

SHAM PEER REVIEW IN ISRAELI HOSPITALS AND EXPERT TESTIMONY IN MEDICAL MALPRACTICE LITIGATION



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WHAT IS SHAM PEER REVIEW (SPR)?

- ▶ Though peer review is a welcomed and appropriate activity, taking place in the various arenas of the academic world, it seems that where Professionals operate in the Medical world peer review took a step forward and became sham peer review.
- ▶ SPR is the name given to the prostitution of the medical peer review which intends harm and attacks a physician for personal reasons related to his medical profession, which are unrelated to the physician's quality of care and patients' safety.
- ▶ Larry Poliner describes SPR ***“Like a deadly virus sheltered within an immune cell, peer review has been infected. Ironically, some, who have sworn to “first do no harm,” now use peer review as a weapon of harm—“Doctors Who Hurt Doctors.”***
- ▶ Disingenuous “concern for patients” is used to conceal malicious motives in a legalized charade where absolute immunity protects those who utter the words “peer review,” and where form trumps substance at every level”
- ▶ We will show that the same SPR tactics illustrated in the Poliner case apply in Israel

THE POLINER CASE

- Larry Poliner is a Cardiologist that was maliciously put out of work, his reputation was ruined and his practice was destroyed by tactics of SPR as quoted in his article review that was written after the court ruled in his favor.
- **“The process that unfolded was directed at stopping me from practicing at the hospital by removing my privileges to work there as a cardiologist. I had an interventional practice based on outreach patients for a year. I then opened a solo interventional practice at the hospital”.**
- “With the first patient I scheduled in the cardiac catheterization lab, I was informed that my privileges were no longer active and I would not be allowed to treat the patient. After I complained, it was determined that there was no basis for the adverse action against my privileges, and I was allowed to provide treatment to the patient”.

SPR IN ISRAELI HS APPEARS IN DIFFERENT MANNERS

- ▶ First, as a tool to diminish expert opinion credibility in order to influence the court in Medical malpractice cases or in other issues.
- ▶ Second, as a tool to eliminate experts from testifying against the interests of medical professional bodies.
- ▶ Third, as a tool to eliminate professionals who are whistleblowers, competitors or become a threat to the medical institution by protecting patient safety and revealing cover-up of Medical Malpractice.
- ▶ The SPR against professionals are done in very shrewd and sophisticated tactics under different clauses of Immunity, that puts the physician on the defense and intended to prove that his conduct is against the interest of the institution.
- ▶ We will show examples of SPR in the above situations, and try to compare the SPR in Israel to case law in the USA. At the end I will be happy to share with you some of my unanswered questions.

SPR AS A TOOL TO DIMINISH EXPERT OPINION (1)

- ▶ The writing of an expert opinion for legal purposes is a judicial process in which the expert tries to convince the court and influence the outcome of proceedings.
- ▶ The expert opinion should be supported by medical records and data collected according to Evidence Based Medicine (EBM) rules and rely on medical literature and studies published in scientific text books and journals.
- ▶ In order to overcome hurdles of a malpractice or tortious behavior of a practitioner in a medical institution, **we experience expert opinions that attack the credibility of the other party's expert opinion rather than answering to the merits of the case** or declaring that the practitioner is not familiar with the clinical guidelines of the standard of care – **regardless of whether that is true.**
- ▶ This tactic is commonly used by experienced experts to convince the court to prefer their opinion.

SPR AS A TOOL TO DIMINISH EXPERT OPINION CREDIBILITY

- ▶ Another Form of SPR of an Expert Opinion is by **challenging the credibility of a professional that testified against the interest of the professional body.**
- ▶ Government Bylaws forbid any physician to testify against the state in any criminal or civil proceedings.
- ▶ **Dr Maia Forman is a pathologist** who applied to work for the government in the Institution of Forensic Medicine as an forensic doctor. She won a bid to serve as the head of the department of forensic medicine in the institution.
- ▶ Prior to her appointment she wrote an expert opinion on behalf of the accused in a well known murder case of a child in a school bathroom.
- ▶ The prosecution used some comments of the court to claim that Dr. Forman is not suitable for the job and tried to put a stop order on her nomination using SPR tactics attacking her credibility.
- ▶ The Labor court dismissed the claim.

