report's recommendations. In general, NPRC recommends two approaches in the selection of cases and data to determine if the physician satisfies the accepted standards of clinical practice.

The first approach is to select the cases or individual acts that "fall out in peer review" and indicate the physician may have insufficient clinical skill or judgment to comply with the standards of care. This is an economical approach as the number of cases or acts may be small. Using this approach will result in one of the following:

- The performance by the physician in these cases may satisfy the standard of care and indicate that the physician's clinical skill and judgment are satisfactory and that further case review is unnecessary.
- The performance by the physician in these cases may indicate a failure by the physician to satisfy the standard of care or indicate that the physician's clinical skill and judgment are unsatisfactory and that further peer review is necessary.
- The performance by the physician in these cases may be so egregious or so clearly indicate the physician's lack of clinical skill or judgment that further case review is unnecessary.

The second approach is to examine an adequate sampling of cases, as determined by the specialty and the circumstances, and review each case in detail. Based upon this review and the provision of appropriate comparative data, the hospital should be able to determine if the physician satisfied the standards of care, exhibited the appropriate medical knowledge, clinical skill and judgment in these cases and if the physician compares appropriately with available national data and benchmarks.

The initial determination of what constitutes an adequate sampling of cases or acts is crucial to providing an appropriate basis for the hospital's action or inaction. Regardless of the approach, however, it is not uncommon for the physician under review to assert that the hospital used an inadequate sampling of cases, that "all physicians have bad cases," or that the sampling of cases is unreasonable to support the adverse action against the physician. The determination by the hospital of the scope of the review must, therefore, be objectively reasonable and defensible.



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Selection of a Peer Reviewer

Another critical decision for the hospital is the selection of the peer reviewer. Selecting a peer reviewer with the appropriate qualifications reduces challenges to the peer reviewer by the physician being reviewed and fortifies the effectiveness and credibility of the peer review report. Too often, hospitals focus solely on whether or not the reviewer practices in the same specialty as the physician being reviewed. Although this is, clearly, an important criterion, several additional qualifications will help ensure that a routine in-hospital peer review is effective:

- The same or more expertise in the medical specialty as the practitioner under review
- Sufficient time to conduct the peer review
- Sufficient communication and writing skills
- No conflict of interest (e.g., a competitor)
- The same educational background as the physician under investigation (e.g., D.O. versus M.D.)
- A good reputation free of malpractice claims, disruptive behavior or legal problems
- Expertise in peer review

The last criterion, expertise in peer review, is often overlooked when selecting a peer reviewer. Whether performed in-house or by an external peer review organization, a peer reviewer with sufficient training in the performance of peer review brings a specialized knowledge that is invaluable to an effective peer review.

Reviewing cases for peer review is distinct from a review based on malpractice criteria or outcome-only based criteria. A peer reviewer with expertise in the performance of peer review will be able to appropriately analyze the entire medical management of the reviewed cases to determine if there were any lapses in clinical knowledge or judgment and assess whether or not the lapses constitute a deviation from the accepted standards of care. All of this analysis will be clearly set forth in the experienced peer reviewer's report to the hospital, allowing hospital decision-makers to confidently proceed, rather than trying to interpret the "maybes" and "ifs" that often make peer review reports useless, as well as a potential liability in further proceedings.

The hospital should also give additional consideration to the peer reviewer's credentials if the peer review is complex or is likely to result in a professional review action. In these circumstances, whether the review is performed internally or externally, the credentials of the peer reviewer should be superior to those of the physician under review to eliminate any argument that the peer reviewer is not sufficiently qualified to conduct the review. (See, also, Hospital Peer Review Guide I: Avoiding Money Damages available at www.nationalpeerreview.com).



