

The Cost of Courage: How the tables turn on doctors

First of a series

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By Steve Twedt, Post-Gazette Staff Writer

America's physicians, sworn to protect their patients from harm, increasingly face a surprising obstacle -- their own hospitals.

In medical centers as small as Centre Community Hospital in State College and as prestigious as Yale and Cornell, doctors who step forward to warn of unsafe conditions or a colleague's poor work say they have been targeted by hospital administrators or boards.

Instead of receiving praise or even support for trying to improve care, they're disciplined or dismissed for being "disruptive" or for violating patient confidentiality. Frequently, the hospital turns the tables on the whistleblowers and accuses them of poor care. They also threaten internal investigations that could result in listing the complaining doctors in the National Practitioner Data Bank, which can make finding a similar position at another hospital all but impossible.

Not even whistleblower laws, designed to give legal protection to those trying to report wrongdoing, safeguard the doctors in many cases. And all too often, state and federal agencies and national accrediting groups do little to protect these physicians or make sure patient care problems are corrected.

During the past 10 months, the Pittsburgh Post-Gazette has examined cases across the United States in which physicians who spoke up about poor care faced reprisals, including peer review hearings, demotions, temporary loss of credentials, involuntary transfers or outright dismissal. In one Missouri case, a physician was cited for violating patient confidentiality after he pushed for further investigation into possible serial murders at the hospital.

While it's unknown exactly how often physicians are targeted for patient advocacy, a 1998 survey of 448 emergency physicians across the United States found that 23 percent had either lost a job, or were threatened with it, after they'd raised quality-of-care concerns. Ed Kabala, a lawyer with the Downtown law firm Fox Rothschild, which represents physicians, said he had noticed a recent increase locally in physicians being accused of disruptive conduct.

"We might have seen two or three in a year, then all of a sudden, we had five in 60 days. Some of them were bona fide and some were not," he said.

"There are cases where physicians have raised legitimate concerns about other physicians, or hospital staffing, and in retaliation they have been subjected to threats that they are



Dr. Tom Kirby, a surgeon, stands in his home that is now in foreclosure after he was suspended from University Hospitals in Cleveland. Kirby has not operated on a patient in nearly 18 months while he fights charges of being "disruptive and abusive." View [larger image](#). (John Beale, Post-Gazette)

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disruptive. It's a technique to be used when other disciplinary reasons could not be justified."

Isolated incidents?

Hospital attorneys, not surprisingly, take a different view.

"I don't see it as a large problem," said John Horthy, of Pittsburgh's Horthy Springer and Mattern, one of the leading health care law firms in the United States.

Horthy's firm has represented 400 to 500 hospitals, and is on retainer with about 30, and "we may have one of these [whistleblower physician] cases," he said.

While acknowledging that relationships between physicians and hospitals "are the worst I've ever seen" because of economic and other outside pressures, Horthy said that "most disruptive physicians are, in fact, disruptive. If it's nothing but whistleblowing, the hospital almost never acts."

But the Post-Gazette's investigation has shown that while such incidents may not happen at most hospitals, doctors who question quality standards or practices can pay a steep personal and professional price, including:

- **Loss of patients and their practice.** After he was summarily suspended for complaining about poor care received by his patients, vascular surgeon Dr. Thomas Wieters of Charleston, S.C. had 48 hours to find another physician to tend to his hospitalized patients. Dr. Gil Mileikowsky, an obstetrician-gynecologist in Encino, Calif., had to tell longtime patients that someone else would have to deliver their babies. Similarly, transplant surgeon Dr. Thomas Kirby of Cleveland's University Hospitals has not operated on a patient in nearly 18 months while he fights charges of being "disruptive and abusive."

- **Prolonged investigations.** Kirby waited more than a year for his hearing, and Mileikowsky has had two hearings abruptly stopped after procedural disagreements arose, such as whether he could question his accusers. Both sought court intervention, only to be told their wrongful termination lawsuits could not be addressed until their administrative appeals within the hospital were completed.

- **Financial ruin.** Wieters estimates he's lost about 80 percent of his income since his dismissal and is considering filing for personal bankruptcy. Kirby's Cleveland Heights home is now in foreclosure.

- **Lack of relief from courts.** Almost uniformly, courts have given hospitals a wide berth in handling staff credentialing matters. When kidney specialist Dr. Linda Freilich sued a Maryland hospital that terminated her privileges after she complained about substandard care, the courts declined "to enmesh themselves in hospital governance." Wieters was told by one federal court that the fact that he'd uncovered substandard care was irrelevant.

Targeting reformers

Those who have witnessed reprisals against physicians or were targets themselves are troubled that advocating for better patient care can be seen as disruptive and lead to serious professional consequences. Some say it's like arresting a person who yells "A man's been shot!" for violating a noise ordinance.

"We're the only people who can stand up for patients," said Dr. Scott Plantz, an emergency medicine specialist who headed the survey of emergency physicians. "The nurses can't, because they're employees of the hospital. But doctors aren't, or at least they weren't in the past. With managed care, and doctors working for hospitals, it gets worse and worse and worse."

The silencing of whistleblower physicians hasn't received the kind of intense publicity malpractice reform arguments have. But because many of

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the doctors' complaints involve the basic standards of care being used at hospitals, it could have just as big an impact on the quality of care patients receive.