SPR IN ISRAELI HOSPITALS - THE MILGALTER CASE

- ▶ Dr. Eli Milgalter was the Director of the Heart Transplant Unit at Hadassah Medical Center in Jerusalem, and was appointed as the Director of the Pediatric Cardiothoracic Surgery Unit. The unit was a candidate for the Nobel Prize due to its contribution to the special relationship with the Peres Center that referred Palestinian patients to Hadassah.
- ▶ Dr. Milgalter was also a senior lecturer at the Hebrew University.
- ▶ Dr. Milgalter was an exceptional surgeon in his abilities and he was highly thought of by peers and patients alike. He specialized in both pediatric and adult surgery.
- ▶ Dr Milgalter worked for 37 years in Hadassah and died in 2015 from stress that led to a heart attack. In the last 7 years of his life he underwent a brutal Sham Peer Review conducted by the head of the Cardiothoracic Surgery Department, who recurrently risked patient safety in order to demolish Dr. Milgalter's career.
- ▶ Dr. Milgalter was a whistleblower who warned in real-time against faults in the hospital.
- ▶ Recently my office has filed a wrongful death lawsuit against Hadassah hospital claiming that his sudden death was caused by sham peer review and tortious behavior.

TACTICS OF SHAM PEER REVIEW AGAINST DR. MILGALTER

- ▶ Since the appointment of a new director of the Cardiothoracic Surgery Department, Dr Milgalter's authority and reputation were abused , and he was exposed to a series of harmful actions and procedures that amounted to a tortious sham peer review as follows:
 - ▶ Changing the surgery program and canceling the regular surgery days of certain physicians in the department, in order to enlarge the director's private patient list.
 - ▶ Decreasing the number of Dr. Milgalter's patients on the weekly surgery schedule.
 - ▶ Taking away Dr. Milgalter's permanent professional staff in pediatric cardiac surgery.
 - ▶ Removing Dr. Milgalter from the teaching staff at the School of Medicine with the allegation that his teaching quality was unsuitable despite the fact that Dr. Milgalter was considered to be an excellent lecturer at the School of Medicine.
 - ▶ Adopting arbitrary sanctions against Dr. Milgalter, including forbidding him from conducting surgery for lengthy periods, forbidding his entry into the catheterization unit.
 - ▶ Removing Dr. Milgalter from the consultation program for internal medicine departments, and preventing referrals of medical tourism to him.

TACTICS OF SHAM PEER REVIEW AGAINST DR. MILGALTER

- ▶ Since the appointment of a new director of the Chest Heart Surgery Department ,Dr Milgalter's authority and reputation were abused , and he exposed to a series of harmful actions and procedures that amounted to a tortious sham peer review as follows:
 - ▶ Changing the surgery program and canceling the surgery days of certain physicians in the department, in order to enlarge the director's private patient list.
 - ▶ Decreasing Dr. Milgalter patient list in the surgery program plan.
 - ▶ Splitting Dr. Milgalter from permanent professional staff in pediatric cardiac surgery.
 - ▶ Removing Dr. Milgalter from the teaching staff at the School of Medicine with the allegation that his teaching quality was unsuitable despite the fact that Dr. Milgalter was considered to be an excellent lecturer at the School of Medicine .
 - ▶ Adopting arbitrary sanctions against Dr. Milgalter, including forbidding him from surgery for lengthy periods, forbidding his entry into the catheterization clinic.
 - ▶ splitting him from the consultation program for internal medicine departments, and preventing him from referrals of medical tourism.

IGNORING WARNINGS OF MISCONDUCT ENDANGERING PATIENT SAFETY

- In July 2009, with the increase of the cases where harm was caused to patients, Dr Milgalter, driven by his conscious and moral obligation, **sent a warning letter to Hadassah's management, titled "Improper management can kill patients!"** “ where he lists the factual events since the appointment of the new head of the department:
- Dr. Milgalter warned in his letter of the risks to patient safety in the department.
- The hospital's CEO ignored the content of the letter and instructed all other recipients of the letter to ignore his warnings as well.
- Following his warnings about the department management in a manner that endangers patients, Dr Milgalter received a formal complaint that his behavior was unethical and he was summoned to a disciplinary hearing in an improper procedure.
- As a sanction the extension of Dr. Milgalter's appointment as the director of the unit was upheld until the results of the disciplinary hearing.

ENDANGERING PATIENT SAFETY

- Out of all the episodes of which Dr Milgalter had warned of in the detailed letters to the hospital management, two events were fatal: the R.H. episode and the A.T. episode. An investigation committee was established at the Ministry of Health followed by a police investigation with a suspicion of criminality.

The R.H. Episode

At the direct order of the Director, the staff was instructed not to call Dr Milgalter who was on night duty despite the fact that he was present at the hospital. Post factum it became clear that this instruction was fatal as a child wasn't treated and died from a cardiac complication.

Had he been called immediately on her admission to the emergency room, he would have diagnosed her coronary condition, applied timely emergency medical aid, and the infant would have survived.

