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Handful of docs behind most negligence cases

September 3, 2006

BY [JIM RITTER](#) Health reporter

The elderly man had a bad heart, so Dr. Joshua Salvador gave him a pacemaker. But Salvador put the device on the wrong side of the heart.

Another patient was having digestive problems, so Salvador performed several colonoscopies. But he failed to detect she had colon cancer.

A third patient had fibroid growths in her uterus. But while removing the fibroids, Salvador accidentally cut a hole in her bladder. He sent her home and she nearly died.

Salvador paid malpractice settlements in all three cases. His treatments were unprofessional, unethical and "grossly negligent," said the judge who conducted a hearing for the state Medical Disciplinary Board. "There is a serious risk of harm presented if Dr. Salvador is permitted to practice."

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An epidemic of doc suicides

Dr. Harry Reiss' career appeared to be thriving. The 43-year-old urologist was an assistant professor at New York University, an expert on impotence and author of 13 medical journal articles. Plus, his private practice was taking off. But one day after seeing his last patient, Reiss got on the examining table, hooked up an IV and gave himself a fatal dose of the anesthetic thiopental.

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Addiction on call

Something was seriously wrong with Dr. Robert Berry as he administered anesthesia to a mother of three who was having her tubes tied. The anesthesiologist's face was flushed. He was coughing and sweating, and he kept dropping things.

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The state suspended Salvador's license for a minimum of 10 years, although this was cut to 4 1/2 years after Salvador appealed.

The case illustrates how a handful of doctors are responsible for a large portion of negligent medical care. Just 5 percent of doctors pay out 53 percent of malpractice damages, according to a study by the consumer group Public Citizen.

Disciplining doctors isn't easy

The state says 230 Illinois doctors have had three or more black marks, such as malpractice judgments, hospital disciplines and felony convictions. This represents less than 1 percent of all Illinois doctors.

In the past, incompetent doctors sometimes fell below the state's radar. But a new law is enabling the state to discipline doctors who have shown a pattern of negligent care going back as long as 10 years.

But disciplining doctors is not easy in Illinois. In most states, a doctor can be disciplined for negligence and other infractions if there's a "preponderance of evidence" of guilt. Illinois is one of 15 states that require a higher standard of proof -- "clear and convincing" evidence.

State turns up heat on docs

Illinois has a state agency to protect the public from bad doctors such as these. For years, Illinois was ranked near the bottom in disciplining doctors. But even though the agency was criticized in a recent audit, recent statistics indicate it has begun to crack down much harder on misbehaving and incompetent physicians.

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Michele Polan. "He said, 'I love your mother. I would never let anything happen to her.'"

After Salvador did the surgery in his Chicago office, he told Polan he had cut her mother's bladder, but assured her he had stitched it up and that she would be fine.

But Polan said her mother came out of surgery pale, incoherent and in great pain. Polan thought she should go to a hospital. But Salvador did not have admitting privileges to any hospital and insisted she go home. Polan wanted an ambulance; Salvador instead sent a janitor to help carry Simone to her apartment.

Salvador dropped by the apartment later that night, and gave Simone intravenous fluids. But around midnight, with her mother still in pain and turning jaundiced, Polan decided to call an ambulance. The paramedics, Polan said, were stunned by what they saw: an IV bag hanging from a ceiling fan, and a catheter from Simone's bladder filling with blood.

Simone was taken to Resurrection Hospital, where doctors said she would die without emergency surgery. Simone had a hysterectomy and spent nearly a month in the hospital. Simone won a \$900,000 malpractice judgment, but remains bitter. "He basically left me to die," she said.

Salvador could not be reached for comment. But in court filings and in testimony at his disciplinary hearing, Salvador insisted he did nothing wrong. He said he repaired the tear in Simone's bladder, and that the post-surgical pain and urine in the blood were normal. Salvador also said he provided appropriate care in the other two cases.

But the disciplinary hearing judge said Salvador lacked credibility "and suffered from delusions of grandeur."

Salvador represented himself during the three-day hearing. He later hired attorney John Hynes, who in court filings said the hearing judge was biased and hostile toward Salvador, the "overly harsh" suspension was a response to investigative reports on Salvador by WBBM-TV, and the hearing was a "mockery with a predetermined result because of pretrial and post-trial publicity." A spokeswoman for the disciplinary board called the allegation "absurd."

After a Cook County judge ordered the state to reconsider its discipline, Salvador's suspension was reduced to a minimum of 4 1/2 years. Salvador is appealing this shorter suspension.

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But even when judged by Illinois' stricter standard, Salvador was guilty of gross negligence, according to the disciplinary board, which recommended his suspension.