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Distinguishing Peer Review from Legal/Malpractice Review

The purpose of the peer review system of a hospital, on an individual and institutional level, should be to identify, track and resolve inappropriate clinical performance and medical errors and ineffective institutional processes at initial stages, thereby increasing patient safety and the quality of patient care. Functioning properly, the peer review process is an effective mechanism for educating physicians, upgrading clinical knowledge, enhancing medical practice, reducing medical errors and improving patient safety. Peer review should not be intended or approached as a confrontational process designed solely to discipline physicians. (See, also, Hospital Peer Review Guide IV: Fixing Roadblocks to Effective Peer Review available at www.nationalpeerreview.com.)

The key to effective educational peer review is early detection and prompt action to re-educate a physician. If the peer review system acts with a sense of urgency, most physicians will be receptive to education and appropriate adjustments to clinical practice patterns and conduct.

In order to identify, track and resolve inappropriate clinical performance and medical errors at initial stages, physician peer reviewers should approach peer review by examining any variance in performance from the accepted clinical standards in:

- Pre-operative evaluation
- Operative procedure technique
- Clinical judgment and decision-making
- Post-operative care
- Record keeping and documentation

This process should be distinguished from the medical-legal system for identifying negligence and assessing liability. An appropriate peer review system is not focused solely on poor outcomes to determine what punitive action should be taken against a physician. Effective peer review provides a process for continuously reviewing and identifying all of the factors, both physician and institutional, that may be affecting patient care. These factors may not necessarily constitute negligence or rise to the level of legal liability, but may necessitate modifications to clinical performance or technique or procedural/operational methods to enhance each aspect of patient care and avoid poor outcomes.



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Focus the Peer Review on Clinically Applicable Issues

Commonly, an unsupervised peer reviewer examines the medical records and other materials provided by the hospital or the peer review organization and writes the report.

However, this approach may not sufficiently focus the peer reviewer on clinically applicable issues related to the competency and professional conduct of the physician that are within the expertise of the reviewer. The result is a report that may omit important analyses and/or include opinions regarding unnecessary or extraneous issues.

The inclusion of unnecessary or extraneous issues in a peer review report often results in:

- redirecting the focus from the important issues to peripheral issues
- damaging the credibility of the peer reviewer if the issues are not within the peer reviewer's expertise (e.g., an orthopedic surgeon analyzing the mental condition of a disruptive physician)

Limiting the peer reviewer to relevant clinical issues that are within the expertise of the reviewer, including clinical management, timeliness of medical interventions, adherence to hospital's critical pathways and/or other established guidelines, medical record documentation, and follow-up case management or professional conduct, will streamline the peer review report and avoid the problem of addressing distracting extraneous issues. These extraneous matters are another mechanism in a hearing or litigation that can be used to discredit the peer reviewer and the peer review report.

An additional benefit of this guidance is that the narrowed review will reduce the ultimate cost of the entire peer review process.

Provide the Complete Record to the Peer Reviewer

It is important to provide the peer reviewer with a complete record of the cases to be reviewed. This will avoid:

- delay, if the problem is recognized
- or, if unrecognized, a peer review report with erroneous conclusions

If the peer reviewer is inexperienced in peer review or does not have sufficient time to conduct the peer review, it is likely that the provision of insufficient records for the review will not be recognized until well into the peer review process. Not only will this negate the time and effort in obtaining the completed report, but, in the event of a professional peer review action, this deficiency will quickly become a diverting issue. Legal counsel for the physician is likely to provide the remainder of the records, together with experts, to explain why the omitted facts were crucial to the peer review report.



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Dealing with Poor Documentation

A significant issue in many peer review cases is the lack of appropriate medical record documentation by a physician. In many cases, the peer reviewer may be unable to fully assess the medical management of the case due to poor medical record documentation.

Appropriate medical record documentation is necessary for a hospital to fulfill its obligations to ensure the safety of its patients and the appropriateness of the medical care provided by the medical staff. Therefore, insufficient medical record documentation should be deemed a violation of the clinical standard of care because the physician has not provided a sufficient basis for the medical staff, acting on behalf of a hospital, to monitor and evaluate the clinical judgment of the physician. As a result, the hospital and the medical staff do not know if the physician's care was appropriate and the hospital is unable to fulfill its obligations to its patients. Therefore, if a physician disregards this obligation the Hospital should take appropriate corrective action.

