

Dispute over treatment of heart patients derails career

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By Steve Twedt, Post-Gazette Staff Writer

CLEVELAND -- When University Hospitals of Cleveland recruited Dr. Thomas Kirby to head up its cardiothoracic surgery and lung transplant divisions in 1998, he saw it as an opportunity to raise a fledgling program to national prominence.

Kirby, 51, had directed lung transplant programs at two highly renowned hospitals -- Columbia Presbyterian Medical Center in New York and the Cleveland Clinic -- when he got the intriguing offer to run his own program at University Hospitals, which is affiliated with Case Western Reserve University.

"I told them, 'I'm not moving over here to run some second-rate program,'" Kirby recalled. Hospital officials assured him they wanted a premier program, too, and they were eager to have him direct it. His starting salary was \$800,000 a year.

In the ensuing years, the number of lung transplants at UH went from zero to 15 per year, solidly establishing the program as a player in the state.

But, even as more patients received life-saving surgeries, the story took a turn neither Kirby nor the hospital expected.

Today, nearly six years after he was hired, Kirby is out of work. He was suspended more than a year ago by UH for "disruptive and abusive" behavior.

Kirby says the only thing he was trying to disrupt was the high mortality rate among the hospital's heart patients, which was two to three times the national average.

But being right has not prevented the derailment of Kirby's promising surgical career. For the past two months, he has lived among packed boxes and unhung pictures in his expansive Cleveland Heights home, which is now in foreclosure proceedings.

The divorced father of three -- his oldest started college this fall -- is considering filing for personal bankruptcy.

Last month, the hospital upheld Kirby's suspension, putting the final stamp on his removal. He's now looking for work outside of Cleveland, but is likely to end up at a much smaller program.

"I'm in a state of shock," Kirby said. "I can't believe it. I feel like I've been trashed and mauled."

Pushing for change

Not long after he joined UH, Kirby started pressing hospital executives about program changes, particularly for open heart procedures. Kirby said he was alarmed by mounting deaths and complications among intensive care patients after heart surgeries, and took his concerns to hospital administrators and board members.



John Beale/Post-Gazette

Dr. Thomas Kirby stands outside University Hospitals of Cleveland, which suspended him more than a year ago for "disruptive and abusive" behavior. He had been recruited by the hospital in 1998 to head up its cardiothoracic surgery and lung transplant divisions.

Among the troubling examples of questionable care Kirby cited at UH:

*After a 60-year-old lung transplant patient died, it was discovered that a monitoring alarm had not been turned on.

*A man admitted for a routine heart bypass ended up needing a heart transplant because of a surgical mistake.

*A man scheduled for surgery the following Monday died after surgeons did not respond to warnings from weekend staff that the patient was bleeding internally.

*A 52-year-old man died 10 days after heart valve replacement surgery which, for undisclosed reasons, took 24 hours to complete and involved transfusion of 120 pints of blood.

*A woman, 46, admitted for heart bypass, died of a massive heart attack after post-operative bleeding went untreated.

Eric Sandstrom, a spokesman for University Hospitals, would not confirm or deny Kirby's accounts.

"This has been in the courts for a long time and just the fact that it's a legal matter means we cannot comment on it," he said. He did confirm that Kirby's privileges had been suspended.

Thinking back, Kirby believes UH officials began gathering information about him in late 2000, after he had proposed to the hospital administration that they bring in two new surgeons. That move, Kirby believes, made him "a target of the older surgeons in the group" who felt threatened by the proposal.

When he returned from a five-day vacation in January 2001, Kirby learned he'd been demoted and the two colleagues he'd recruited to the program had been told their services were not needed.

During the subsequent months, acrimony within the department boiled up and eventually led to Kirby filing a slander suit against a fellow surgeon, who Kirby says had made disparaging remarks to other staff members about his clinical competence. That suit is still pending.

No one has disputed that the program had troubles -- at one point, UH temporarily suspended its heart transplantation service after four consecutive patients died. Yet even though the hospital never accused him of poor medical care, it was Kirby who lost his job in April 2002.

