

# Special Focus Peer Review Committees: The Evolution of Traditional Peer Review to Improve Efficiency and Performance

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The term “peer review” often strikes fear in a health care practitioner. Generally, peer review has a negative connotation since it is commonly associated with an investigation initiated by the occurrence of an adverse event. While this often may be the case, proactive facilities and their administrations, departments, and medical staffs are using peer review to do more than investigate the practitioner and her acts.

Special focus peer review committees have become more prevalent in addressing operational matters as part of the facility’s planning and risk management activities. The purpose of utilizing peer review committees in this fashion is not to focus on one practitioner. Rather, special focus peer review committees serve as vehicles to examine and analyze such areas as hospital departments, service lines, or even indi-

vidual Current Procedural Terminology codes. A committee determining the efficiency of the staff and their interaction is another example of their use. Finally, special focus peer review committees may be used to track performance of operational initiatives. The best parties to engage in such reviews are the peers that are part of the operational initiatives.

This article addresses how facilities may use special focus peer review committees not only to improve quality, but also to increase efficiency, improve employee and patient satisfaction, ensure compliance with hospital rules and regulations, and promote best practices.

## Peer Review vs. Professional Review Action

While the terms “peer review” and “professional review activity” are often used interchangeably in health care, each has a special meaning based on the context in which it is used. A “peer review,” in its simplest sense, is the “evaluation of a person’s work or performance by a group of people in the same occupation, profession, or industry.”<sup>1</sup> However, the definition may apply to any analysis in health care related to rules, regulations, and best practices, whether clinical or operational in nature, by those with similarities of experience through job, education, knowledge, or training in that area.





Defined in the Health Care Quality Improvement Act of 1986, as amended,<sup>2</sup> a “*professional review activity*” is an analysis of the facts and circumstances with respect to an individual physician in determining whether to grant, revoke, or modify a physician’s privileges or membership or determine the scope of such privileges or membership if such are granted.<sup>3</sup> As with a peer review, this activity is under the guidance and analysis of those who may judge the abilities of an individual for the purposes of privileges or membership. “Peer review” will focus on an individual, group, or system that may impact an entity whereas the “professional review activity” will focus on an individual. A professional review activity is a subset, or type of, peer review. In both instances it is imperative that those serving on the committee conducting the review and making recommendations possess a common base of knowledge to effectively judge the issues before it.

## Areas Suited for Special Focus Peer Review

There are many components within health care where those providing care want to be assured that the patient is receiving quality care in the most optimal and efficient way. Quality may be affected not only by who is delivering care and the results of such care, but by what operational processes are used in the delivery of care. Operational processes include such things as whether the patient is transferred within the system according to medical needs; if the hospital has assured availability of proper equipment and supplies; whether there is adequate communication between

providers through networks and systems; and if the delivery of care is properly staffed and by whom. By reviewing those common areas that all providers of care within a hospital or other type of health care facility encounter, a determination of which need attention through a special focus peer review can be made.

John Nelson, MD, the co-founder and past president of the Society of Hospital Medicine, proffered three review categories that impact the individual practitioner’s performance in the delivery of care, which in turn may result in issues on a broader scale.<sup>4</sup> The focus on the individual practitioner is much more than just performance by the physician. Rather, the focus should be on all individuals such as nurse practitioners, physician assistants, and others involved in direct patient care. Arguably, the review may extend to any person who is involved in patient interaction.

### 1. Human Resources

The first category is what Nelson defines as traditional “human resources,” which includes the overall non-clinical aspects of performance by the practitioner such as fulfilling job duties and effectively working with others. This area may include how the practitioners work with each other and interact with the patients. Complaints levied against a physician by a nurse or other staff member is a common issue addressed in special focus peer review.<sup>5</sup> Specifically, a study conducted in 2009 by the American College of Physician Executives, or ACPE, found outrageous behavior is not uncommon in health care organizations.<sup>6</sup> The study provided several examples of work environment issues that affected patient care.<sup>7</sup> They included the following examples:<sup>8</sup>

- Physicians groping others while they were trying to do their jobs;
- Items being thrown across the operating room such as surgical tools;
- Employees holding personal grudges that impacted patient care; and
- Employees making accusations against others related to negligence or incompetence before the patient and their families.