The targeted whistleblowers include some of the best of the best: chiefs of staff, board-certified specialists, highly regarded transplant surgeons and the president of the Pennsylvania Medical Society.

"There's an attitude that it's better to cover [a problem] up than to let it be known and correct it, because [a hospital] cannot afford the consequences of letting anybody find out that it went wrong," said Dr. Edward Dench, who just completed his year at the reins of the medical society. Dench said he became a target at Centre Community Hospital after questioning procedures there.

"If a nurse or physician speaks up and says, 'This is wrong,' they are the ones most likely to be punished."

And that's only counting the ones who have the courage and conviction to speak up. Many others weigh the professional and financial cost and do not come forward, thus silencing the patient's best and most knowledgeable advocate.

"If you want your life to go on without disruption, then that's what you do," said John Blum, a Loyola University of Chicago professor who's written extensively on hospital credentialing. "There is a real public health threat there. There has to be some kind of immunity to those who are presenting allegations of quality problems."

While retaliating against whistleblower physicians does not happen at most hospitals, some say it appears to be on the increase.

"It is clear that we are hearing of more cases of these kind of really difficult conflicts occurring between hospitals, and, in some instances, hospital boards, and the medical staff," said Dr. Paul M. Schyve, senior vice president of the Joint Commission on Accreditation of Healthcare Organizations, which accredits most U.S. hospitals. Schyve said one factor driving these disputes is the economic pressure hospitals face to keep costs down and maintain a good image.

The American Medical Association, while stipulating that there is no clear definition, says physician behavior is disruptive when it interferes with patient care. But the AMA code also notes, "Criticism that is offered in good faith with the aim of improving patient care should not be construed as disruptive behavior."

The whistleblowers at hospitals are not always physicians.


Nurses and other health care workers have come forward, at risk of being fired, having their work hours cut back or being reassigned to an undesirable shift. Occasionally, they've successfully fought back.

Last year, a jury awarded three nurses \$275,000 from a Bradenton, Fla., hospital for retaliating against them after they complained about poor nursing care. In Naperville, Ill., nurse Reem Azhari sued Edward Hospital after she was the only staff member let go because of "budget cuts" in March 2000, not long after she had reported several health and safety violations, including uncertified medical students being allowed to perform surgery.


But whistleblower physicians face a unique vulnerability, one that can

A Conversation with Steve Twedt


Audio excerpts from a discussion of "The Cost of Courage" with Post-Gazette Staff Writer Steve Twedt


AUDIO  The project began with [a call from a physician.](#)
(1MB MP3)


AUDIO  Across the country [patients should be worried](#) about whether doctors are afraid to criticize poor health care practices at hospitals.
(1MB MP3)


AUDIO  Hospitals have been able to threaten doctors with being listed as ["disruptive"](#) on a national database originally developed to identify dangerous or incompetent physicians.
(500K MP3)

AUDIO  Powerful and secretive [peer review boards](#) can make doctors afraid to speak out.
(1.7MB MP3)

AUDIO  Physicians do not receive the same [due process safeguards](#) before a review board that they would expect in court.
(1.2MB MP3)

AUDIO  Hospitals are under [intense economic pressure](#) to avoid public criticism from doctors who practice there.
(884K MP3)

AUDIO  Physicians who want to blow the whistle on practices at a hospital face a [real threat](#) from physician review boards and an adverse listing in a national databank.
(614K MP3)

AUDIO  There is a [high cost](#) for physicians labeled as being "disruptive."
(546K MP3)

make disagreeing with their hospital administrators a career-ending move. Once they've been labeled disruptive, doctors may face sanctions and effective banishment from the profession. That gives hospitals considerable leverage when conflicts occur.

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The irony of this growing trend is that hospitals are silencing doctors by using a piece of federal legislation that was meant to protect patients.

Hospital peer review, typically involving a panel of physicians who review patient cases, is an integral part of the Health Care Quality Improvement Act, which Pittsburgh's Harty co-authored and which Congress passed in 1986. The law sets out a framework for discreetly investigating a physician's performance and ensuring he's meeting accepted standards of care.

The shroud of immunity and confidentiality over internal hospital investigations of physicians is intended to protect both the patient's and the doctor's privacy, and allow for open discussion of the details.

But it also means that physicians who are wrongly or maliciously accused may be pulled into a hearing where they have no legal representation and no opportunity to face their accusers. Or, in some cases, their accusers sit on the panel investigating them.

"The assumption that peer review is always only about quality and not about economic or intra-professional political struggles is less and less realistic as the economics of the health care industry become more competitive," said Sallyanne Payton, a University of Michigan health law professor.

Historically, physicians have supported the confidentiality of peer review proceedings, seeing it as a protection.

But that is changing.

"I'm hearing from more and more doctors that peer review really represents, in too many institutions, physicians who are either employed by the hospital or are linked to the hospital, so they're doing the hospital's bidding," said Dr. John C. Lewin, executive vice president and CEO of the California Medical Association.

Lewin would like to see a "renaissance" of peer review, refashioning it by using outside specialists instead of staff members beholden to the hospital. "We're concerned that some hospital facilities are less interested in objectivity than in using peer review for their own purposes."

In some cases, those purposes include retaliating against whistleblower physicians who jeopardize the daily flow of patients and reimbursements.

The none-too-subtle warning to doctors: If you value your career, report no harm.

Tomorrow: A South Carolina surgeon is blackballed

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