Joint Commission on Accreditation of Healthcare Organizations (JCAHO) Standard IM.6.10 requires a "complete and accurate medical record for patients assessed, cared for, treated, or served." The rationale for this Standard states: "Patient-specific data and information are contained in the medical record, both inpatient and outpatient, to facilitate patient care, treatment and services; serve as a financial and legal record; aid in research; support decision analysis; and guide professional and hospital performance improvement." Insufficient medical record documentation by a physician does not support these functions. Additionally, medical record documentation must support the coding and billing of the case.



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Providing the Basis for the Findings by the Peer Reviewer

Medicine is not an exact science, and clinical practice is not an error-free activity. Different physicians, in the legitimate exercise of individual clinical judgment, justifiably approach clinical problem-solving in different ways. Accordingly, a broad range of performance is generally recognized as clinically acceptable.

Due to the nature and uncertainties of clinical practice and limitations of the information reviewed, it is possible that other qualified analysts might legitimately disagree with some of the findings and the conclusions of a highly qualified peer reviewer.

Therefore:

- Questionable or problematic behavior and/or clinical performance identified in a peer review report must be based upon the medical records and other documentation/imaging studies made available to the peer reviewer.
- The peer review report must contain the appropriate references to this data.
- The peer review report must reference current literature and relevant standards of practice.

The peer review report must stand alone as the basis for action or inaction by the hospital. This requires that the report contain a detailed abstract of the medical record and documentation/imaging studies and references to current literature. This level of detailed information in the report supports the hospital's affirmation to any court or hearing panel that the hospital's actions were logical, reasonable and sustained by the evidence.

In addition, in the event of a hearing or litigation, the report should contain the information necessary to support the peer reviewer's findings, without requiring the peer reviewer and others to re-review volumes of documents.



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Timely Report

The efficacy of a peer review evaluation diminishes if it is not delivered in a timely manner. The passage of time alone is not only inconvenient, but poses its own procedural and legal pitfalls.

The physician under review or his/her legal counsel may argue that during the time period in which the review was conducted (delayed by the inability of the peer reviewer to provide a timely report), the hospital allowed the physician to practice and, therefore, the hospital and the medical staff could not believe that the physician was clinically incompetent or that the physician's disruptive behavior compromised patient safety. Alternatively, the physician and his/her legal counsel may argue that during the time period in which the review was conducted (delayed by the inability of the peer reviewer to provide a timely report), the hospital did not allow the physician to practice, therefore prejudicing the physician's case and causing the physician substantial money damages.

Peer review reports should be provided within an appropriate time period established by the hospital and the medical staff. This time frame must balance the need to allow the peer reviewer to adequately review the records and provide cogent findings and the need to keep the peer review process timely and accountable.

Involving Experienced Legal Counsel in the Early Stages

Although most peer review activities are routine and handled without reaching the hearing stage or proceeding to litigation, every hospital should consider the possibility that a hearing and/or litigation will result and that the hospital will be required to defend its peer review action or inaction. By consulting with experienced legal counsel early in the process, the hospital ensures compliance with HCQIA and the medical staff bylaws. In contrast, hospital legal counsel is often not involved until corrective action is recommended and the peer review report has already become an intractable part of the record. At that point, it may be too late to remedy any legal defects in the report.

To address this concern, NPRC Reports undergo a legal review by NPRC's attorneys prior to being delivered to the hospital. This initial legal review by NPRC is not a substitute for obtaining legal advice early in the peer review process. However, NPRC's legal review of the NPRC Report allows hospital decision-makers to confirm, from the onset, that the peer review report provides a defensible basis for the hospital's action or inaction in a peer review proceeding.



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Scoring

Although used by many hospitals, scoring peer review cases based on a set of defined parameters often contributes to the ineffectiveness of the peer review report. Rather than the streamlining effect sought by instituting scoring requirements, the subjectivity of the parameters and the scoring itself become another subject for debate.