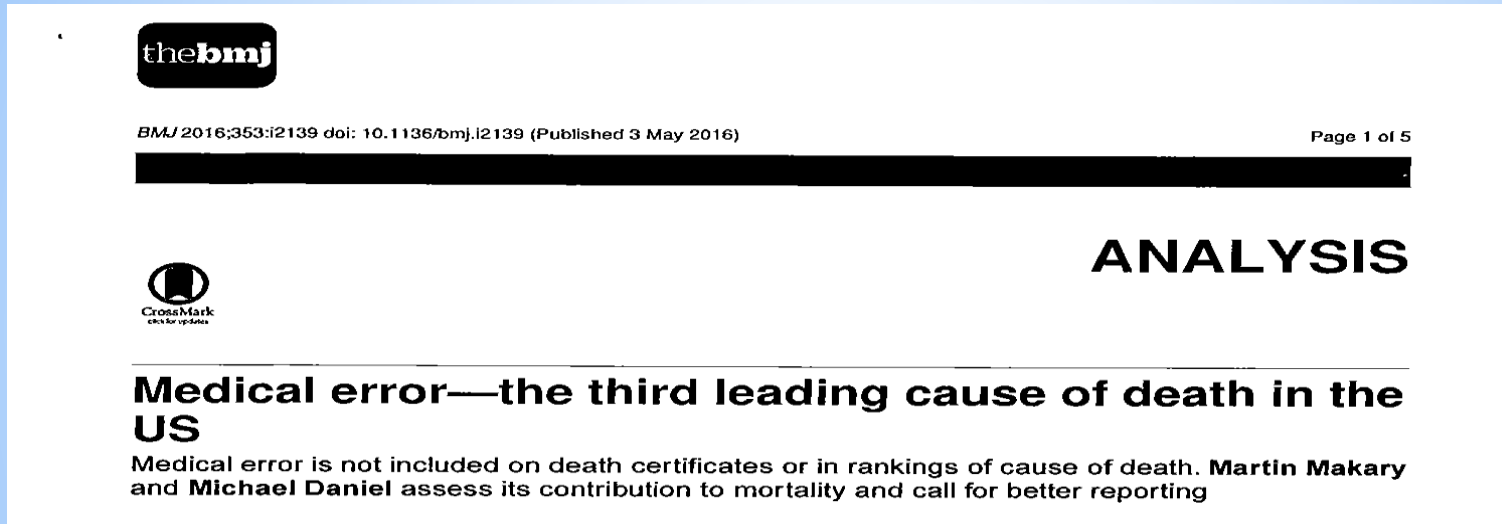
The A.T. episode

Dr Milgalter's warnings about the defaults and procedures that endanger the patients under the Director's management fell on deaf ears. Together with other senior physicians, Dr Milgalter warned of the fact that operating room no. 8 was unsuitable for pediatric surgery due to the infrastructure, and that pediatric surgery in this room could cause a disaster. Dr Milgalter refused to operate in this room despite the threats of the Director to adopt measures against him if he did not operate there. On January 23, 2011 the risk that he had warned of occurred: a resuscitation device was connected erroneously to a carbon dioxide valve instead of an oxygen valve and, as a result of this, severe and irreversible brain damage was caused to the child A.T.

THE CLAIM OF DR MILGALTER'S ESTATE


- ▶ Further to Dr. Milgalter's death his estate filed a claim of wrongful death as a result of the harmful conduct of the Defendants towards him, with the intention of undermining his mental condition, humiliating him and destroying his professional reputation and social status. The harmful conduct caused him stress, exacerbated his physical condition and caused his untimely death, at the age of 64.
- ▶ This claim exposes a web of events stemming from negligent management that caused irreversible damage to physicians and patients in the Cardiothoracic Surgery Department at Hadassah under the direction of Defendants. The Defendant created a noxious work environment and hostile organizational culture within the confines of Hadassah Hospital, while sacrificing the health and endangering the lives of patients for the sake of empowering his professional status and concealing and whitewashing events of medical malpractice in the department about which the Deceased and the other department physicians had warned.
- ▶ The harmful conduct towards Dr. Milgalter was perpetrated by the abuse of power of the Defendants and the absolute backing by the Hadassah Hospital administration.
- ▶ Dr. Milgalter's widow Aviva Milgalter , is now continuing his fight legally & publicly.

IS THERE CAUSATION BETWEEN THE FOLLOWING HEADING AND SHAM PEER REVIEW?