'A touchy-feely doctor'

Salvador, 75, has practiced medicine for 50 years, including 35 in Illinois. His Web site brags that Salvador is "intelligent, attractive, humble and a highly personable physician and author." It also says he has "the youth and renewed vigor and vitality of a man half his age."

Salvador had been Rosemary Simone's doctor for six years when he recommended she have surgery to remove uterine fibroids. "He's a touchy-feely doctor," said Simone's daughter,

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Ob-gyn charged with sex abuse

September 3, 2006

BY [JIM RITTER](#) Health Reporter

Last year, a Downstate obstetrician-gynecologist named Dr. Roger Schroeder did a hysterectomy on a patient identified as T.S.

When she woke up, Schroeder was "rubbing his penis on her lips," according to a complaint filed by the state agency that disciplines doctors.

Last January, a patient who was nine months pregnant was sedated by the Jerseyville doctor, allegedly for no medical purpose. While she was under sedation, Schroeder touched her breasts with his hands and mouth, the state complaint said.

Another patient went to Schroeder for a gynecological exam. While she was unclothed, Schroeder asked her to "meet him for a drink," the state alleges.

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A Jersey County grand jury recently indicted the 53-year-old doctor for aggravated battery and criminal sexual abuse in connection with the alleged abuse of the pregnant woman.

Patients distraught

And two women are suing Schroeder for allegedly abusing them while they were under anesthesia. One woman, identified as Mary Doe, alleges she was raped while waking up from a tubal ligation. Both women "are completely mentally distraught," said their attorney, Joseph Hoefert. "They're basket cases."

Schroeder's attorney, Edward Unsell, said Schroeder "denies each and every allegation."

Jersey Community Hospital has fired Schroeder, and the state has suspended his license to practice medicine.

"It's an absolute nightmare," Unsell said. "He just can't understand it."

OB-GYNs are among the doctors most likely to be disciplined for sexual misconduct, along with psychiatrists and family and general practice physicians, according to a 1998 study in the *Journal of the American Medical Association*. The study found

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protect the patient from such abuse. A chaperone also can protect the doctor from false accusations. Studies have found that those most likely to want a chaperone include women who are young, never married, childless and black. But many women say they don't feel the need.

Chaperone policies vary. Many doctors bring in another staffer for all pelvic and rectal exams, but rarely for breast exams. Others have chaperones for breast and pelvic exams, but not for rectal exams.

Guidelines of the American College of Obstetricians and Gynecologists say that if either the patient or the doctor wants a chaperone, the request should be honored.

Concern about physician sexual misconduct dates to ancient Greece. The Hippocratic Oath, written in the 4th century B.C., prohibits "sexual relations with both female and male persons, be they free or slaves."

Today, the American Medical Association says having sex with a patient, even if it's consensual, can exploit the patient and cloud the doctor's judgment and "constitutes sexual misconduct." Having sex with a former patient also is unethical if the doctor uses his or her position to take advantage of the patient, the AMA says.

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that 4.4 percent of disciplinary cases against doctors involve sexual misconduct.

Chaperones protect patients

Sexual misconduct typically involves a male doctor and female patient. There are two types, "sexual violation" and "sexual impropriety." Sexual violation includes having sex with a patient, touching breasts or genitals without a medical reason or trading drugs for sexual favors. Sexual impropriety includes deliberately watching a patient undress, making sexual comments about a patient's body, asking a patient for a date or criticizing a patient's sexual orientation.

Having a third person in the room during an intimate exam can

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Medicaid fraud leads to prison, dooms license

September 3, 2006

BY [JIM RITTER](#) Health Reporter

Dr. Babubhai Patel grew up in India, where he attended B.J. Medical College, one of the country's premier medical schools.

Patel then completed his residency at the University of Illinois and, for more than 20 years, had a family practice in impoverished neighborhoods on Chicago's South Side and West Side.

According to his lawyer, he earned his medical license "through blood and sweat."

But then Patel threw it all away. Last March 24, he pleaded guilty in a Medicaid billing scam that investigators estimate totaled between \$500,000 and \$800,000.

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At his June 8 sentencing hearing, Patel cried as he described how he had ruined his career through his own fault.

"He got on his knees and begged for forgiveness," said his attorney, James Urtis. "It was a very emotional scene."

Patel, 55, was hoping for probation. But Circuit Judge Joseph Claps wasn't in a forgiving mood. He sentenced Patel to four years and four months in state prison. The judge said he hoped the sentence would deter other doctors from engaging in fraudulent schemes.

