

External Peer Review As A Risk Minimization Strategy:

A Legal Summary

Responding to Barriers to Effective Internal Peer Review

It is obvious that engaging external peer reviewers is wise when contemplating corrective action with a medical staff member or when sentinel events occur. But external peer review can mitigate risk in other circumstances, as well.

Resolve conflicts of interest and establish objectivity.

Conflicts of interest frequently arise in peer review situations, as reviewers often have economic, professional, social or family ties with the reviewed physician. Many hospitals do not have a sufficient number of practitioners in a given specialty to assign a reviewer without such ties. In cases where the review is the result of an incident or pattern that may lead to litigation or corrective action, hospitals may wish to consider engaging an objective outside expert sooner, rather than later. An objective outside determination can mitigate the threat of allegations of biased peer review. It can also identify problems in hospital processes or procedures that should be corrected to reduce the likelihood of similar problems in the future. Finally, an objective outside determination can help establish a paper trail supporting the reasonableness of the hospital's position.

Provide true peer for accurate evaluation.

A sub-specialist, or any physician working with new technology or performing a new procedure, may not have any peers in his or her hospital community – or all such peers may be either partners or direct competitors. Many hospitals will turn to an academic medical center for help in such a case, but the practice environment of an academician is much different than that of a community hospital. A hospital, and its physicians, may be better served by turning to an external peer reviewer with similar training and expertise, working in a similar practice environment.

Bolster inadequate internal resources.

External peer review is often an effective solution for hospitals that lack adequate physician resources to conduct performance analysis in a timely fashion. The sheer volume of performance and quality data that many hospitals now collect can create a risk for a hospital. If there is evidence of a problem with a particular physician's practice, but there is a delay in identifying that problem because data was not analyzed promptly, a patient who suffered harm as a result may have a negligence claim against the hospital that a jury may find persuasive. Similarly, hospitals should consider engaging external peer review when a review of a physician who is the subject of an investigation cannot be completed within a specified period—perhaps 30 days—using in-house resources.

Meet unique hospital needs.

Finally, each hospital should develop procedures to turn to external peer review as required by its own particular circumstances. Hospitals with high volume and few willing or qualified reviewers may decide to outsource all cases in a particular specialty, or a certain number of cases per year. Cases where internal reviewers cannot reach a conclusion or a consensus should be subject to external review, as should unresolved quality issues related to a particular department, procedure, or practitioner. And cases where physician behavior or demeanor may have had an impact on clinical outcomes benefit from objective outside review by a peer with no prior personal knowledge of the physician.

In summary, hospitals should realistically assess the efficacy and quality of their internal peer review procedures, keeping in mind the significant litigation risk associated with peer review activities, and consider how to incorporate external peer review as an integral part of their overall risk management strategies.