All of these are common instances as set forth in the 2009 study and may justify a special focus peer review to address practitioner actions. Identifying and addressing these issues early may prevent subsequent disruptive behavior.<sup>9</sup>

### 2. Business and Operational Aspects

Nelson’s second category focuses on the business and operational aspects in the delivery of care. This area includes whether the practitioner’s medical records are properly and timely completed and whether the practitioner satisfies the

obligations mandated by the hospital or facility to maintain privileges or membership (i.e. attending meetings and serving on committees).<sup>10</sup> Instances where the patient's health is deteriorating but progress notes look the same may be an indication that the physician is not keeping timely notes or even, as witnessed, "cutting and pasting" notes from previous encounters.<sup>11</sup> It also may pertain to the practitioner not possessing and using the proper resources for the delivery of care.<sup>12</sup> Failures in these areas may result in diminished quality while impacting the financial aspects of operations.

### 3. Measureable Quality of Care

Nelson's third category encompasses measureable quality of care. He cites as examples "assessment of mortality, readmission rate, performance on such quality metrics such as core measures, and performance of selected initiatives."<sup>13</sup> Again, this is not an individual practitioner-focused peer review but rather one on a department or service-line level. This peer review ultimately may lead to a subsequent professional review action if the analysis of the larger set reveals issues with one or more practitioners within that set.

An example of this third category of review that leads to an action involving an individual practitioner is found in *Sokol v. Akron General Medical Center*.<sup>14</sup> In *Sokol*, the hospital's Medical Council created a Surgery Quality Task Force to conduct a special focus peer review of the entire cardiac surgery program by performing statistical risk assessment in relation to mortality rates.<sup>15</sup> The assessment revealed that Sokol's mortality rate was significantly higher than the other cardiologists within the department, and a subsequent professional review action was initiated against him.<sup>16</sup> The special focus peer review provided the hospital with information it previously had not known, highlighting concerns that needed to be addressed regarding mortality of its patients. While the action against the practitioner was after the fact, it identified an issue that was addressed to reduce the likelihood of further patient care issues.

The three categories demonstrate that moving from the first to the third may reveal circumstances from a broader standpoint that can negatively impact quality of care. The hospital or facility then may proceed with a more focused approach in addressing the issues discovered. It is not unusual that attempting to bridge these areas will result in a review of multiple parts of the organization. The Joint Commission's Standard MS.01.01.01 recognizes the need to have a collaborative relationship between the hospital, its governing body, and medical staff.<sup>17</sup> This in turn shall ensure a "well functioning relationship, reflecting clearly recognized roles, responsibilities, and accountability, to enhance the quality and safety of care, treatment, and services provided to patients."<sup>18</sup> Using special focus peer review committees helps in recognizing instances where the collaborative relationship is succeeding and where it is falling short.

### Best Practices in Conducting Special Focus Peer Review

A special focus peer review must be structured so its primary goal is to reach the end result envisioned by the governing body that empowered it to act. The process should be structured like a typical business process to examine issues and solve problems.<sup>19</sup> Six Sigma is a common business tool used to drive quality improvements through strategic and systematic steps by using the DMAIC problem solving method.<sup>20</sup> The DMAIC process provides that the proper approach to problem solving is to:

- Define the problem;
- Measure the problem;
- Analyze the data derived in the Defining and Measurement stages;
- Improve upon the situation by developing alternatives and then determining which alternative is the best choice; and
- Implement a number of Controls to determine if the solution has been reached or whether other alternatives must be considered.<sup>21</sup>

This structure allows the peer review committee to recognize issues, if any, that must be investigated and analyzed so it can propose solutions to increase efficiency and effectiveness.<sup>22</sup> In return, this process may lead to improved quality of care.<sup>23</sup> The peer review process should include the following elements:<sup>24</sup>



- *Consistent policies and procedures in light of other peer review.* Without consistency, your efforts may not align with others within the organization.
- *Timeliness.* Establish a set schedule to gather information and meet, rather than just when the committee wishes to do so.
- *Objective, defensible conclusions.* These are necessary to effectively address quality of care issues and identify firm and actionable conclusions.
- *Balance between opinions.* The committee should consist of individuals knowledgeable in the area so all opinions are considered to reach a conclusion and recommendation.
- *True peer review.* The peer review committee must be composed of those with education, knowledge, training, and experience related to the special focus.
- *Useful actions.* The committee has a specific focus and has the authority to act.
- *Regular auditing.* Once issues are identified and actions are taken, follow up is imperative to ensure the subject of the special focus continues to be addressed.