Medicaid provides health insurance to low-income families, and the state estimates that about 5 percent of billings from clinics, nursing homes, pharmacies, etc. are fraudulent. Doctors account for a "significant share" of the fraud.

The state audits doctors when it sees suspicious billing, such as more than 12 hours of office visits in a day, billing for an office visit when a patient is in the hospital or billing significantly more than other doctors in the same specialty.

Investigators uncovered Patel's crime after noticing his monthly Medicaid billings had suddenly doubled.

Patel engaged in a scheme known as "gang billing." When he saw one patient, he would submit phony bills for every member of the patient's family. He also would randomly pluck

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a patient's records and submit a bill, without seeing the patient. To conceal the scam, he would falsify medical records and write unnecessary prescriptions.

"It was blatant fraud," said Patrick Keenan, chief of the Illinois attorney general office's Medicaid Fraud Bureau. "This was a pretty bad case. This was a pretty bad doctor."

Patel's problems had been building for years. In 2001, the state required him to undergo a comprehensive assessment of his clinical skills. He also was ordered to have a female chaperone present whenever he conducted a breast, pelvic or rectal exam.

The center that assessed Patel concluded he had marginal medical knowledge and poor clinical judgment, and lacked communication skills with patients.

Patel also got in trouble with the U.S. Drug Enforcement Administration for prescribing controlled substance drugs such as Vicodin without proper record keeping. He later failed to pay a \$270,000 DEA fine and violated an agreement that he not prescribe controlled-substances for five years.

The state Financial and Professional Regulation Department suspended Patel's license in February 2005, saying that allowing him to continue practicing medicine would put people in "very real jeopardy."

Patel appealed. At a Jan. 4 hearing, his attorney argued that Patel had never been sued for malpractice and that there was no evidence he had ever harmed a patient.

"So why in the world would the department seek to have Dr. Patel's license -- which he earned through blood and sweat, which he uses to support his family -- why would the department want to suspend his license?" Urtis said.

Eleven weeks later, Patel pleaded guilty to the felony fraud, effectively dooming any chance of getting his license back.

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Who disciplines doctors?

September 3, 2006

The board that recommends disciplinary actions against doctors in Illinois consists of six doctors, one chiropractor, plus four members chosen from the public as "the consumer advocates for lay people," in the words of board chairman Dr. Douglas Webster.

For now, though, all four public positions are vacant.

Members gather twice a month for meetings that last half a day or longer. The governor is looking for, but hasn't found, candidates who have the ability to do the job but don't work in health care, said Blagojevich spokesman Gerardo Cardenas.

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Why doctors face state action

September 3, 2006

These are the top reasons, in order, for doctors to be disciplined by state medical boards:

- Drug or alcohol abuse
- Unprofessional conduct, such as prescribing drugs online without first doing an exam
- Controlled-substance violations -- such as indiscriminately prescribing Vicodin, Valium or other habit-forming drugs
- Negligent care
- Fraud, such as overbilling Medicaid or cheating on taxes
- Sexual misconduct
- Failure to maintain adequate medical records

SOURCE: Federation of State Medical Boards

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Check up on your doctor

September 3, 2006

The state makes public all disciplinary actions against doctors, ranging from letters of reprimand to license revocations.

Go online to the Illinois Financial and Professional Regulation Department's Web site, www.idfpr.com. Click on "Professional regulation license lookup."

To file a complaint against a doctor, go to www.idfpr.com or call (312) 814-6910. You have to identify yourself, but your name will remain confidential.

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State turns up heat on docs

September 3, 2006

BY [JIM RITTER](#) Health Reporter

A Chicago doctor nearly kills a patient after botching a routine surgery to remove fibroid growths from her uterus.

A Downstate OB-GYN is accused of sexually assaulting patients while they're under sedation.

A family practice doctor in Chicago is sent to prison after ripping off as much as \$800,000 from Medicaid by submitting phony bills.

Illinois has a state agency to protect the public from bad doctors such as these. For years, Illinois was ranked near the bottom in disciplining doctors. But even though the agency was criticized in a recent audit, recent statistics indicate it has begun to crack down much harder on misbehaving and incompetent physicians.

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The Illinois Financial and Professional Regulation Department took 281 disciplinary actions against doctors last year, a 17 percent increase over 2004 and more than double the number of actions in 2001.

Among all states, Illinois last year had the 18th highest disciplinary rate, according to the consumer group Public Citizen. In 2001, Illinois ranked 47th.

"Illinois deserves credit for moving up," said Dr. Sidney Wolfe, director of Public Citizen's Health Research Group. "But there still are states with two times as much discipline against doctors."