Caught in crossfire

Kirby believes he got caught in a political crossfire, with staff surgeons who felt threatened by the changes targeting him from one side and, from the other, hospital administrators, who were upset that Kirby had been speaking directly to hospital board members.

The suspension letter from the medical chief of staff accused Kirby of being "abusive, arrogant and aggressive" with other hospital staff, including use of profanity and "foul and/or sexual language." Accusers were not named, dates were not supplied and Kirby was not offered the chance to continue practicing surgery.

"He made people mad because he didn't settle for mediocre," said Lisa Sorenson, 39, a nurse who followed Kirby from Cleveland Clinic to UH and is now back at the clinic.

"He really believed that to make a program good and keep patient safety at its highest, you had to do things, even if it makes people unhappy."

Kirby sued University Hospitals for wrongful termination, but the judge said the suit could not go forward until Kirby's internal UH appeal was resolved.

At one point, when talk of a possible resolution surfaced, Kirby's attorney sent a letter to the hospital's law firm, insisting that "any settlement of this case will require the institution of reforms in the hospital that, in the future, will prevent careless and fatal medical practices."

Adding fuel to the fire was the fact that Kirby gave a sworn affidavit for a family suing the hospital.

Terry Mullin, 58, received a new heart at UH on May 23, 2001, but died the next day after a second surgery failed to stop internal bleeding. The Mullin family sued in November 2002, accusing the hospital of negligence. The family's attorney knew from news articles that Kirby had been suspended and asked him to testify. He agreed because he thought the hospital was stonewalling the family.

In his affidavit, Kirby said he'd warned key administrators since 1999 "of numerous deficiencies relative to medical care complications and surgical outcomes, which existed in the division of cardiothoracic heart surgery at University Hospitals." Despite those warnings, he added, "no remedial and/or curative action was instituted."

Hospital attorneys have tried to quash Kirby's statement, as well as subpoenas issued for top administrators and the board chairman at UH.

In January, eight months after he'd been summarily removed, Kirby faced a panel convened to consider his suspension. But three days into the proceeding, the panel was abruptly disbanded after Kirby's attorney learned that two of the three panelists were on the clinical council that had ordered his suspension. A second panel was convened in July, leaving Kirby's status in limbo for months longer.

His finances are shot

With last month's final ruling, Kirby faces the challenge of looking for a new hospital, but now his name is included in the National Practitioner Data Bank as a physician who lost his credentials because of professional misconduct. He has not decided whether to appeal the data bank report.

Kirby has not collected a paycheck in more than a year and has attorney fees "in the hundreds of thousands of dollars," he said. His savings and his retirement nest egg are both gone. Kirby, a classical pianist, has had to sell his piano to help cover the mounting bills.

University Hospitals and its patients have suffered, too. After Kirby's departure, the lung transplant program had been inactive until recently.

The hospital received high marks for its heart surgery program from U.S. News and World Report this year, but Health Grades Inc., a Colorado company that rates health care quality at more than 5,000 U.S. hospitals, has described UH's survival rates for valve replacements and in-hospital deaths as "poor." Health Grades spokeswoman Sarah Loughran said 10 percent to 12 percent of the hospitals reviewed get that ranking.

Last year, the Accreditation Council for Graduate Medical Education revoked UH's authority to train cardiothoracic surgery medical residents, saying the program no longer met council standards.

Although the hospital accused Kirby of being abusive, several staff members testified otherwise at his hearing.

The employees, including his transplant coordinator, several nurses and residents and his secretary, described Kirby as professional and respectful. A surgical assistant for Kirby said the surgeon "had great behavior" and had never been abusive in the 100 or so surgeries they'd done together. He also was nominated as surgical teacher of the year at Case Western Reserve's School of Medicine in 2002.

Kirby does not dispute that he has exacting clinical standards, or that he has used profane language. But he believes he was fired and labeled disruptive for insisting on improvements to the UH program that he thought would save lives.

At the time of his suspension, Kirby said, he did not have a single accusation of poor care against him.

His career aspirations may be so much vapor now, but Kirby said he would not turn his back or compromise on patient care.

"How much is one person's life worth?" Kirby asked. "If I were to prevent even one death as a result of this, it will have been worth it."

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[Back](#)

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