## Privilege Issues in Peer Review

A special focus peer review still may be subject to privilege based on the subject matter and how it is initiated and carried out. Federal courts have been reluctant to create a new privilege as a matter of federal common law as it relates to medical peer review.<sup>25</sup> Therefore, be aware of the law of the jurisdiction where the peer review occurs to determine if privilege may attach to the committee and its actions based on the subject matter before the committee. Also, consider quality improvement and quality assurance issues that may allow for additional privilege protections. Usually, in both instances, the committees and the underlying review must be initiated through a formal committee structure. The hospital or facility must be cognizant of these issues in establishing the peer review committee and how the proceedings are handled. Significant ramifications, including liability issues, may arise out of the peer review committee's investigation and ultimate actions.

## Conclusion

The health care industry has witnessed a significant increase in utilization of special focus peer review committees. They can serve to promote quality measures, address internal operational issues, establish a basis for subsequent professional review actions, and provide a risk management tool. For them to be successful, all parties that will be part of, or affected by, the committee and its review must be considered a stakeholder in that process. Stakeholders should be represented on the committee or at least asked to provide their input for consideration. Finally, if the committee determines that subsequent efforts need to be pursued, the hospital or facility must be prepared to move forward with the next steps including auditing the process after it concludes.

- 1 Dictionary.com, available at <http://www.dictionary.com/browse/peer-review>.
- 2 42 U.S.C. § 11101 *et seq.*
- 3 *Id.* at § 11151(10).
- 4 John Nelson, *Internal Peer Review*, THE HOSPITALIST (July 2009), available at <http://www.the-hospitalist.org/hospitalist/article/123920/internal-peer-review>.
- 5 *Id.*
- 6 Carrie Johnson, *Bad Blood: Doctor-Nurse Behavior Problems Impact Patient Care*, PHYSICIAN EXEC., p. 6–11 (Nov.–Dec. 2009) (detailing the 2009 Doctor-Nurse Behavior Survey), available at <https://www.ache.org/policy/doctornursebehavior.pdf>.
- 7 *Id.*
- 8 *Id.*
- 9 Alan Rosenstein, *Early Intervention Can Help Prevent Disruptive Behavior*, PHYSICIAN EXEC., p. 14–15 (Nov.–Dec. 2009), available at <https://www.ache.org/policy/doctornursebehavior.pdf>.
- 10 Nelson, *supra* note 4, at p.1.
- 11 Chris Dimick, *Documentation Bad Habits: Shortcuts in Electronic Records Pose Risk*, 79 J. of AHIMA 40–43 (June 2008), available at <http://library.ahima.org/doc?oid=81008#.WSWrnxPyvyV>.
- 12 Nelson *supra* note 4, at p.1.
- 13 *Id.*
- 14 173 F.3d 1026 (6th Cir. 1999). The main issue before the court was whether Dr. Sokol was provided sufficient notice of the subsequent professional review action.
- 15 *Id.* at 1028.
- 16 *Id.*
- 17 The Joint Commission, Standard MS.01.01.01 (formerly MS.1.20) effective March 31, 2011, available at [http://www.jointcommission.org/assets/1/18/MS\\_01\\_01\\_01.pdf](http://www.jointcommission.org/assets/1/18/MS_01_01_01.pdf). This Joint Commission Standard contains 36 Elements of Performance that apply to either the Critical Access Hospital Accreditation Program, the Hospital Accreditation Program or both Programs.
- 18 *Id.* at p.1.
- 19 Skip Freedman, *Best Practices for Enhancing Quality*, PATIENT SAFETY AND QUALITY HEALTHCARE (Jan./Feb. 2007), available at <https://www.psqh.com/janfeb07/peer.html>.
- 20 Martin Murray, *Six Sigma Concepts: The DMAIC Problem Solving Method*, THE BALANCE (Nov. 16, 2016), available at <https://www.thebalance.com/six-sigma-concepts-the-dmaic-problem-solving-method-2221186>.
- 21 *Id.*
- 22 Freedman, *supra* note 19, at p.2.
- 23 *Id.*
- 24 *Id.*
- 25 *Agster v. Maricopa Cnty.*, 422 F.3d 836, 839-40 (9th Cir. 2005).