The consumer group looked at serious disciplinary actions, including license probations, suspensions and revocations. Between 2003 and 2005, Illinois took 4.1 serious actions per 1,000 doctors. By comparison, disciplinary rates were more than twice as high in the three toughest states, Kentucky, Alaska and Wyoming. But Illinois' rate was 2-1/2 times higher than that of the bottom state, Mississippi.

Why discipline is on rise

Even in the toughest states, fewer than 1 percent of doctors are disciplined each year, and they may represent only a fraction of the problem. In a recent study in the *Annals of Internal Medicine*, researchers added up all of the doctors who

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incompetence.

These are among the reasons disciplining is up in Illinois, according to John Lagattuta of the professional regulation department:

- The department has hired two full-time physicians to investigate complaints. Consequently, a backlog of more than 350 cases has been reduced to 200.
- The board is immediately suspending the licenses of doctors accused of sexual misconduct, substance abuse or other alleged infractions that could put patients in imminent danger. These temporary suspensions remain in effect while the cases are being heard.
- The board has begun invoking a new form of discipline -- refusing to renew licenses. A doctor must have a license to practice medicine, and this license must be renewed every three years. The board is refusing to renew doctors who have lost their licenses in other states or have failed to pay child support, student loans or state income taxes.
- A new law gives the board authority to share information and conduct joint investigations with law enforcement agencies such as the State Police and Drug Enforcement Administration.
- The board is prosecuting cases more aggressively these days. "There's a different culture," Lagattuta said.

Staff shortage criticized

Jerry Goldberg, an attorney who represents doctors, said the board now is imposing fines or reprimands in cases that in the past it might have settled without disciplinary action.

However, a recent audit by state Auditor General William Holland concluded that the department needs to do a better job of reviewing complaints and disciplining doctors.

For example, half of the investigations of cases received in fiscal years 2004 and 2005 took longer than the department's five-month guideline. Department spokeswoman Susan Hofer said a federal privacy law slowed the gathering of medical records, and "we have since worked out a lot of those glitches."

The auditor also criticized the department for having only two staffers to monitor 1,100 doctors and other professionals who have been put on probation. Hofer said the department plans to hire three additional probation monitors.

State Rep. Mary Flowers (D-Chicago) sponsored the resolution requesting the audit. She said she was "disappointed" that the auditor found problems with the department.

"I was expecting something better," Flowers said.

suffer debilitating physical or mental illnesses, are addicted to drugs or alcohol, have "significant deficiencies" in medical skills or knowledge or are abusive to nurses and patients.

Researchers concluded that at least one-third of all doctors will at some point in their careers have a condition that impairs their ability to practice medicine safely. For a hospital with 100 doctors, "this translates to an average of 1 to 2 physicians per year," they wrote.

In Illinois, the Medical Disciplinary Board investigates complaints and recommends disciplinary actions for infractions ranging from sloppy record keeping to gross

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Addiction on call

September 4, 2006

BY [JIM RITTER](#) Health Reporter

Something was seriously wrong with Dr. Robert Berry as he administered anesthesia to a mother of three who was having her tubes tied. The anesthesiologist's face was flushed. He was coughing and sweating, and he kept dropping things.

Berry was addicted to the pain-killer Demerol. And Kim Jones, his 31-year-old patient, was about to pay a terrible price for his impairment.

As the operation was ending, Berry failed to give Jones a drug to wake her up. He removed Jones' breathing tube before she could breathe on her own. And he failed to notice she wasn't getting oxygen, said attorney Ron Perey, who represented Jones in a malpractice lawsuit.

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Jones suffered severe brain damage. Today, she resides in a nursing home in a nearly vegetative state, unable to talk, move or feed herself.

"We think it was his drug impairment that caused this," said Brian Cahill, an attorney for Kadlec Medical Center in Richland, Wash., where Berry worked. "The standard of care was so far below normal it could not be anything other than impairment."

Jones won a \$1 million settlement from Berry and \$7.5 million from Kadlec. The hospital, in turn, obtained a \$6 million judgment from Berry's previous employer and partners for not disclosing his addiction. Berry, who could not be reached for comment, has lost his medical license.

Addiction to drugs and alcohol is the No. 1 reason doctors lose their licenses or are otherwise disciplined, according to the Federation of State Medical Boards.

It's unknown how much patients are being harmed by impaired doctors. One of the few studies on the subject found that in New Jersey, impaired physicians did not experience a higher rate of malpractice claims than unimpaired doctors. However, cash settlements paid by impaired doctors were higher.

Anesthesiologists may be prone