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ANALYSIS

Medical error—the third leading cause of death in the US

Medical error is not included on death certificates or in rankings of cause of death. **Martin Makary** and **Michael Daniel** assess its contribution to mortality and call for better reporting

251K DIED IN THE USA IN 2013 DUE TO MEDICAL ERROR

Figures

Causes of death, US, 2013

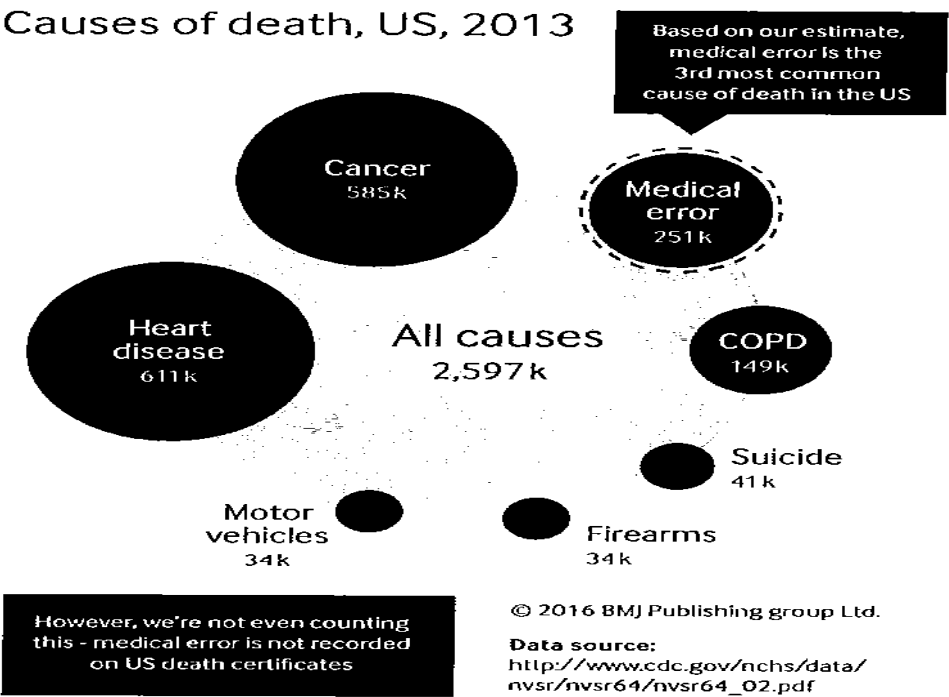


Fig 1 Most common causes of death in the United States, 2013²

LEGAL IMMUNITY IN ISRAEL HEALTH SYSTEM

- ▶ One of the arguments in American literature shows an history of outrageous and unjustified immunity that allows sham peer review that began in the mid-1980s with a perception, probably false, that instances of malpractice by physicians were increasing.
- ▶ In Israel legislation protects wrong behavior by giving immunity in different ways:
- ▶ Testimony of expert witnesses is protected by legislation allowing the witness to say any thing against his colleges or anyone else.
- ▶ Hospitals conduct in internal investigating hearing are completely immured. This allows them to cover-up any malpractice that accrued within the medical institution.
- ▶ Hospital disciplinary hearings are completely immured.
- ▶ When Dr. Milgalter asked to complain to the Ministry of health and testify in front of disciplinary hearing committee, Hadassah authorities stopped him from doing so using different tactics.
- ▶ Immunity of wrongful conduct within medical clinics is used as a tool to cover mistakes.
- ▶ This full immunity allows sham peer review to take place in its different forms mentioned above.
- ▶ Immunity allows to cover-up wrongful conduct that the physicians call Defensive Medicine and what **I consider as a tool to escape accountability in Medical Malpractice cases.**

THE DOUBLE JEOPARDY SYNDROME OF SHAM PEER REVIEW

- ▶ Once SPR takes place in a severe manner its probably unrecoverable.
- ▶ As Dr Poliner concludes in his review : “Despite the eventual return of all of my privileges, and after a jury unanimously found that defendants acted “maliciously without justification or privilege,” **my reputation was ruined, and my practice was destroyed.** The sham peer review was highly effective in eliminating me as a competitor, despite there being nothing wrong with the care I provided. It completely destroyed my referral sources. **It is hard to undo a label of “dangerous doctor” once it has been indelibly stamped on the physician victim”.**
- ▶ In this story we see that all players lose. The physician, the hospital, the patients and public.
- ▶ Sham Peer review is like a cancer cells within the system that attacks not only the physician involved but also patient safety, in the sense that patients become the main victim in the arena, but also the public loses an excellent and conscious professional.
- ▶ So the question is how does the system avoids Sham Peer review within hospitals?

The Milgalter case raises some important questions:

- After seeing who are the real victims of Sham Peer Review what should be done to avoid other cases as such?
- Should law makers consider to abolish or diminish immunity in order to protect patient safety?
- Why are the tactics of SPR in Medicine are so vicious and harmful?
- What is it that SPR happens especially with cardiologists & surgeons?
- How should society protect whistleblowers?
- Who should be accountable to SPR?
- Under what law should SPR be tried - Labor law or Torts?

THANK YOU FOR LISTENING

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