



Doctors' Histories of Malpractice Lawsuits Are Withheld from Patients

September 14, 2011 by [Patrick A. Malone](#)

You have to wonder how in the modern world it is possible that a surgeon with 16 prior malpractice lawsuits for medical mistakes was allowed to operate on Maribeth Chase's brain. *She* certainly was unaware the checkered history of Dr. Robert Tenny.

Her [tortuous trip through medical misadventure](#) and the system that enables it was told in a long story earlier this month in the Kansas City Star. The takeaway message from this shocking event is that a doctor's history of alleged malpractice is often unknown to patients, and that doctors under such scrutiny often go undisciplined.

Here's the cautionary tale.

Tenny's Kansas medical license was in good standing and despite a history of malpractice claim payments, state licensing officials had never taken action against him.

In 2007, when Chase went under Tenny's knife for the relatively simple procedure of draining blood from her brain, she didn't know that Tenny's poor care previously had left one patient dead, others paralyzed and yet others requiring remedial operations. She didn't know he'd been denied clinical privileges by a local hospital.

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Chase awoke from her surgery paralyzed on one side and unable to speak, the victim of a brain injury sustained during the operation. Her condition gradually deteriorated, and she died.

Tenny settled her family's wrongful death suit for \$1,010,000, a sum that brought the amount of malpractice payments made on Tenny's behalf since the early 1990s to about \$3.7 million. But that's only part of the story.

Tenny denied causing Chase's injury and continues to practice medicine, never mind that other disciplinary proceedings against him are pending and his Kansas license remains in good standing.

One week after Chase died, her daughter Claire filed a detailed complaint about Tenny with the Kansas medical licensing board. The board did not start formal disciplinary proceedings against Tenny until June 2010. More than a year later, the case is still not scheduled for a hearing.

It gets worse.

The Kansas City Star found 20 other doctors in Kansas and Missouri with clean, unencumbered licenses despite having lengthy histories of malpractice cases. "Some have been sued over patient deaths and serious injuries. Some allegedly operated on the wrong body parts, made incorrect diagnoses, delivered unnecessary treatment or left surgical materials inside their patients," according to the paper.

None of their records reflects any discipline by state medical licensing boards.

Doctors and insurance companies in Kansas and Missouri must notify the boards about malpractice payments and the information also is collected by a federal agency, the National Practitioner Data Bank. State officials claim to review malpractice payments, but also say that a payout doesn't necessarily mean there are grounds for disciplinary action. A financial settlement can be a business calculation, "a cost-benefit analysis of whether to go to trial," one official told The Star.

The American Medical Association has reported that most doctors will be sued for malpractice by the time they retire, but most never face more than one lawsuit.

Doctors who are sued repeatedly and successfully are uncommon. According to The Star, "If you're a doctor with more than two malpractice payments, you're in a rare group," said Russell Aims of the Massachusetts Board of Registration in Medicine.

The Star noted that the advocacy group Public Citizen recently released a nationwide analysis of the Data Bank. It found 14 states with physicians who had at least 10 malpractice payments plus at least one report by a

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hospital revoking or limiting clinical privileges, but who had not been disciplined by their state. One undisciplined doctor in New Mexico had 26 malpractice cases. One in Indiana had 20.

According to analyst Robert Oshel, formerly of the National Practitioner Data Bank, fewer than 2% of doctors nationwide have accounted for half of the reported \$67 billion paid out for malpractice claims in the U.S. since 1990. "Taking that 2% of physicians out of practice would certainly make quite a difference," Oshel told The Star.

"I wouldn't necessarily recommend revoking the licenses of all the docs responsible for half of the payments," Oshel said. "Some who have a single large payment are probably good, safe doctors. But all of them, especially those with multiple payments, would be good candidates for investigation by the licensing boards."

After her mother's ordeal, Claire Chase said, "I certainly at this point wouldn't trust ... (a) doctor without checking their history."

If your state isn't among the 17 that allow patients to view medical boards websites to find out about doctors' malpractice histories, it's time to let your legislators know that this is not acceptable. That this is a matter of life and death.

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