Diverting the focus away from the quality of care or disruptive behavior issues is a common tactic used in the defense of a physician under review during a hearing or litigation. Regardless of how clearly the hospital believes the parameters for scoring a peer review case are set forth in the procedures, their mere existence instantly raises questions regarding their validity and applicability to the specific case or act being reviewed. Physicians and/or their attorneys can question how the scoring requirements were developed, by whom, when were they last reviewed, whether they are applied in a routine manner across the hospital, and if the score assigned by the peer reviewer accurately reflects the reviewer's analysis of the case.

In fact, requiring a peer reviewer to assign a score can result in a more cursory analysis by both the peer reviewer and the hospital and medical staff decision makers. The same reasons that scoring requirements are put in place, to save time and attempt to achieve some uniformity, often result in the loss of important facts in the peer review report. As the case proceeds through the peer review process, the score often becomes the primary reflection of the facts of the case, with other reviewers relying on the score rather than becoming familiar with the facts and nuances of the case. Clearly, a full review of the case is not required at each level of the peer review process, but neither should a review at any level be confined to the distinct parameters outlined for the assigned score.

Finally, some of the scoring systems instituted in hospitals are so confusing that the hospital and medical staff decision makers and the board of the hospital receive overall reports regarding cases in the peer review process that are unintelligible. The multiple levels of scoring become a maze of numbers and letters that fail to provide any meaningful information to the persons responsible for overseeing the quality of care at the hospital.



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Multi-Disciplinary Peer Reviews

Many hospitals struggle with peer review cases that require multi-disciplinary review. The reports generated by the various specialties may contain disparities in the peer review findings, remain inconclusive without the information from the other reviews, or even dispute the appropriateness of the inclusion of a particular specialty in the peer review. Centralized coordination of the peer review reports and process, whether by the committees or departments themselves or by administration, is necessary to resolve these issues and ensure that multi-disciplinary reviews do not become mired in the complexities of the process.

One solution is to convene a multi-disciplinary peer review committee to conduct the review. This committee would have representation from each of the applicable specialties and the final peer review report would contain the coordinated findings of the committee. Alternatively, a peer review coordinator or other member of administration can attempt to reconcile the findings of the various committees or departments and submit a combined report for the committees/departments' revision and approval. Clearly, a report obtained from an external peer review source should also coordinate the findings of the various peer reviewers.

Regardless of the methodology, this process is essential in presenting a cohesive report to the decision makers and ensuring that multi-disciplinary cases are reviewed and resolved in a timely manner.

Separate Reports for Clinical Competence and Disruptive Behavior

If the hospital and medical staff are concerned about a physician's clinical competence, as well as disruptive behavior, the peer review activities for each issue should be conducted as two separate tracts – a clinical review to determine the physician's clinical competence and a behavioral review to investigate the physician's disruptive behavior.

Dividing the peer review into two distinct issues keeps the peer reviewers and investigators focused on the issues within their expertise and ensures the credibility of the report of each type of review. If either report concludes that the physician's actions adversely affect patient care, the hospital will have a solid foundation for taking appropriate action. (See, also, Hospital Peer Review Guide II: Handling the Disruptive Provider available at www.nationalpeerreview.com.)



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Summary

The peer review report should be designed to make it easier for hospital boards, administrators and medical staff officers to fulfill their legal obligation to provide quality care to patients and to preserve hospital and medical staff immunity from money damages. The peer review report should, standing alone, serve as:

- a mechanism to improve the quality of patient care
- the foundation for the subsequent professional review actions
- the protection of the hospital and medical staff from money damages under HCQIA
- a defense against an action by the physician

An appropriate evaluation of a peer review report requires hospital decision-makers to evaluate a number of factors that influence the effectiveness of the report. This evaluation is essential to determine if the report provides the information, clinical references and findings of an expert peer reviewer to serve as a strong evidentiary basis for the hospital's action or inaction.